

Docket No. 19-_____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL HUNTER; MARTIN CASSIDY; CARL CARSON,
Petitioners,

v.

RANDY COLE; KAREN COLE; RYAN COLE,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS OF THE FIFTH CIRCUIT

UNOPPOSED APPLICATION TO ASSOCIATE JUSTICE
SAMUEL A. ALITO, JR. TO EXTEND THE TIME 21 DAYS FOR
PETITIONER TO FILE A PETITION FOR WRIT OF CERTIORARI

William S. Helfand
Norman Ray Giles
LEWIS, BRISBOIS, BISGAARD &
SMITH, LLP
24 Greenway Plaza, Suite 1400
Houston, Texas 77046
(713) 659-6767

James T. Jeffrey, Jr.
LAW OFFICES OF JIM JEFFREY
3200 W. Arkansas Lane
Arlington, Texas 76016
(817) 261-3200

Attorneys for Petitioner

**Petitioners Request that Their November 18, 2019 Deadline to File a
Petition for Writ of Certiorari be Extended 21 days as Follows:**

Basis for Jurisdiction

This Court has jurisdiction, under 28 U.S.C. § 1254(1), to grant a petition for writ of certiorari and review the Fifth Circuit Court of Appeals' En Banc opinion denying qualified immunity to Petitioners Lt. Martin Cassidy, Officer Michael Hunter and Officer Carl Carson. Petitioners Cassidy, Hunter and Carson previously successfully sought a Writ of Certiorari from this Court which granted the Petition, vacated a Fifth Circuit Court's panel decision, and remanded for reconsideration in light of *Mullenix v. Luna*, 136 S.Ct. 305 (2015), see *Hunter v. Cole*, 137 S.Ct. 497 (2016). After additional proceedings described in more detail below, the Fifth Circuit Court sitting En Banc denied the qualified immunity defenses of all three Petitioners. Petitioner Carson asserts he has qualified immunity to the Fourteenth Amendment claim against him under the *Mullenix* framework and the Fifth Circuit Court's judgment conflicts with *Manuel v. City of Joliet*, 137 S.Ct. 911 (2017). Petitioners Hunter and Cassidy assert qualified immunity to the Fourth Amendment alleged excessive force claim against them, and assert the Fifth Circuit Court did not faithfully comply with this Court's remand order and did not properly apply *Mullenix* and other holdings of this Court mandating a factually specific evaluation of the clearly established law component of the qualified immunity defense when it instead opted to treat this case as a so called "obvious case" under *Tennessee v.*

Garner, 471 U.S. 1 (1989).

21-Day Extension Requested

Petitioners Lt. Cassidy, Officer Hunter and Officer Carson request that their current deadline of November 18, 2019, to file a petition for writ of certiorari be extended 21 days, until December 9, 2019. Respondent does not oppose the requested extension.

Good Cause for Extension

The attorneys for Petitioners have prepared a rough draft of a Petition for Certiorari which needs substantial editing, revision, and other preparation which Petitioners' attorneys had planned for attorney Norman Giles to conduct during the week of October 28 and November 4, 2019. Unfortunately, Norman Giles was away from the office the entire week of October 28 attending to his mother and his family during his mother's final illness and her death on November 2, 2019. Mr. Giles expects to be away from the office the entire week of November 4, 2019 attending to final arrangements and the funeral for his mother and attending to his family.

Petitioners' attorneys had initially planned that after Mr. Giles' edits and revisions, a revised draft to be returned to their attorney James Jeffrey on or before November 11, with collaborative final edits and revisions to be made for a timely delivery to the printer (Counsel Press) in time to meet the current November 18 deadline. Pre-existing scheduling commitments of Attorney Jeffrey and Petitioners'

other attorney William Helfand, summarized below, present substantial challenges for preparing and printing the Petition.

