

No.

IN THE
Supreme Court of the United States

LISA PRICE,

Petitioner,

v.

MONTGOMERY COUNTY, ET AL.,

Respondents.

**APPLICATION FOR A 30-DAY EXTENSION OF TIME WITHIN WHICH TO
FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Application to the Honorable Brett M. Kavanaugh,
as Circuit Justice for the Sixth Circuit

Pursuant to Supreme Court Rule 13.5, Applicant Lisa Price hereby requests a 30-day extension of time, to and including December 13, 2023, within which to file a petition for a writ of certiorari.

1. The decision below is *Price v. Montgomery County*, No. 21-6076 (6th Cir. 2023). The Sixth Circuit issued its opinion on July 5, 2023, *see* App. A, and denied rehearing en banc on August 15, 2023, *see* App. B. Unless extended, Applicant's time to seek certiorari in this Court expires November 13, 2023. Applicant is filing this application at least ten days before that date. *See* S. Ct. R. 13.5. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1). Respondents do not object to this extension request.

2. Good cause exists for a 30-day extension. An extension is justified by the press of business on numerous other pending matters. The undersigned is responsible for the following engagements, which make it difficult for counsel to prepare the petition for a writ of certiorari by the current deadline:

- 1) Oral argument in *Sonos, Inc. v. Int'l Trade Comm'n*, No. 22-1421, and *Sonos, Inc. v. Google*, No. 22-1573 (Fed. Cir.), on November 8, 2023;
- 2) Oral argument in *Pegasystems Inc. v. Appian Corp.*, No. 1399-22-4 (Va. Ct. App.), on November 15, 2023;
- 3) A reply brief in *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, Nos. 23-10151 and 23-10171 (11th Cir.), due November 20, 2023;
- 4) A brief in opposition to certiorari in *Smith v. Spizzirri*, No. 22-1218 (U.S.), due December 4, 2023.
- 5) A reply brief in *AliveCor v. ITC*, Nos. 23-1509 and 23-1553 (Fed. Cir.), due January 17, 2024; and
- 6) Ongoing argument preparation in *Plexxikon Inc. v. Novartis Pharm. Corp.*, No. 23-1113 (Fed. Cir.).

3. In addition, an extension is warranted because this case presents two substantial and important questions of law: is the defense of absolute prosecutorial immunity available under 42 U.S.C. § 1983 for a prosecutor's knowing destruction of exculpatory evidence, and is it available for a prosecutor's defiance of a specific court order that leaves no room for discretion? In holding that absolute immunity is available for both forms of prosecutorial misconduct, the Sixth Circuit disregarded this Court's carefully drawn boundaries on the defense. This Court has made clear that absolute immunity serves only to insulate prosecutorial conduct that is intimately related to the judicial process and entails the exercise of advocative

discretion and professional judgment. *See Kalina v. Fletcher*, 522 U.S. 118, 126, 130 (1997). The two forms of misconduct at issue here fall outside those limits. Destroying evidence is a ministerial act far removed from the judicial process, and as Judge Nalbandian emphasized in parting ways with the panel majority, defying a judicial directive that leaves no room for discretion is “disobedience,” not advocacy. App. A at 27 (quoting *Odd v. Malone*, 538 F.3d 202, 214 (3d Cir. 2008)).

4. Both questions Applicant will present to the Court are ones on which the circuits are split. First, in holding that absolute immunity applies to the knowing destruction of exculpatory evidence, the Sixth Circuit joined three other circuits and expressly split from the Third Circuit. *Compare* App. A at 9, *and Annappareddy v. Pascale*, 996 F.3d 120, 142 (4th Cir. 2021), *and Heidelberg v. Hammer*, 577 F.2d 429, 432 (7th Cir. 1978), *with Yarris v. County of Delaware*, 465 F.3d 129, 136-37 (3d Cir. 2006) (rejecting absolute immunity for the knowing disposal of exculpatory evidence). Similarly, the Sixth Circuit’s grant of absolute immunity for defiance of a court order that left no room for discretion deepened an existing split between the Eighth and Eleventh Circuits—both of which grant absolute immunity for such misconduct—and the Third and Tenth Circuits, which reject absolute immunity for the same misconduct. *Compare* App. A at 10, *and Hart v. Hodges*, 587 F.3d 1288, 1298 (11th Cir. 2009), *and Webster v. Gibson*, 913 F.2d 510, 512 (8th Cir. 1990), *with Odd*, 538 F.3d at 214, *and Gagan v. Norton*, 35 F.3d 1473, 1474-75 (10th Cir. 1994).

5. Additional time is also necessary because undersigned counsel and his firm did not represent Applicant before the Sixth Circuit. Additional time is thus

reasonably necessary for counsel to become familiar with the issues, the record, and relevant case law. An extension of time will help ensure that the petition clearly and thoroughly presents the important issues raised by the Sixth Circuit's decision.

6. The requested 30-day extension would cause no prejudice to Respondents, who have advised that they have no objection to the extension.

7. For the foregoing reasons, Applicant hereby requests that an extension of time be granted, up to and including December 13, 2023, within which to file a petition for certiorari.

Respectfully submitted,

/s/ E. Joshua Rosenkranz

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November 1, 2023