No. 23A217

IN THE

Supreme Court of the United States

CRAIG ROPER,

Applicant,

v.

DE'ON L. CRANE, *et al.*,

Respondents.

On Application for a Stay of District Court Proceedings Pending Disposition of Petition for a Writ of Certiorari

OPPOSITION TO APPLICATION FOR A STAY OF DISTRICT COURT PROCEEDINGS PENDING DISPOSITION OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

More than five months after the Fifth Circuit denied applicant Craig Roper's petition for rehearing and his motion to stay the mandate, and more than three months after filing his petition for certiorari, Roper asks this Court to abruptly halt ongoing district court proceedings. Since the Fifth Circuit issued the mandate in March 2023, Roper amended his answer, answered respondents' amended complaint, and filed a motion to compel discovery from respondents. Only on July 31, 2023, more than two months after Roper filed his petition for certiorari, did Roper first move the district court to stay its proceedings. The district court promptly denied the motion, and then Roper waited another three weeks before asking this Court to effectively overturn that discretionary decision.

Roper satisfies none of the traditional criteria for the stay he requests, so he briefly argues that a stay is "required" based on a misreading of this Court's recent decision in *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915 (2023). *Coinbase* and the cases it cites proceed from the simple premise that a notice of appeal transfers jurisdiction away from the district court to the court of appeals. That jurisdictional transfer ended in this case when the Fifth Circuit issued the mandate, rendering *Coinbase* inapplicable.

Roper fares no better under the traditional stay factors. As demonstrated by respondents' Brief in Opposition, filed concurrently with this Opposition to Roper's Application to Stay, Roper cannot demonstrate a significant likelihood that this Court will grant certiorari, much less that it will reverse the Fifth Circuit's denial of

his motion for qualified immunity at the summary judgment stage, a decision that is both fact-bound and correct. As the Fifth Circuit explained, the evidentiary record presents numerous disputed issues of material fact that, if resolved in respondents' favor, establish that Roper shot an unarmed, non-violent suspect pointblank in the abdomen after he had done nothing more than verbally resist a command that he step out of his parked car. On these facts, Roper's decision to shoot Crane falls squarely within the category of excessive force this Court has recognized as an "obvious" Fourth Amendment violation, *Brosseau v. Haugen*, 543 U.S. 194, 200-01 (2004), foreclosing qualified immunity.

Roper has not demonstrated that he will face irreparable harm from participating in district court proceedings while this Court considers his petition for certiorari. Roper's claim of irreparable harm is rebutted by Roper's own conduct, choosing to litigate matters in the district court for months before deciding to seek a stay. After Roper's delay allowed him to compel discovery from respondents, he now seeks a stay to excuse himself from complying with any reciprocal discovery obligations. And over the months since the mandate issued, the district court has invested time and energy in preparing scheduling orders and deciding motions—efforts that Roper now belatedly seeks to wipe away. Roper's strategic choice to take advantage of the district court proceedings for several months before seeking a stay when it most suits his interests is a tactic that this Court should not reward and is alone grounds for denying the Application.

Roper's requested stay should also be denied because it would harm respondents, the district court, and the public interest by further delaying the administration of justice in this case. The complaint was filed in 2019, yet the case has barely progressed, and respondents are scarcely any closer to achieving justice for Roper's unconstitutional killing of Tavis Crane. The public interest favors the speedy resolution of disputes brought to the federal courts.

The Application should be denied for all of these reasons. But were the Court to grant the application and stay district court proceedings, it should do so only as to Roper. Although defendant City of Arlington, Texas, has separately petitioned for certiorari, it has not asked for (nor is it entitled to) a stay, and Roper offers no reason to extend the stay to a party that did not request it.

STATEMENT

The relevant legal and factual background of the underlying case is set forth in the brief in opposition to Roper's petition for a writ of certiorari. *See* Br. in Opp. (BIO) pp. 2-9. As described more fully in that brief, respondents brought suit under 42 U.S.C. § 1983 against petitioners, Arlington Police Officer Craig Roper and the City of Arlington, after Roper shot Tavis Crane to death during a traffic stop on February 1, 2017.

