

No: _____

IN THE SUPREME COURT OF THE UNITED STATES

NOBLE COOPER; NORMAN COOPER, ESTATE OF;
JENNIFER COOPER; NATHAN COOPER; CARLY LOPEZ,
Individually and as Next Friend of Nason Cooper and
Nevon Cooper, Minors; NASON COOPER, A Minor;
NEVON COOPER, A Minor,

Applicants,

v.

OFFICER OLIVER FLAIG; OFFICER ARNOLDO SANCHEZ,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

NOBLE COOPER; NORMAN COOPER, ESTATE OF; JENNIFER COOPER; NATHAN COOPER; CARLY LOPEZ, Individually and as Next Friend of Nason Cooper and Nevon Cooper, Minors; NASON COOPER, A Minor; NEVON COOPER, A Minor,

Applicants,

v.

OFFICER OLIVER FLAIG; OFFICER ARNOLDO SANCHEZ,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE SAMUEL A. ALITO, JR., Associate Justice of the United States, and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicants Noble Cooper; Norman Cooper, Estate of; Jennifer Cooper; Nathan Cooper; Carly Lopez, Individually and as Next Friend of Nason Cooper and Nevon Cooper, Minors; Nason Cooper, a Minor; Nevon Cooper, a Minor, respectfully request a 46-day extension of time, to and including February 21, 2020, within which to file

a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The final judgment of the Fifth Circuit was entered on October 8, 2019. Unless extended, the time to file a petition for a writ of certiorari will expire on January 6, 2020. This application is being filed more than 10 days before that date.

Respondents are unopposed to this application for an extension of time to file a petition for a writ of certiorari.

A copy of the opinion below is attached hereto. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

In support of his request, Petitioner shows the following as good cause:

1. This case arises out of the in-custody death of Norman Cooper in San Antonio, Texas in April of 2015. Norman Cooper was killed after being tased nine (9) times by respondents in his parents' home. Norman was handcuffed and lying face down.

2. Applicants filed suit against respondents for excessive force and deliberate indifference pursuant to 42 U.S.C § 1983 for violations of the Fourth and Fourteenth Amendments. The district court denied respondents' motion for summary judgment as to the excessive force claims determining that the respondents were not entitled to qualified immunity. Respondents filed an interlocutory appeal to the Fifth Circuit challenging the district court's decision.

3. The Fifth Circuit reversed and rendered in favor of the respondent officers. Fifth Circuit Opinion at p. 1. The panel held that the district court "[could

not] find as a matter of law that the Officers' use force was 'objectively reasonable in light of clearly established law at the time the challenged conduct occurred.'" *Id.* at p. 3. Further, the Fifth Circuit held "Appellees [applicants herein] do not meet this burden." *Id.* at p. 4. "They [appellees] cannot point to any factually analogous case that would establish that Flaig and Sanchez's use of force was unreasonable." *Ibid.* The Fifth Circuit has shifted the burden of proof to the plaintiffs to disprove qualified immunity. Moreover, the Fifth Circuit's insistence on factually identical circumstances in previous cases has left victims of serious constitutional violations without a remedy.

4. The petition for certiorari will illustrate that review is warranted because the judicially created doctrine of qualified immunity guts 42 U.S.C § 1983 without basis and should be eliminated or substantially revised. The legal community at-large, including Justices of this Court, have criticized the lack of legislative and empirical support for the qualified immunity doctrine as well as the injustices it has caused. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1870 (2017) (Thomas, J., concurring in part); see also, *e.g., id.* at 1872 ("Until we shift the focus of our inquiry to whether immunity existed at common law, we will continue to substitute our own policy preferences for the mandates of Congress. In an appropriate case, we should reconsider our qualified immunity jurisprudence."); Ex. A, at 23-24 (Willett, J., concurring *dubitante*) ("I add my voice to a growing, cross-ideological chorus of jurists and scholars urging recalibration of contemporary immunity jurisprudence and its real world implementation.") (quotation marks

omitted); William Baude, *Is Qualified Immunity Unlawful?*, 106 Cal. L. Rev. 45, 46-49 (2018) (answering that question in the affirmative); Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797, 1799 (2018) (“If the Court did find an appropriate case to reconsider qualified immunity * * * the Court could not justify the continued existence of the doctrine in its current form.”).

5. Undersigned counsel has completed a substantial amount of the petition for writ of certiorari but other matters with similar deadline obligations as well as the Thanksgiving and Christmas holidays have delayed applicants’ completion of the petition. Additionally, this case involves important, complex issues and contains a lengthy record. Undersigned counsel has also been ill recently.

For the foregoing reasons, this application for a 46-day extension of time, to and including February 21, 2020, to file a petition for writ of certiorari in this case should be granted.

December 26, 2019.

Respectfully submitted,

/s/ Edward L. Piña

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