Attorney James T. Jeffrey, Jr. also has the following pre-existing deadlines and commitments:

1. Dispositive motion briefing and answer in a federal civil rights case - Civil Action No. 4:19-CV-00696-O, *Sherley Woods, et al v. City of Arlington*, et al, in the U.S. District Court Northern District, Fort Worth Division due November 4, 2019;
2. Dispositive motion response briefing in another federal civil rights case – Civil Action No. 4:15-CV-00476-Y, *Shellie Smith, et al v. City of Arlington, et al*, in the U.S. District Court Northern District, Fort Worth Division due November 4, 2019;
3. Dispositive motion proceeding reply briefing in another federal civil rights case – Civil Action No. 4:19-CV-00048-O, *Eric Von-Russell Mitchel v. Detective Barbara Bell, et al*, in the U.S. District Court Northern District, Fort Worth Division due November 4, 2019;
4. Dispositive motion briefing and answer in another federal civil rights case – Civil Action No. 4:19-CV-00091-P, *De’On L. Crane, et al v. City of Arlington, et al*, in the U.S. District Court Northern District, Fort Worth Division due November 5, 2019;
5. Dispositive motion briefing in another federal civil rights case – Civil Action No. 3:19-CV-02126-K, *John Barto Clark v. City of Burleson, et al*, in the U.S. District Court Northern District, Dallas Division due November 12, 2019;
6. Dispositive motion briefing and answers due for multiple Defendants in a federal civil rights case – Civil Action No. 4:19-cv-00688, *Ronald Schmidt v. Marla Hawksworth, et al*, in the U.S. District Court Eastern District, Sherman Division due November 14, 2019;
7. Reply briefing in a dispositive motion proceeding due in a federal civil rights case – Civil Action No. 4:18-CV-00341-P, *Joe Lutz v. Bill Waybourn, et al*, in the U.S. District Court Northern District, Fort Worth Division due November 14, 2019;

8. Discovery responses and materials due in a state case – Cause No. DC-19-15446, *Alicia Limon v. City of Grand Prairie, et al*, in the 95th District Court for Dallas County, Texas due November 19, 2019;
9. Dispositive motion briefing and answers due in a federal civil rights case – Civil Action No. 4:19-CV-00916-O, *Sterling Jonkheer v. Ronny Desselles, et al*, in the U.S. District Court Northern District, Fort Worth Division due November 21, 2019;
10. Dispositive motion briefing due in a federal USERRA case – Civil Action No. 3:19-CV-002191-L, *Fernando Castillo v. City of Grand Prairie*, in the U.S. District Court Northern District, Dallas Division due November 29, 2019;
11. Depositions in a state case – Cause No. DC-19-06000, *Bajro Rizvic v. Global Gaming Solutions, LLC, et al*, in the 193rd District Court for Dallas County, Texas on December 2, 3, and 4, 2019;
12. Reply briefing in a dispositive motion proceeding due in a federal civil rights case – Civil Action No. 3:19-CV-001997-M, *Robert Paul Cledera v. United States William Barr, A.G., et al*, in the U.S. District Court Northern District of Texas, Dallas Division due December 5, 2019.

Attorney William S. Helfand also has the following pre-existing deadlines and commitments:

1. **Wednesday, November 6, 2019** – Traveling to New Orleans for Oral Argument in No. 18-20723, *Laura Covington v. City of Madisonville, Texas*, United States Court of Appeals for the Fifth Circuit, on November 7, 2019.
2. **Thursday, November 7, 2019** - Oral Argument in No. 18-20723, *Laura Covington v. City of Madisonville, Texas*, United States Court of Appeals for the Fifth Circuit, on November 7, 2019.
3. **Friday, November 8, 2019** – Deposition preparation in Cause No. 2019-19896, *David Vanderschee v. Intertek USA, Inc.* 269th Harris County, Texas, on November 8, 2019.
4. **Friday, November 8, 2019** – Deposition preparation in Cause No. 2019-19896, *Susan Clifton v. City of Pasadena*, 127th Harris County, Texas, on November 8, 2019.