Respondents filed their original complaint in January 2019. ECF No. 1. After denying in relevant part the defendants' motions to dismiss at the pleading stage, ECF No. 25, 48, the district court adopted a bifurcated discovery plan in which the parties would first engage in discovery and motion practice limited to the

question of qualified immunity, and only then proceed to broader discovery. ECF No. 66. The case did not make it past the initial discovery phase, however, because the district court granted summary judgment to the defendants, finding that there was no constitutional violation. Pet. App. 27a.

The Fifth Circuit reversed. The court found that the district court erroneously resolved a key factual dispute—whether Roper shot Crane as he was trying to turn the car off or after the car began to move—in favor of Roper. As the court of appeals explained, when drawing all factual inferences in favor of respondent, Roper "shot Crane less than one minute after he drew his pistol and entered Crane's backseat aside a pregnant woman and a two-year-old," Pet. App. 17a; "Crane was shot while unarmed with Roper's arm around his neck," *id*. 15a; and "Roper shot Crane while the car was still in park and before the car began to move," *id.* at 16a. These facts "indicate a violation of a clearly established right." *Id*. at 23a.

Roper petitioned for rehearing en banc, which was denied on February 24, 2023. *Id.*. at 36a. Roper then filed a motion to stay the mandate, Stay Application App. 1a, which the Fifth Circuit denied on March 7, 2023, *id.* at 24a, and the mandate issued a week later. Roper took three months to submit his petition for certiorari, which was filed on May 25, 2023.

Months passed, and the district court proceedings continued ahead. Although Roper told the district court in April that he intended to file a motion to stay proceedings, Joint Status Report 5, ECF No. 99, the motion did not materialize.

The district court entered a scheduling order, Stay Application App. 128a, later amended, establishing dates for discovery cut-off and dispositive motions. Respondents amended their complaint, and Roper filed his answer to it. Roper also filed a motion to compel respondents to provide discovery. The district court issued nearly a dozen orders to resolve a number of motions and other matters. *See* ECF Nos. 91, 95, 98, 100, 102, 109, 110, 111, 115, 121, 124.

Finally, on July 31, 2023, Roper asked the district court to stay all proceedings pending disposition of the petition for certiorari. The court denied the motion on August 9, 2023. Stay Application App. 51a. Roper then waited three more weeks to file his Application for a Stay. Over 25 weeks elapsed between the Fifth Circuit's denial of Roper's request to stay the mandate and his request to this Court.

STANDARD OF REVIEW

In general, "[a] stay is an 'intrusion into the ordinary processes of administration and judicial review' and accordingly 'is not a matter of right, even if irreparable injury might otherwise result to the appellant.'" *Nken v. Holder*, 556 U.S. 418, 427 (2009) (citations omitted). The burden is especially high for applications made to this Court: "Denial of such in-chambers stay applications is the norm; relief is granted only in 'extraordinary cases.'" *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers) (citation omitted).[1]

[1] Although Roper invokes 28 U.S.C. § 2101(f), that statute grants courts authority to stay only a "final judgment or decree." *Id.*; *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regul. Comm'n*, 479 U.S. 1312, 1312 (1986)

"The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [this Court's] discretion." *Nken,* 556 U.S. at 433-34. "To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.*

"The burden of persuasion" on every element "rests on the applicant," and the burden is "particularly heavy" when, as here, both the district court and the court of appeals have declined to stay proceedings. *Beame v. Friends of the Earth*, 434 U.S. 1310, 1312 (1977) (Marshall, J., in chambers); *see also Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316 (1983) (Blackmun, J., in chambers) ("[A] district court's conclusion that a stay is unwarranted is entitled to considerable deference."); *Breswick & Co. v. United States*, 75 S. Ct. 912, 915 (1955) (Harlan, J., in chambers)

(Scalia, J., in chambers) (acknowledging that, although the Supreme Court may review "interlocutory orders of federal courts," "it is only the execution or enforcement of *final orders* that is stayable under § 2101(f)" (emphasis added)). Roper's requested relief is available only under the All Writs Act, which provides for "writs necessary or appropriate in aid of [this Court's] jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Such a request "demands a significantly higher justification than" stays under § 2101(f). *Ohio Citizens*, 479 U.S. at 1312 (Scalia, J., in chambers).

