

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

John Doe 1, *on behalf of themselves and a Class of all other similarly situated John and or Jane Doe employees of Harris County*; **John Doe 2**, *on behalf of themselves and a Class of all other similarly situated John and or Jane Doe employees of Harris County*,

Petitioners,

v.

Harris County, Texas; Lina Hidalgo, *County Judge*; Rodney Ellis, *Precinct 1 Commissioner*; Adrian Garcia, *Precinct 2 Commissioner*; Jack Cagle, *Precinct 4, Commissioner*; Tom S. Ramsey, *Precinct 3, Commissioner*; Edward Gonzalez, *Harris County Sheriff*,

Respondents.

**PETITIONER'S APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

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Petitioners' Counsel

To the Honorable Samuel A. Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Pursuant to Rule 13.5 Petitioners respectfully request that the time to file a Petition for Writ of Certiorari in this Court be extended for 30 days to and including April 4, 2024.

The U.S. Circuit Court of Appeals for the Fifth Circuit denied Petitioners appeal on December 5, 2023, *Per Curiam* following the reasons stated in the opinion of the district court ruling of November 17, 2022, which affirmed the district court's order dismissing Petitioner's case for failure to state a viable cause of action. Thus, the Petition for Certiorari currently from Petitioner's is currently due on or before March 5, 2024. This application for extension of time is being filed more than ten days before that date. *See* Supreme Court Rules 13.5, 22, 30.2, and 30.3. A copy of the opinion of the Court of Appeals for the Fifth Circuit affirming the judgment of the district court, is attached to this application as Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1). This request is unopposed.

The time provided by Supreme Court Rule 13 became insufficient to allow Petitioners' counsel to do justice to the issues at hand, which are of vast importance. Petitioners seek an extension of thirty (30) days in which to file this petition for a writ of certiorari. *See* Supreme Court Rule 13.5 (“[A] Justice may extend the time to file a petition for writ of certiorari for a period not exceeding 60 days”).

Background

The petition will raise the important federal questions of whether the Fifth Circuit's summary disposition affirming the dismissal of Petitioners claims pursuant to a motion presented to the district court for failure to state a claim under Fed. R. Civ. P. Rule 12(b)(6) was appropriate based upon the Fifth Circuit's long-standing position as the only circuit to not recognize a substantive due process claim under a state created danger theory regarding injunctive relief. The petition also will also raise the following important question of federal law of whether allowing the Petitioners to be deprived of qualified immunity protections when they are forced to work in conditions where it is impossible to comply with rules procedures that are designed for the protection of prisoners housed in the Harris County Jail facilities.

The Harris County Jail facilities have since the filing of this case experienced a record number of jail deaths of the detainees. There have been a record number of assaults on jail personnel, inmate assaults on inmates resulting in a death, a brutal rape of female supervisor by an inmate. Overcrowding is an on-going problem with insufficient personnel to adequately perform the essential functions required under state and federal law. Respondents continue to shift the blame to Petitioners when they cannot complete all the required functions. Petitioners are required to stay at the jail in excess of twelve to sixteen hours a day and are locked in until sufficient personnel arrive to relieve the shift.

The state created danger theory has been accepted in some form in all other circuits and should be settled by this court, to wit: are employees of a governmental entity

allowed to establish that the refusal of the county commissioner's to intentionally refuse to follow their ministerial duty and properly fund and staff the jail facility. This denial constitutes a violation of a non-discretionary function. Additionally, whether qualified immunity for individual employees represents an affirmative right the governmental entity can intentionally interfere with by forcing employees to work in conditions where they cannot adequately perform basic duties required under the law. Employees are now exposed to being denied the protections provided under the application of qualified immunity as they cannot perform the essential functions of their duties solely due to mismanagement by county officials. Petitioners have been stigmatized by

Since the Court of Appeals decision on December 5, 2023, I have been prevented from adequately researching and writing the petition for writ of certiorari and will be unable to complete the petition within the 90 days provided by Rule 13 for the following reasons. I have suffered from a personal illness requiring various medications which have negatively impacted my ability to work at a constant or continuous pace. The medication also resulted in an extended period of deprivation of a normal sleep pattern. In addition, counsel have been involved continuously with representation of approximately 3500 law enforcement and detention personnel regarding external defense for use of force issues as well as numerous internal employment matters and other administrative or litigation issues resulting from internal policy matters. These issues are continuous and have consumed all the available time preventing the ability to finish the petition within

the prescribed time frame.

Assistant County Attorney Seth Hopkins, who is one of Respondent's attorneys in this case, advised me by email that Respondents do not object to the extension.

WHEREFORE, Petitioners request this Court to grant an extension of time up to and including April 4, 2024, in which to file a petition for writ of certiorari on behalf of Petitioners.

Dated: February 23, 2024

Respectfully submitted,

/s/ David J. Batton

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Petitioners' Counsel

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 5, 2023

No. 22-20652

Lyle W. Cayce
Clerk

JOHN DOE 1, *on behalf of themselves and a Class of all other similarly situated John and or Jane Doe employees of Harris County*; JOHN DOE 2, *on behalf of themselves and a Class of all other similarly situated John and or Jane Doe employees of Harris County*,

Plaintiffs—Appellants,

versus

HARRIS COUNTY, TEXAS; LINA HIDALGO, *County Judge*; RODNEY ELLIS, *Precinct 1 Commissioner*; ADRIAN GARCIA, *Precinct 2 Commissioner*; JACK CAGLE, *Precinct 4, Commissioner*; TOM S. RAMSEY, *Precinct 3, Commissioner*; EDWARD GONZALEZ, *Harris County Sheriff*,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-3036

Before JONES, BARKSDALE, and ELROD, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

No. 22-20652

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that plaintiffs-appellants pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.



**Certified as a true copy and issued
as the mandate on Dec 28, 2023**

Attest: *Style W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

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PER CURIAM:*

The court has carefully considered this appeal in light of the briefs, the comprehensive district court opinion, and pertinent portions of the record. Having done so, we find no reversible error of law or fact. The district court's judgment is AFFIRMED for essentially the same reasons articulated by that court.

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.