No. 23A_____

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IN THE
SUPREME COURT OF THE UNITED STATES

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WAPLES MOBILE HOME PARK LIMITED PARTNERSHIP;
WAPLES PROJECT LIMITED PARTNERSHIP; AND A.J. DWOSKIN & ASSOCIATES, INC.,
*Applicants*,

v.

ROSY GIRON DE REYES; JOSE DAGOBERTO REYES; FELIX ALEXIS BOLAÑOS; RUTH RIVAS;
YOVANA JALDIN SOLIS; ESTEBAN RUBEN MOYA YRAPURA; ROSA ELENA AMAYA;
AND HERBERT DAVID SARAVIA CRUZ,
*Respondents*.

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

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April 12, 2024

## PARTIES TO THE PROCEEDINGS BELOW

Applicants Waples Mobile Home Park Limited Partnership, Waples Project Limited Partnership, and A.J. Dwoskin & Associates, Inc. were the defendants in the district court and the appellees in the court of appeals.

Respondents Rosy Giron de Reyes, Jose Dagoberto Reyes, Felix Alexis Bolaños, Ruth Rivas, Yovana Jaldin Solis, Esteban Ruben Moya Yrapura, Rosa Elena Amaya, and Herbert David Saravia Cruz were the plaintiffs in the district court and the appellants in the court of appeals.

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## RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, applicants Waples Mobile Home Park Limited Partnership, Waples Project Limited Partnership, and A.J. Dwoskin & Associates, Inc. state the following:

Waples Mobile Home Park Limited Partnership is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of Waples Mobile Home Park Limited Partnership.

Waples Project Limited Partnership is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of Waples Project Limited Partnership.

A.J. Dwoskin & Associates, Inc. is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of A.J. Dwoskin & Associates, Inc.

## RELATED CASES

*Reyes, et al. v. Waples Mobile Home Park Ltd. P'ship, et al.*, 91 F.4th 270 (4th Cir. Jan. 23, 2024) (No. 22-1660)

*Reyes, et al. v. Waples Mobile Home Park Ltd. P'ship, et al.*, 602 F. Supp. 3d 890 (E.D. Va. May 6, 2022) (No. 1:16-cv-563)

*Waples Mobile Home Park Ltd. P'ship, et al. v. Reyes, et al.*, 139 S. Ct. 2026 (May 13, 2019) (No. 18-1217) (denying certiorari)

*Reyes, et al. v. Waples Mobile Home Park Ltd. P'ship, et al.*, 903 F.3d 415 (4th Cir. Sept. 12, 2018) (No. 17-1723)

*Reyes, et al. v. Waples Mobile Home Park Ltd. P'ship, et al.*, 251 F. Supp. 3d 1006 (E.D. Va. Apr. 18, 2017) (No. 1:16-cv-563)

*Reyes, et al. v. Waples Mobile Home Park Ltd. P'ship, et al.*, 205 F. Supp. 3d 782 (E.D. Va. Sept. 1, 2016) (No. 1:16-cv-563)

## APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH 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, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, applicants Waples Mobile Home Park Limited Partnership, Waples Project Limited Partnership, and A.J. Dwoskin & Associates, Inc. respectfully request a 60-day extension of time, up to and including June 21, 2024, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

The court of appeals entered its judgment and issued an opinion on January 23, 2024. The court of appeals' opinion (reported at 91 F.4th 270) is attached hereto as Exhibit A. The order of the district court (reported at 602 F. Supp. 3d 890) is attached hereto as Exhibit B. The petition would be due on April 22, 2024, and this application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

**1.** This case presents an important issue about disparate-impact liability under the Fair Housing Act ("FHA"), 42 U.S.C. § 3604. In *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), this Court held that the FHA countenances that theory. But it also emphasized that "disparate-impact liability has always been properly limited in key respects that avoid the serious constitutional questions that might arise under the

FHA, for instance, if such liability were imposed based solely on a showing of a statistical disparity." *Id.* at 540. One limitation is "leeway" for developers "to state and explain the valid interest served by their policies." *Id.* at 541. That is, "private developers [must] be allowed to maintain a policy if they can prove it is necessary to achieve a valid interest." *Id.*