("A single Justice may also be expected to give due regard to a lower court's denial of a stay.").

ARGUMENT

I. *Coinbase* Is Inapplicable And Does Not Change The Appropriate Standard.

Roper first suggests that this Court's recent decision in *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915 (2023), "require[s] a stay of the district court's proceedings." Stay Application 1-3. This assertion relies on a fundamental misunderstanding of *Coinbase*.

Coinbase considered whether the district court must stay its proceedings while a party appeals an order denying a motion to compel arbitration to the circuit court. This Court looked to the "clear background principle prescribed by this Court's precedents," including *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982), that "[a]n appeal, including an interlocutory appeal, divests the district court of its control over those aspects of the case involved in the appeal." *Coinbase*, 143 S. Ct. at 1919 (internal quotation marks omitted). This "*Griggs* principle resolve[d] th[e] case:" filing the notice of appeal of a denial to compel arbitration transferred jurisdiction over the matter to the court of appeals for resolution, and the district court was required to stay its proceedings while the interlocutory appeal regarding arbitrability proceeded. *Id.* In support of its holding, *Coinbase* cited several qualified immunity decisions, *id.* at 1920 n.4, all of which rely on the same logic of jurisdictional transfer to halt district court proceedings during an interlocutory appeal. *E.g.*, *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992)

("[W]here, as here, the interlocutory claim is immediately appealable, its filing divests the district court of jurisdiction to proceed with trial."); *Yates v. City of Cleveland*, 941 F.2d 444, 448 (6th Cir. 1991) (similar); *Stewart v. Donges*, 915 F.2d 572, 575 (10th Cir. 1990) (similar); *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989) (similar).

"The filing of a notice of appeal is an event of jurisdictional significance," *Griggs*, 459 U.S. at 58, but so is the issuance of the mandate. "Just as the notice of appeal transfers jurisdiction to the court of appeals, so the mandate returns it to the district court." *Kusay v. United States*, 62 F.3d 192, 194 (7th Cir. 1995).

Coinbase and *Griggs*'s rationale of exclusive appellate jurisdiction loses all force once the mandate vests jurisdiction back in the district court. Thus, unlike the jurisdictional significance of a notice of appeal, it is well-settled that a "petition for certiorari to the Supreme Court did not divest the court of appeals or district court of jurisdiction. … [T]he mere filing of a petition for certiorari with the Supreme Court neither stops the mandate from issuing nor stops the case from proceeding in the district court." *United States v. Sears*, 411 F.3d 1240, 1242 (11th Cir. 2005). In order to keep jurisdiction out of the district court after the circuit has ruled, a litigant seeking certiorari must make a further showing that the petition presents a substantial question and there is good cause for the stay. Fed. R. App. P. 41(d). The Fifth Circuit found (without noted objection) that Roper had not made that showing, and issued the mandate in March 2023. Stay Application App. 24a.

It makes sense that a notice of appeal automatically transfers jurisdiction (and halts district court proceedings) while a petition for certiorari does not. There is an enormous practical difference between a notice of appeal and a petition for certiorari. An appeal to a three-judge circuit court panel is available as a matter of right to any litigant with an appealable order. Further review by this Court is the exception, reserved for a small number of extraordinary cases, as this Court declines the vast majority of requests for review. *See, e.g.*, Sup. Ct. R. 10 ("Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons … A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

In sum, Roper's argument that *Coinbase* requires a stay of district court proceedings fails because the jurisdictional premise of *Coinbase* evaporates once the mandate issues, as it has here. Instead, Roper must demonstrate that he is entitled to the extraordinary relief he requests under this Court's usual framework for granting such relief. He cannot do so.

II. This Court Is Unlikely To Grant Certiorari And Reverse The Court Of Appeals' Decision.

As demonstrated by respondents' brief in opposition to Roper's petition for a writ of certiorari, neither Roper nor the City identify any basis for this Court's review of the Fifth Circuit's denial of Roper's motion for summary judgement based on qualified immunity.

