

No. 23A\_\_

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IN THE  
**Supreme Court of the United States**

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JOSEPH RANDOLPH MAYS,

*Applicant,*

v.

T.B. SMITH, WARDEN, S. MA'AT, JAMIE HOSKINS, V. WILLIS, J. HALFAST, R. MARTIN,  
LT. CHRISTOPHER, LT. K. HENDRY, OFFICER V. WILKINS, OFFICER GLASS, OFFICER  
SLAYDON, OFFICER LASSITER, J. CARAWAY, AND JOHN/JANE DOES,

*Respondents.*

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

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To the Honorable John G. Roberts, Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit:

1. Under Supreme Court Rules 13.5, 22, and 30, Applicant, Joseph Randolph Mays, respectfully requests a 57-day extension of time, up to and including December 29, 2023, to file a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit (the “Fourth Circuit”), to review *Mays v. Smith, et al.*, No. 20-7540 (4th Cir. June 6, 2023). The Fourth Circuit issued its decision on June 6, 2023. Appendix A. The Fourth Circuit denied the petition for panel rehearing and rehearing en banc on August 4, 2023. Appendix B. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254. The time to file a petition for a writ of certiorari will otherwise expire on November 2, 2023. The application is timely because it has been filed more than ten days before the date on which a petition is otherwise due.

2. The decision of the Fourth Circuit presents important and recurring questions concerning whether a criminal defendant may pursue claims for violations of his Fifth Amendment Due Process and Equal Protection rights under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Applicant Mays was working as a factory-worker in prison when his supervisors discriminated against him on the basis of his race. Certain of Respondents withheld information from Mays that was necessary to complete his work as a lead mechanic, falsely accused Mays of disrupting the orderly running of the facility, refused to get tools for Mays while getting them for a white co-worker, and allowing white inmates to withhold work information from Mays despite his senior position and authorization to access it. As a result, Mays—an African American inmate—was fired from his position in the factory while a white co-worker was not. Then, certain of Respondents denied Mays due process by placing him in administrative detention and transferring him to another facility using falsified evidence and without providing him notice of the misconduct he allegedly committed to warrant these actions. The Fourth Circuit below ultimately held that Mays’ Fifth Amendment claims presented a new *Bivens* context because “[t]he Supreme Court has never authorized a *Bivens* claim for procedural due process or race-based discrimination,” even though the Court has allowed *Bivens* claims for gender-based discrimination and by federal inmate prisoners against prison officials. See *Davis v. Passman*, 442 U.S. 228 (1979) and *Carlson v. Green*, 446 U.S. 14 (1980). Moreover, the question whether a *Bivens* remedy for wrongful discrimination in violation of the Fifth Amendment has divided

the courts of appeals. Several courts of appeals hold that such claims are cognizable under *Bivens*, while other courts of appeals agree with the Fourth Circuit's decision below that such claims present a new, impermissible context under *Bivens*. For example, in contrast to the decision below, the Third Circuit has held that prison officials' violation of an inmate's Fifth Amendment due process rights by failing to protect an inmate from violence does *not* constitute a new *Bivens* context. *Bistrrian v. Levi*, 912 F.3d 79, 90 (3d Cir. 2018); *see also Farmer v. Brennan*, 511 U.S. 825, 832-49 (1994). By holding that Mays' Fifth Amendment claims present a new context under *Bivens*, the panel decision deepens the existing circuit split.

3. Good cause exists for this requested extension. Undersigned counsel, Lawrence D. Rosenberg of Jones Day, directs the West Virginia University College of Law's Supreme Court Litigation Clinic, which is co-counsel in this case. The Clinic students are preparing for upcoming exams and are also engaged in a number of other cases including *United States v. Hashimi*, No. 22-7190 (4<sup>th</sup> Cir.), in which Appellant's opening brief and appendix are currently due on October 23, 2023. An extension of time is necessary to ensure that the students are able to meaningfully engage in substantive work on the Petition in this matter.

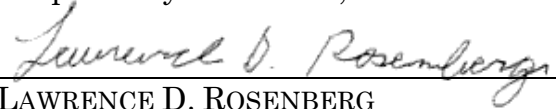
4. Furthermore, Mr. Rosenberg has had and has a number of recent and upcoming deadlines in other matters and personal matters that would make extremely difficult completing the petition in this matter without the requested extension. He is counsel of record in *Antero Resources Corp. v. Irby, et al.*, No. 22-333 (U.S.), in which a petition for a writ of certiorari was filed on September 11, 2023. He

also has engaged in extensive briefing throughout September and October, and on October 12, 2023, presented oral argument before the Central District of California in *In the Matter of the Application of Lufthansa Technik AG, Petitioner, for an Order Pursuant to 28 U.S.C. § 1782 to Take Discovery Pursuant to the Federal Rules of Civil Procedure, of Respondent Thales Avionics, Inc. For Use in Foreign Proceedings* (No. 8:22-mc-00034-JVS-KES). In September and October, he also engaged in extensive briefing and motion practice in the Western District of Washington in *In the Matter of the Application of Lufthansa Technik AG, Petitioner, for an Order Pursuant to 28 U.S.C. § 1782 to Take Discovery, Pursuant to the Federal Rules of Civil Procedure, of Respondent Panasonic Avionics Corporation for Use in Foreign Proceedings* (No. 2:17-cv-1453-JCC) In both of those matters, he expects to engage in further extensive briefing over the next several weeks as well as to take depositions in California and Seattle Washington. In September and October, Mr. Rosenberg also prepared substantial post-hearing briefing in an arbitration proceeding before the American Arbitration Association in *Citigroup v. Villar* (No. 01-21-0004-5256), and expects to prepare further substantial briefing and motions over the next several weeks. Finally, Mr. Rosenberg's work on the petition was interrupted by the death of a close family member in late September.

WHEREFORE, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 57 days, up to and including December 29, 2023.

Dated: October 20, 2023

Respectfully submitted,

A handwritten signature in cursive script, reading "Lawrence D. Rosenberg", is written over a horizontal line.

LAWRENCE D. ROSENBERG

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