A second limitation, the Court emphasized, is "[a] robust causality requirement," which "ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create." *Id.* at 542 (cleaned up). In other words, "a prima facie case of disparate impact" requires a plaintiff to "produce statistical evidence demonstrating a causal connection" between a challenged policy and "a disparate impact." *Id.* at 543. The Court instructed lower courts to "examine with care whether a plaintiff has made out a prima facie case of disparate impact," underscoring that "prompt resolution of these cases is important." *Id.*

**2.** In 2016, "four noncitizen Latino families from El Salvador and Bolivia" sued Waples Mobile Home Park (the Park), contending that it had violated the FHA by "enforcing a policy that required all adults living at the Park to present proof of legal status in the United States" (the Policy). 91 F.4th at 273-74. In a prior appeal in this case, a split panel of the Fourth Circuit held (reversing the district court, and over the dissent of Judge Keenan) that the plaintiffs had stated a *prima facie* disparate-impact claim under *Inclusive Communities* "by demonstrating that the challenged Policy 'caused a disproportionate number of Latinos to face eviction from the Park compared to the number of non-Latinos who faced eviction based on the

Policy.'" 91 F.4th at 275 (quoting 903 F.3d 415, 428 (2018)). The panel majority remanded the case for further proceedings regarding the Park's claim that the policy served a valid interest, "such as verifying identity, conducting criminal background checks, avoiding loss from eviction, and avoiding liability under the anti-harboring statute, 8 U.S.C. § 1324(a)(1)(A)(iii)." *Id.* The Park petitioned for a writ of certiorari, but the Court did not grant the petition. *See* 139 S. Ct. 2026 (2019) (No. 18-1217).

**2.** Shortly before trial on remand, the district court granted summary judgment for the Park, relying on its interest in avoiding prosecution under the anti-harboring statute. But the panel below reversed. It did not revisit the prior panel's holding that plaintiffs had "show[n] a causal connection between the Policy and an attendant disparate impact on Latino residents." 91 F.4th at 276. And it acknowledged that "[a]voiding criminal liability can certainly serve as the basis for a business necessity defense." *Id.* at 277. Yet it held that the Park could not rely on an interest in avoiding prosecution under the anti-harboring statute for two reasons: (i) "renting to an undocumented person" is not *sufficient* to prove a violation of the anti-harboring statute absent proof of an intent to harbor that person, *id.* at 278, and (ii) the Park did not show that a desire to avoid a harboring prosecution had motivated its 2015 decision to enforce the Policy, *id.* at 279-80. It thus remanded the case again. *Id.* at 280.

The Park expects to file a petition for a writ of certiorari. That petition would argue that this case exemplifies confusion in the lower courts about the proper application of *Inclusive Communities*. Further, it would explain that the decision

below disregards *Inclusive Communities*' admonition that "disparate-impact liability" under the FHA must be "limited in key respects," including by affording developers ample "leeway" "to state and explain the valid interest served by their policies" and by ensuring that liability is not imposed "based solely on a showing of a statistical [racial] disparity," 576 U.S. at 540, that the Park "did not create," *id.* at 542.

**3.** The 60-day extension to file a certiorari petition is necessary because undersigned counsel needs the additional time to review the record and prepare the petition and appendix in light of other, previously engaged matters in this and other courts, including: (1) a reply brief in this Court in *Official Committee of Asbestos Claimants v. Bestwall LLC, et al.*, No. 23-675 (filed Apr. 10, 2024); (2) a brief in the West Virginia Supreme Court of Appeals in *City of Huntington, et al. v. AmerisourceBergen Drug Corp., et al.*, No. 24-166 (to be filed Apr. 19, 2024); (3) a reply brief in the Fourth Circuit in *GenBioPro, Inc. v. Raynes, et al.*, No. 23-2194 (due May 20, 2024); and (4) a reply brief in this Court in *Shell plc, et al. v. City & County of Honolulu, et al.*, *Official Committee of Asbestos Claimants v. Bestwall LLC, et al.*, No. 23-952 (to be filed May 21, 2024). Undersigned counsel also will be out of the country from May 17 through June 1 on long-scheduled family vacation.

For all these reasons, there is good cause for a 60-day extension of time, up to and including June 21, 2024, within which to file a certiorari petition in this case to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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April 12, 2024