

No. 22A508

IN THE

**Supreme Court of the United States**

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

*Applicants,*

*v.*

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

*Respondents.*

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**APPLICATION FOR A FURTHER 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 Levett Lewis respectfully request a further extension of time of 30 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.*

2. On December 2, 2022, Applicants timely requested an extension of time within which to file a petition for certiorari in this case, and Justice Gorsuch granted a 30-day extension on December 8. The current deadline for the petition is January 14, 2023. This application is filed more than 10 days before that deadline.

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

4. Good cause exists for an additional extension of time. Undersigned counsel of record intends to take parental leave during January and early February 2023 to care for his infant daughter. An extension of time would enable undersigned counsel to balance his childcare obligations with his representation of Applicants in this matter.

5. In addition, undersigned counsel of record is representing Applicants in his capacity as co-director of the Howard University School of Law Civil Rights Clinic.

Because Howard's academic semester does not begin until January 9, 2023, an additional extension of time is necessary to permit the Clinic's students to assist counsel for Applicants in preparing the petition for certiorari in this case.

6. A further extension of time is also warranted because of the press of other client business. Counsel for Applicants have several litigation deadlines during the relevant period, including:

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

b. An answering brief in *Harden v. Byers*, No. 22-7054 (10th Cir.), due on January 19, 2023.

c. An answering brief in *Scott v. Vineyard*, No. 22-3152 (8th Cir.), due on January 20, 2023.

d. A petition for certiorari in *Johnson v. Prentice*, No.22A416, due on January 22, 2023.

e. An opening brief in *McGowan v. Herbert*, No. 22-2033 (6th Cir.), due on January 23, 2023.

f. An opening brief in *Fisher v. Bureau of Prisons*, No. 22-3754 (6th Cir.), due on February 2, 2023.

7. Finally, as explained in Applicants' previous extension application, an extension is necessary because 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.” *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”).

8. For the foregoing reasons, Applicants request that this Court grant an additional 30-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 30, 2022