

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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Officer Cornelius L. Emily, in his individual and official capacities; and Officer Ernest Rhoney, in his individual and official capacities,

Petitioners,

vs.

Christopher Welters,

Respondent.

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**APPLICATION FOR EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI**

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TO: THE HONORABLE BRETT M. KAVANAUGH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT:

1. Pursuant to Supreme Court Rules 13.5, 22 and 30, Petitioners respectfully request a 30-day extension of time, up to and including April 13, 2023, to file a petition for a writ of certiorari to the United States Supreme Court to review the Minnesota Supreme Court's decision in *Welters v. Minnesota Department of Corrections*, A20-1481 (attached as Exhibit A.)

2. This case arises out of a claim under 42 U.S.C. §1983 by Respondent Christopher Welters, who was a Minnesota inmate serving a life sentence for murder. Welters claims Petitioners, Corrections Officers Earnest Rhoney and Cornelius Emily, violated the Eighth Amendment in restraining him during a medical appointment. After the state district court granted summary judgment to the officers, the Minnesota Court of Appeals reversed as to the Eighth Amendment claim. The Minnesota Supreme Court granted certiorari and affirmed. *Welters v. Minnesota Department of Corrections*, 982 N.W.2d 457 (Minn. 2022). The court evaluated Petitioners' conduct under the "deliberate indifference" standard, not the "malicious and sadistic" standard this Court has said "extends to ... prophylactic or preventive measures intended to reduce the incidence of [actual confrontations] or any other breaches of prison discipline." *Whitley v. Albers*, 475 U.S. 312, 322 (1986). The court also denied qualified immunity to the officers, holding that "concern about holding an officer to a constitutional standard at too high a level of generality is reduced" because, in that court's view, there was no "competing government interest" implicated by Petitioners' conduct. 982 N.W.2d at 481–82.

3. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. The time to file a petition for a writ of certiorari will expire without an extension on March 14, 2023. This application, filed jointly by the Petitioners, is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

4. Petitioners are considering asking this Court to review the applicable Eighth Amendment standard as well as the Minnesota Supreme Court's denial of qualified immunity. Because this case will raise significant and complex constitutional issues that could apply to multiple government actors, it will require additional time to adequately research, draft, and prepare a potential petition for certiorari. Additionally, counsel for Petitioners are preparing an amicus brief in support of respondents in *Tyler v. Hennepin County*, No. 22-106, which is now pending in this Court. Counsel have also had and continue to have significant ongoing briefing and oral argument responsibilities in a number of significant matters pending in Minnesota's trial and appellate courts, including *Cruz-Guzman, et al. vs. State of Minnesota, et al.* Minnesota Supreme Court, No. A22-0118; *In Re: Otto Bremer Trust*, Minnesota Supreme Court, No. A22-0906; *Snell v. Walz*, Minnesota Court of Appeals, No. A21-0626; *Mast, et al. v. Minnesota Pollution Control Agency, et al.*, Minnesota Court of Appeals, No. A22-1534; *Berrier v. Minnesota State Patrol*, A22-1545; *Doran 610 Apartments, LLC, et al. v. Walz, et al.*, Minnesota District Court, No. 62-CV-22-5132. Petitioners believe that a 30-day extension will be sufficient time to finalize a petition for filing in this Court.

Accordingly, Petitioners respectfully request that an order be entered extending the time to file a petition for a writ of certiorari for 30 days, up to and including April 13, 2023.

Dated: March 3, 2023

Respectfully Submitted,

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/s/ Michael Goodwin

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