

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

HJALMAR RODRIGUEZ, Jr.,
Petitioner

v.

EDWARD BURNSIDE, ET AL.,

***APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE
A PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT***

To the Honorable Clarence Thomas, Associate Justice of the United States and
Circuit Justice for the Eleventh Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court,
Hjalmar Rodriguez respectfully requests a 59-day extension of the time, to and
including Friday, January 20, 2023, in which to file a petition for a writ of certiorari
in this Court. The U.S. Court of Appeals for the Eleventh Circuit entered judgment
on June 30, 2022. A copy of the Eleventh Circuit's opinion is attached as Exhibit 1.
Rodriguez v. Burnside, 38 F.4th 1324 (11th Cir. 2022). A copy of the Eleventh
Circuit's June 30, 2022, judgment is attached as Exhibit 2. On August 24, 2022, the
Eleventh Circuit denied Mr. Rodriguez's timely petition for rehearing en banc. See

Exhibit 3. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1). Without an extension, Mr. Rodriguez's time to petition for writ of certiorari would expire on Tuesday, November 22, 2022. This application is being filed more than 10 days before that date.

Petitioner Rodriguez is a devout Muslim in the custody of the Georgia Department of Corrections. Under this Court's precedents, Mr. Rodriguez retains the First Amendment right to freely exercise his sincere religious beliefs so long as his practice does not interfere with the state's legitimate penological interests. See *Turner v. Safley*, 482 U.S. 78, 89 (1987). Mr. Rodriguez's religious free exercise was substantially burdened by shower transport policies and practices at the State's Special Management Unit (SMU) that prevented him from adhering to the cleanliness practices and modesty required by his religion. *Rodriguez v. Burnside*, 38 F.4th at 1329. Seeking to vindicate his constitutional rights, Mr. Rodriguez sued the prison officials responsible for enforcing these policies under 42 U.S.C. § 1983 and the First and Fourteenth Amendments.

The Eleventh Circuit affirmed a grant of summary judgment to the prison officials, applying this Court's four-part framework from *Turner v. Safley* for assessing whether prison regulations burdening an incarcerated person's exercise of religion are "reasonably related to legitimate penological interests." 38 F.4th at 1330 (quoting *Turner*, 482 U.S. at 89). In concluding that the challenged prison policies survive constitutional scrutiny, the panel interpreted and applied, among other things, the fourth *Turner* factor, which asks whether the plaintiff has identified any

“obvious, easy alternatives” to the current regulation, which might tend to show that the prison policy is an “exaggerated response to prison concerns.” *Turner*, 482 U.S. at 89-91 (internal quotation marks omitted); *Rodriguez*, 38 F.4th at 1330. The Eleventh Circuit did not contest that the prison’s shower-frequency restrictions, which the officials sought to justify based on the burdens and concerns associated with transporting incarcerated people from their cells to the shower, prohibited Petitioner from complying with the Muslim bathing ritual *ghusl*. *Rodriguez*, 38 F.4th at 1329. And the court acknowledged that Petitioner had proposed that, as an alternative, he be housed in a neighboring block where cells contain showers, allowing him to comply with the *ghusl* ritual. *Id.* at 1332-1333. But the panel held that an “individual exemption” is inadequate as a matter of law to satisfy *Turner*. *Id.* at 1332. Instead, in the panel’s view, an incarcerated person must propose an “alternative policy that could replace the current one on a prison-wide scale.” *Id.* at 1333. Largely on that basis, the Eleventh Circuit held that, under *Turner*, the prison’s shower-frequency restrictions did not violate Petitioner’s constitutional rights.

The Eleventh Circuit also rejected Petitioner’s separate argument that prison officials unconstitutionally burdened his free exercise rights by only allowing him to wear underwear and shoes while walking from his cell to the shower, which violated his religious obligation to guard his modesty. *Id.* at 1333-1334. The court rejected Petitioner’s suggestion that he be housed in an available neighboring block with in-cell showers, again on the ground that an individualized exemption is legally

inadequate. And the panel separately rejected Petitioner’s suggestion that another alternative was available—namely, that the prison simply follow *its own existing policy*, which allowed people to wear t-shirts during transport. In the panel’s view, it was not “illogical or unreasonable” for the prison to depart from that policy “on the way to the shower” even if the prison “offers inmates the comparative dignity and comfort of wearing a shirt during other activities.” *Id.* at 1334.

In addition to finding that neither policy impermissibly burdened Petitioner’s religious exercise, the panel concluded—on analytically related grounds—that prison officials would be entitled to qualified immunity. *Id.* at 1334-1335.

Undersigned counsel and the University of Virginia Supreme Court Litigation Clinic respectfully submit that the additional time requested is necessary to complete preparation of Mr. Rodriguez’s petition. Mr. Rodriguez proceeded pro se in the district court. He did not benefit from the assistance of counsel in this lawsuit until his appeal to the Eleventh Circuit. See *Rodriguez v. Burnside*, 38 F.4th at 1335. Undersigned counsel were recently engaged for the first time at the certiorari stage. Despite diligent efforts, substantial work remains to complete review of the extensive, handwritten record to ensure that all appropriate issues are prepared for this Court’s review. Furthermore, undersigned counsel are working to supplement the work completed by appointed counsel below with respect to the legal issues at stake on appeal. Additional time is also required to ensure that any delay from the Georgia state prison mail screening process does not prevent Mr. Rodriguez from reviewing and commenting on draft filings.

Undersigned counsel and the University of Virginia Supreme Court Litigation Clinic have also faced numerous overlapping deadlines in other matters during the time for preparation of a petition for writ of certiorari in this case. Among other things, the University of Virginia Supreme Court Litigation Clinic is counsel for petitioner in *Jones v. Hendrix*, No. 21-857, which will be argued in this Court on November 1, 2022. In addition, undersigned counsel is involved in preparing a brief in opposition due on November 7, 2022, in this Court's case 22-115, and is counsel of record preparing a brief in opposition due on November 18, 2022, in this Court's case 22-256.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari up to and including Friday, January 20, 2023.

Respectfully submitted,



JEREMY C. MARWELL
Counsel of Record
VINSON & ELKINS LLP
2200 Pennsylvania Ave., NW
Suite 500 West
Washington, D.C. 20037
(202) 639-6507
jmarwell@velaw.com

October 31, 2022