

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DENNIS WAYNE HOPE,
Applicant,

v.

TODD HARRIS, ET. AL.,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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November 19, 2021

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

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5 and 22, applicant Dennis Hope respectfully requests a 59-day extension, to and including January 28, 2022, 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. The Fifth Circuit denied Mr. Hope’s petition for rehearing en banc on September 1, 2021. Unless extended, the time to file a petition for a writ of certiorari will expire on November 30, 2021. This request is unopposed.

1. Mr. Hope has been in solitary confinement since 1994—27 years and counting. These decades of isolation have ravaged Mr. Hope’s body and mind, causing him to suffer hallucinations, suicidal ideation, and constant pain. Worse, the only officials “reviewing” Mr. Hope’s solitary confinement disclaim the authority to get

him moved out of solitary confinement. He filed suit *pro se* alleging, as relevant here, an Eighth Amendment claim for cruel and unusual punishment and a procedural due process claim under the Fourteenth Amendment.

2. This case presents two important questions of federal constitutional law on which the federal courts of appeals are sharply divided.

3. First, the Fifth Circuit rejected—in two sentences, in a footnote—Mr. Hope’s claim that his quarter century of solitary confinement constitutes cruel and unusual punishment under the original meaning of the Eighth Amendment. *See Hope v. Harris*, 861 F. App’x 571, 582 n.5 (5th Cir. 2021). This splits the Fifth Circuit from at least the Third and Fourth Circuits, both of which have held that prolonged solitary confinement can violate the Eighth Amendment. *See Porter v. Pa. Dep’t of Corr.*, 974 F.3d 431 (3d Cir. 2020); *Porter v. Clarke*, 923 F.3d 348 (4th Cir. 2019). The Fifth Circuit’s decision also conflicts with the original understanding of “cruel and unusual punishment”—as noted by John Stinneford, whose research on the original meaning of the Eighth Amendment this Court has adopted. *See* John F. Stinneford, *Experimental Punishments*, 95 Notre Dame L. Rev. 39, 65-66, 71-72 (2019); *Bucklew v. Precythe*, 139 S. Ct. 1112, 1123 (2019).

4. Second, the Fifth Circuit held that biannual sham “reviews” of Mr. Hope’s continued solitary confinement—conducted by officials who disclaim any authority to change his placement and use the time to discuss irrelevant topics like the availability of firewood—satisfy due process. But at least seven circuits—the Second, Third, Fourth, Sixth, Seventh, Eighth, and Tenth—would disagree. *See Isby*

v. Brown, 856 F.3d 508, 527-29 (7th Cir. 2019) (collecting cases). And these pro forma “reviews” do not comport with the fundamental requirement for “meaningful” process under this Court’s seminal opinion in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

5. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case due to the press of business on numerous other matters. Substantial commitments of counsel of record during the relevant time period include:

- An answering brief in the United States Court of Appeals for the Tenth Circuit in *Lewis v. City of Edmond*, No. 21-6081, due December 1, 2021;
- An oral argument in the United States Court of Appeals for the Eighth Circuit in *Mitchell v. Kirchmeier*, No. 21-1071, on December 14, 2021;
- An opening brief in the United States Court of Appeals for the Sixth Circuit in *Teffeteller v. Hall*, No. 21-5974, due December 20, 2021;
- An opening brief in the United States Court of Appeals for the Fourth Circuit in *Hardin v. Hunt*, No. 21-7195, due December 22, 2021;
- A reply brief in the United States Court of Appeals for the Eleventh Circuit in *Benning v. Comm’r, Georgia Dep’t of Corr.*, No. 21-11982, due December 27, 2021;
- An opening brief in the United States Court of Appeals for the Ninth Circuit in *Eaton v. Blewett*, No. 21-35728, due December 27, 2021;
- A reply brief in the United States Court of Appeals for the Ninth Circuit in *Saddozai v. Davis*, No. 20-17519, due December 31, 2021;
- A reply brief in the United States Court of Appeals for the Tenth Circuit in *Whitehead v. Mgmt. & Training Corp.*, No. 21-2029, due January 3, 2022; and
- An opening brief in the U.S. Court of Appeals for the Fourth Circuit in *Griffin v. Bryant*, No. 21-7362, due January 14, 2022.

6. In addition, counsel of record has preplanned vacations from November 23, 2021, through November 28, 2021, and December 24, 2021, through January 3,

2022. Moreover, counsel's office—the MacArthur Justice Center—will be closed between December 23, 2021 and January 2, 2022.

7. An extension of time is further justified because it would permit undersigned counsel to provide the sort of comprehensive analysis that would aid this Court in determining whether to grant certiorari.

8. Mr. Hope has not previously sought an extension of time from this Court.

9. Respondents do not oppose the requested extension of time.

10. For the foregoing reasons, the application for a 59-day extension of time, to and including January 28, 2022, within which to file a petition for a writ of certiorari in this case should be granted.

Respectfully submitted,

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