IN THE
SUPREME COURT OF THE UNITED STATES

Lynn Hamlet,
Petitioner,

v.

Officer Hoxie, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE PETITION FOR A WRIT OF CERTIORARI

TO: The Honorable Clarence Thomas, Justice of the United States Supreme Court and Circuit Justice, United States Court of Appeals for the Eleventh Circuit

Pursuant to Supreme Court Rule 13.5 and 28 U.S.C. § 2101(c), petitioner Lynn Hamlet hereby respectfully requests an extension of 60 days in which to file a petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit in *Lynn Hamlet v. Martin Correctional, et al.*, No. 21-11937. The opinion of the Eleventh Circuit in this case, filed on November 9, 2022, is attached hereto as Appendix A. A timely motion for rehearing and rehearing en banc was denied on March 1, 2023, in an order attached hereto as Appendix B. This Court has jurisdiction to review the judgment pursuant to 28 U.S.C. § 1254. A petition for a writ of certiorari currently

is due by May 30, 2023. This application is filed more than ten days before that date. The requested extension would change that date to July 31, 2023. As grounds for this request, petitioner states as follows.

IA. The first question presented in this case is whether it is clearly established or obvious that the Eighth Amendment bars a prison officer from locking an elderly, diabetic man with open wounds on his ankles in a flooded shower contaminated with urine and feces, and depriving him of means of remediation for days after watching him use toilet water from his cell to attempt cleaning feces from his open wounds? The Eleventh Circuit below held that Mr. Hamlet's conditions of confinement were "not objectively extreme under clearly established law." Appx. A 13. The decision of the Eleventh Circuit is irreconcilable with its own opinions and those of other Courts of Appeals acknowledging that "the health risks of prolonged exposure to human excrement are obvious" and objectively present a "substantial risk of serious harm." *Brooks v. Warden*, 800 F.3d 1295, 1298 (11th Cir. 2015). Applying that rule, every Court of Appeals with a prison population has held that forcing incarcerated persons to endure close contact or proximity with feces and depriving them of the ability to promptly remediate such conditions violates the objective prong of the Eighth Amendment.[1] Moreover, the Eleventh Circuit failed to heed this Court's guidance

[1] *See, e.g.*, *Berkshire v. Dahl*, 928 F.3d 520, 527, 538 (6th Cir. 2019); *Wiley v. Kirkpatrick,* 801 F.3d 51, 55, 68 (2nd Cir. 2015); *Surprenant v. Rivas*, 424 F.3d 5, 20-21 (1st Cir. 2005); *Shannon v. Graves*, 257 F.3d 1164, 1168 (10th Cir. 2001); *Keenan v. Hall*, 83 F.3d 1083, 1090, 1091 (9th Cir. 1996); *Young v. Quinlan*, 960 F.2d 351, 355, 357, 365 (3d Cir. 1992), superseded by 42 U.S.C.A. § 1997e(a) on other grounds as stated in *Nyhuis v. Reno*, 204 F.3d 65, 71 n.7 (3rd Cir. 2000); *Williams v. Griffin*, 952 F.2d 820, 825 (4th Cir. 1991); *McCord v. Maggio*, 927 F.2d 844, 848 (5th Cir. 1991); *Fruit v. Norris*, 905 F.2d 1147, 1148, 1150-51 (8th Cir. 1990); *Johnson v. Pelker*, 891 F.2d 136, 140 (7th Cir. 1989)); *c.f. Inmates of Occoquan v. Barry*, 844 F.2d 828, 836 (D.C. Cir. 1988).

that while the "clearly established" prong of the qualified immunity inquiry may be satisfied by citation to "earlier cases involving 'fundamentally similar' facts," such factual similarity is "not necessary" and "officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002); *see also Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020) (citing *Hope*, 536 U.S. at 741) (per curiam); *McCoy v. Alamu*, 141 S. Ct. 1364 (2021) (mem.) (vacating and remanding decision in light of *Riojas*).

IB. The second question presented is whether the judge-made doctrine of qualified immunity should apply in the context of Eighth Amendment conditions of confinement cases, which do not implicate the policies underlying the doctrine? Section 1983 "on its face admits no immunities," it must be read "in harmony with general principles of tort immunities and defenses." *Malley v. Briggs*, 475 U.S. 335, 339-40 (1986). Immunity is only credited if "an official claiming immunity under § 1983 can point to a common-law counterpart to the privilege he asserts," such as "immunity from tort actions at common law when the Civil Rights Act was enacted in 1871," and if the official can prove that "§ 1983's history or purposes [do not] counsel against recognizing the same immunity." *Id.*; *see, e.g.*, *Richardson v. McKnight*, 521 U.S. 399, 404 (1997) (denying extending qualified immunity to private prison guards because "[h]istory does not reveal a 'firmly rooted' tradition of immunity applicable to privately employed prison guards"). When the Court first extended qualified immunity to prison guards, however, it disregarded history. *Richardson*, 521 U.S. at 415-16 (cleaned up) (Scalia, J., dissenting) (acknowledging

"truth" that *Procunier v. Navarette*, 434 U.S. 555 (1978), which established § 1983 immunity for state prison guards, "did not trouble itself with history, as our later § 1983 immunity opinions have done, but simply set forth a policy prescription"). "History does not reveal a 'firmly rooted' tradition of immunity applicable to [] prison guards" at common law, so they are not entitled to the shield of qualified immunity. *Richardson*, 521 U.S. 404; *see, e.g.*, *Dabney v. Taliaferro*, 25 Va. 256, 261, 263 (1826) (affirming judgment against sheriff that created conditions of confinement, which led to frost-bite and disease); *Perrine v. Planchard*, 15 La.Ann 133, 134-35 (1860) (allowing civil action against keeper of police jail who "under color of his authority . . . caused [plaintiff] to be forcibly" whipped, noting that whoever causes damage to another must "repair it").

II. There is good cause for the requested 60-day extension of time for the filing of the petition, which is unopposed by Respondent's counsel. A member of Mr. Hamlet's counsel went on parental leave prior to oral argument and the Court of Appeals' denial of the motion for rehearing and reconsideration. He recently returned from leave and requires additional time to reorient himself with the record and the legal issues in this case, as he will be heavily involved in drafting the petition. In addition, undersigned counsel has other pressing work commitments in addition to the petition in this case. For these reasons, the additional time requested is necessary for counsel to prepare an adequate petition for a writ of certiorari in this important case.

For the foregoing reasons, the application should be granted.

Respectfully submitted,

/s/ Jonathan D. Hacker

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