

No. 23A-___

In the Supreme Court of the United States

ADRIAN MARTINEZ,

Applicant,

v.

SEAN JENNEIAHN; LAUREN MACDONALD; PETER VORIS,

Respondents.

**APPLICATION FOR AN 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**

TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE AND CIRCUIT JUSTICE FOR
THE TENTH CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Aidan Martinez respectfully requests a 30-day extension of time, to and including December 5, 2023, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

The Tenth Circuit denied a timely request for rehearing on August 7, 2023. Unless extended, the time to file a petition for a writ of certiorari will expire on November 5, 2023. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). Copies of the lower court's decision and its order denying rehearing are attached as Exhibits A and B, respectively.

1. This case is a Section 1983 action regarding officers' unprovoked use of force—specifically, a dog bite causing severe lacerations—against petitioner. On the evening of February 17, 2018, Petitioner was transported to the hospital by police after being severely beaten by other individuals, who were later prosecuted for the

beating. Although he had outstanding warrants for failure to appear at previous court dates, petitioner was not arrested or placed in police custody while at the hospital. The next morning, petitioner—having awoken disoriented and confused due to head injuries sustained during the beating—left the hospital without checking out, wearing only his underwear and a hospital gown.

After leaving the hospital, petitioner wandered next door to an apartment complex, where he found an open storage closet, entered the closet, and passed out. Meanwhile, police had been informed by hospital staff that petitioner had left; several officers responded and ultimately located petitioner in the storage closet with the help of a canine. Six officers gathered outside the closet for ten to twelve minutes; for at least the final four of those minutes, officers made no attempt to communicate with petitioner through the closet door. Instead, the officers forced open the closet door revealing petitioner, asleep in the fetal position with his back to the door. Faced with the motionless body of petitioner—who was not known or suspected to be armed—one of the officers released his canine, which tore at petitioner’s forearm for fifteen to twenty seconds while the officer actively encouraged it. Petitioner suffered injuries including a four-centimeter gash (one officer likened petitioner’s arm to “ground hamburger” after the bites) which has resulted in chronic nerve pain.

The district court granted summary judgment to the officers on petitioner’s excessive force and related claims, and the court of appeals affirmed on qualified immunity grounds. The court reasoned that the precedents cited by petitioner were insufficiently analogous, for reasons including that “[n]one of these cases involved use of a dog” as opposed to other types of force, and that “unlike these cases, Mr. Martinez

was inside [a] closet with the door closed before the Officers deployed the dog.” Ex. A, at 8.

The petition for certiorari will demonstrate that the Court’s review is warranted to “reconsider [its] qualified immunity jurisprudence.” *Ziglar v. Abbasi*, 582 U.S. 120, 160 (2017) (Thomas, J., concurring in part and concurring in the judgment); see also, e.g., *Baxter v. Bracey*, 140 S. Ct. 1862, 1864 (2020) (Thomas, J., dissenting from denial of certiorari) (“There likely is no basis for the objective inquiry into clearly established law that our modern cases prescribe.”); *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting) (decrying “a one-sided approach to qualified immunity” that “transforms the doctrine into an absolute shield for law enforcement officers, gutting the deterrent effect of the Fourth Amendment”); *McKinney v. City of Middletown*, 49 F.4th 730, 756-758 (2d Cir. 2022) (Calabresi, J., dissenting) (collecting writings of the “more and more judges [who] have come to recognize” that “qualified immunity cannot withstand scrutiny,” and urging “[t]he Supreme Court [to] do away with this ill-founded, court-made doctrine”).

Alternatively, the petition will demonstrate that certiorari or summary reversal is warranted even assuming the continued validity of qualified immunity, for reasons including the court of appeals’ failure to recognize that the doctrine “do[es] not require a case directly on point” (*Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)), and that, instead, “a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question” (*Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020) (per curiam) (quotation marks omitted).

2. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel has, and has had, several other matters

with proximate due dates, including a reply brief in an intervenor's brief in *Shell v. FERC*, No. 22-1116 (D.C. Cir.), filed September 12, 2023; a motion to dismiss in *Johnson v. Yuga Labs*, No. 2:22-cv-08909 (C.D. Cal.), filed September 12, 2023; an opposition brief to a motion to dismiss in *Vanda Pharmaceuticals Inc. v. United States*, No. 23-629C (Fed. Ct. Cl.), filed September 28, 2023; an opening/response brief in *Benton v. Telecom Network Specialists*, Nos. B318867 and B321869 (Cal. Ct. App.), filed October 6, 2023; oral argument in *Elec. Power Supply Assn. v. FERC*, No. 22-3176 (6th Cir.), on October 19, 2023; an opening brief in *Astellas Pharma, Inc. v. Sandoz*, No. 23-1878 (Fed. Cir.), due October 27, 2023; a reply brief in *Vanda Pharmaceuticals Inc. v. Ctrs. for Medicare and Medicaid Servs.*, No. 23-1457 (4th Cir.), due October 30, 2023; a conditional cross petition in *Dutra v. Jackson*, No. 23A61 (U.S.), due November 6, 2023; a brief in opposition in *Dutra v. Jackson*, No. 23A61 (U.S.), due November 6, 2023; and an intervenor brief in *N.Y. State Pub. Serv. Comm'n v. FERC*, No. 23-1192 (D.C. Cir.), due December 8, 2023.

For the foregoing reasons, the application for a 30-day extension of time, to and including December 5, 2023, within which to file a petition for a writ of certiorari in this case should be granted.

October 20, 2023

Respectfully submitted.



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