5. **Monday, November 11, 2019** – Preparation and deposition in Cause No. 1108033, *Cory Curtis and Angela Curtis v. San Jacinto River Authority*, County Civil Court at Law, Number Two of Harris County, Texas, on November 11, 2019.
6. **Monday, November 11, 2019** – Preparing for and attending Motion for Summary Judgment hearing in Cause No. 2017-85189, *Paxton Webb v. Katz Boutique 6, Inc., et al.*, 189th, Harris County, Texas.
7. **Wednesday, November 13, 2019** – Initial Pretrial and Scheduling Conference and Order to Disclose Interested Person in Civil Action No. 3:19-cv-00248, *Harris, Lyshyra v. Galveston et al.*, In the Southern District of Texas, Galveston Division, on November 12, 2019.
8. **Wednesday, November 14, 2019** - Deadline for Discovery Period, Dispositive Motions and Pleas in Cause No. 2018-84235, *Clifton, Susan v. City of Pasadena*, 127th Harris County, Texas on November 12, 2019.
9. **Wednesday, November 15, 2019** - Docket Call in Civil Action No., 4:17-cv-03829, *Webb, Kimberly v. City of Huntsville*, Southern District of Texas, Houston Division on November 15, 2019.
10. **Monday, November 18, 2019** - Trial in Civil Action No., 4:17-cv-03829, *Webb, Kimberly v. City of Huntsville*, Southern District of Texas, Houston Division on November 18, 2019.
11. **Tuesday, November 19, 2019** - Preparation and deposition in Case No. 8080338, *Housman v. Golden Customer Care, LLC*, Before the Labor Commission, State of Utah – Adjudication Division
12. **Thursday, November 20, 2019** - Preparation and deposition in Cause No. 2019-19896, *David Vanderschee v. Intertek USA, Inc.* 269th Harris County, Texas, on November 20, 2019.

For these reasons, Petitioners seek a 21-day extension of the deadline to file their petition for writ of certiorari.

Course of Proceedings & Judgment Sought to be Reviewed

Respondent Ryan Cole and his parents filed suit asserting various claims arising from an armed encounter with police. Cole's parents sued Petitioners Officer Hunter and Lt. Cassidy alleging they violated Cole's Fourth Amendment right not to be subjected to excessive force. The Coles also sued Officer Carson claiming he violated Cole's rights under the Fourth and Fourteenth Amendments by allegedly lying and concealing evidence to protect Officer Hunter and Lt. Cassidy. The District Court denied Officer Carson's Motion to Dismiss and denied Officer Hunter's and Lt. Cassidy's Motion for Summary Judgment, rejecting all Officers' immunity defenses. The Fifth Circuit Court dismissed the Officers' appeals. *Cole v. Carson*, 802 F.3d 752 (5th Cir. 2015) ("*Cole I*"). After an unsuccessful Petition for Rehearing En Banc, rejected by the Fifth Circuit Court, all three Officers petitioned for certiorari and this Court granted the Petition, vacated the first panel decision, and remanded for reconsideration in light of *Mullenix v. Luna*, 136 S.Ct. 305 (2015). *Hunter v. Cole*, 137 S.Ct. 497 (2016). The same three Judge panel issued a second decision after remand, reinstating the first panel decision and rejecting reconsideration of Officer Carson's qualified immunity defense and again denying Officer Hunter's and Lt. Cassidy's immunity defenses. *Cole v. Carson*, 905 F.3d 334 (5th Cir. 2018) ("*Cole II*"). The Officers timely filed a Petition for Rehearing En Banc which the Fifth Circuit Court granted (*see attached*). On August 20, 2019, the

Fifth Circuit Court sitting En Banc rejected Officer Carson's request for reconsideration of his immunity defense to the Fourteenth Amendment claim, and a majority of the En Banc Court denied the qualified immunity defenses of Officer Hunter and Lt. Cassidy over the dissent of six Judges. *Cole v. Carson*, ___ F.3d ___, 2019 WL 3938014 (5th Cir. 2019) ("*Cole III*") (*see attached Opinion*).

Pursuant to Rule 13, the Petition for Writ of Certiorari is currently due November 18, 2019 – which is 90 days after entry of the Fifth Circuit Court's En Banc Judgment. Petitioners Officer Carson, Officer Hunter and Lt. Cassidy request an additional 21 days by which to file their Petition for Writ of Certiorari.

Certificate Of Conference

Petitioners' counsel and Respondents' counsel conferred and Respondents do not oppose the requested 21-day extension of time for Petitioners to file a petition for writ of certiorari.

Prayer

For these reasons, Petitioners request that their current deadline of November 18, 2019 to file a petition for writ of certiorari be extended 21 days to December 9, 2019.

Respectfully submitted,

/s/James T. Jeffrey, Jr.

James T. Jeffrey, Jr.

LAW OFFICES OF JIM JEFFREY

3200 W. Arkansas Lane

Arlington, Texas 76016

(817) 261-3200

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Norman Ray Giles

LEWIS, BRISBOIS, BISGAARD

& SMITH, LLP

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ATTORNEYS FOR PETITIONERS