

No. _____

IN THE

Supreme Court of the United States

VICKI JO LEWIS AND TROY LEVET LEWIS, INDIVIDUALLY AND AS CO-
PERSONAL REPRESENTATIVES OF THE ESTATE OF ISALAH MARK LEWIS,
DECEASED,

Applicants,

v.

CITY OF EDMOND, AN OKLAHOMA MUNICIPAL CORPORATION; POLICE
SERGEANT MILO BOX, AND POLICE OFFICER DENTON SCHERMAN,

Respondents.

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

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TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE TENTH CIRCUIT:

Pursuant to Rule 13.5 of the Rules of this Court, Applicants Vicki Jo Lewis and Troy Levet Lewis respectfully request an extension of time of 60 days, up to and including February 13, 2023, within which to file a petition for a writ of certiorari. Applicants seek review of the Tenth Circuit's judgment in *Lewis v. City of Edmond*, 48 F.4th 1193 (10th Cir. 2022).

In support of this request, undersigned counsel states as follows:

1. On September 16, 2022, the Court of Appeals issued its opinion reversing the District Court's order denying Respondent Denton Scherman's motion for summary judgment based on qualified immunity. *See* Ex. 1. The current deadline for filing a petition for a writ of certiorari is December 15, 2022. This application is filed more than 10 days before that deadline.

2. This Court's jurisdiction is based on 28 U.S.C. § 1254(1).

3. Good cause exists for the requested extension. This case presents substantial and important questions of law that warrant this Court's plenary review. In particular, the decision of the Court of Appeals conflicts with the precedent of this Court, splits with decisions from other Circuits, and presents recurring and weighty questions regarding the scope, application, and continuing validity of the doctrine of qualified immunity.

a. On April 29, 2019, Isaiah Lewis was shot and killed by Oklahoma Police Officer Denton Scherman. Mr. Lewis was unarmed, naked, and experiencing a mental

health crisis when Officer Scherman shot him four times. Mr. Lewis ultimately succumbed to his gunshot wounds and died.

Applicants—the parents of Mr. Lewis—brought this action against Officer Scherman, Sergeant Milo Box, and the City of Edmond, Oklahoma, alleging (among other claims) that the Defendants used excessive force against Mr. Lewis in violation of the Fourth Amendment.

b. At summary judgment, the District Court held (in relevant part) that Respondent Scherman was not entitled to qualified immunity because a “reasonable jury could conclude that no reasonable officer could have believed that the use of lethal force was lawful when Scherman encountered Lewis.” *See Lewis v. City of Edmond*, No. 19 Civ. 489, 2021 WL 2815851, at *8-*9 (W.D. Okla. July 6, 2021). The Court of Appeals reversed, reasoning that Respondent Scherman deserved qualified immunity because no factually identical precedent clearly established that his conduct—repeatedly shooting a slowly approaching unarmed naked man in the throes of a mental health crisis—was unconstitutional. *See Ex. 1.*

c. The Tenth Circuit’s erroneous decision distorts this Court’s qualified immunity precedents and exacerbates a growing and acknowledged circuit split “over precisely what degree of factual similarity must exist” to clearly establish a constitutional violation. *Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part, dissenting in part); *compare Ex. 1; Morrow v. Meachum*, 917 F.3d 870, 874-76 (5th Cir. 2019) (requiring an “extraordinary showing” of specificity to establish “fair notice”), *with Strand v. Minchuk*, 910 F.3d 909, 915 (7th Cir. 2018)

(holding that “[a]ssessing whether the law is clearly established does not require locating a ‘case directly on point’”). In addition, the decision below presents an ideal vehicle for this Court to reconsider the proper scope and ongoing viability of qualified immunity. As many federal judges (including Members of this Court) have acknowledged, the doctrine of qualified immunity rests on shaky foundations and should be reexamined. *See, e.g., Ziglar v. Abbasi*, 137 S. Ct. 1843, 1869-72 (2017) (Thomas, J., concurring in part and concurring in the judgment); *McKinney v. City of Middletown*, 49 F.4th 730, 756-58 (2d Cir. 2022) (Calabresi, J., dissenting) (appendix collecting judicial decisions and legal scholarship from across the political and ideological spectrum demonstrating that “qualified immunity cannot withstand scrutiny”).

4. An extension of time is further warranted because undersigned counsel of record was not involved in the proceedings below. An extension is therefore necessary to afford undersigned counsel adequate time to review the voluminous summary judgment record and familiarize himself with the facts and procedural history of this case. In addition, an extension would provide law students who are enrolled in the Howard University School of Law Civil Rights Clinic an opportunity to gain valuable experience by working closely with counsel for Applicants to prepare the petition for certiorari in this case.

5. Finally, an extension of time is also necessary because of the press of other client business. Counsel for Applicants have several litigation deadlines during the relevant period, including:

a. An oral argument in *Teeter v. Loomis*, No. 21-2426 (4th Cir.), on December 7, 2022.

b. A discovery conference in *Richardson v. The City of New York*, No. 21 Civ. 3609 (E.D.N.Y.), on December 8, 2022.

c. A petition for certiorari in *N.S. v. Kansas City Board of Police Commissioners* (S. Ct.), due on December 11, 2022.

d. Ongoing settlement negotiations in *Fisher v. Federal Bureau of Prisons*, No. 22-3754 (6th Cir.).

e. An opening brief in *Fisher v. Federal Bureau of Prisons*, No. 22-3754 (6th Cir.), due on December 19, 2022.

f. An opening brief in *Harbridge v. Reed*, No. 22-55861 (9th Cir.), due on January 9, 2023.

6. Applicants have not previously sought an extension of time from this Court.

7. For the foregoing reasons, Applicants request that this Court grant a 60-day extension of time, up to and including February 13, 2023, within which to file a petition for a writ of certiorari.

Respectfully submitted,



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December 2, 2022