As the Fifth Circuit explained, the evidentiary record presents numerous disputed issues of material fact that, if resolved in respondents' favor, establish that Roper shot an unarmed, non-violent suspect pointblank in the abdomen after he had done nothing more than verbally resist a command that he step out of his parked car and had not demonstrated any immediate threat or even any attempt to flee. *See* BIO pp. 13-17. On these facts, Roper's decision to shoot Crane falls squarely within the category of excessive force this Court has recognized as an "obvious" Fourth Amendment violation, *Brosseau v. Haugen*, 543 U.S. 194, 200-01 (2004), one that is "beyond debate," *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (internal quotation marks omitted). *See* BIO pp. 17-18.

Moreover, Fifth Circuit precedent clearly established the unreasonableness of Roper's conduct. *See* BIO pp. 18-20. In *Deville v. Marcantel*, 567 F.3d 156 (5th Cir. 2009), the Fifth Circuit held that an officer had unlawfully used excessive force when he dragged a woman out of her car because she refused to step out after being pulled over for speeding. *Id.* at 168. Like Crane, the woman was in control of the car with the motor running and the gear in park, and she had not given any indication that she would flee or use the vehicle as a weapon. *Id.* at 167. Like Crane, she told the officers that she was not complying with the instruction to exit the car because she had a child in the car and had not done anything wrong. *Id.* at 161-62. Like Roper, the second officer who arrived on the scene abandoned any efforts at negotiation and "quickly resorted" to physical force—"breaking her driver's side window and dragging her out of the vehicle." *Id.* at 168. Given that

Deville provided Roper with fair warning that it would be unlawful to physically drag a suspect out of his car under these circumstances, it certainly provided fair warning that it would be unlawful to choke that suspect and then shoot him pointblank in the abdomen.

Roper and the City attempt to argue otherwise only by improperly construing disputed factual issues in their favor and entirely omitting undisputed facts that belie their version of events. *See* BIO pp. 9-12, 20-21. Moreover, every one of the cases they cite as supporting their position involved officers who used deadly force on a suspect who was already fleeing in a manner that posed a serious risk of immediate harm to officers and civilians—in stark contrast to Roper's decision to shoot Crane while Crane's car was in park and he was attempting to comply with Roper's command that he turn off the ignition. *See* BIO pp. 23-26. The Court is thus unlikely to grant review, let alone to reverse the Fifth Circuit's decision.

III. The Lack Of Irreparable Injury To Roper And The Balance Of The Equities Preclude Injunctive Relief.

To obtain the requested stay, Roper must also demonstrate a likelihood of irreparable harm, which is an impossible task given his choice to spend four months seeking discovery and litigating in the district court before seeking a stay of those proceedings and then waiting another three weeks after the district court denied the stay before filing his Application to this Court. This strategic delay is itself grounds for denying the Application. In contrast, issuing a stay would disrupt the district court's schedule for this case and further delay a case that has lingered for years.

A. Roper Has Not Established Irreparable Harm.

"The authority to grant stays has historically been justified by the perceived need 'to prevent irreparable injury to the parties or to the public' pending review." *Nken*, 556 U.S. at 432 (quoting *Scripps-Howard Radio v. FCC*, 316 U.S. 4, 9 (1942)). Irreparable injury must be demonstrated by an applicant for a stay; "simply showing some 'possibility of irreparable injury'" is not enough. *Id.* at 434-35; *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

Roper's first theory of irreparable harm is that "the District Court could issue rulings that prove to be inconsistent with this Court's eventual determination of the outcome of his qualified immunity." Stay Application 18-19. Presumably, Roper is speculating that the district court could enter judgment against him on the merits (either at summary judgment or after trial). But the summary judgment deadline is months away, ECF No. 132 (providing that dispositive motions are not due until March 8, 2024), and a trial further still. This Court will likely resolve the petitions well before the district court has an opportunity to again wrestle with Roper's liability. There is no reason to think that the district court will give Roper anything but fair consideration. Indeed, the district court previously ruled in favor of Roper. Any incorrect legal ruling can be corrected through the normal appellate process.

Roper also argues that he faces irreparable harm because he "will be subjected to litigation proceedings and discovery directed at him." Stay Application 19. But "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury." *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244

(1980) (citation omitted); *see also, e.g.*, *Sampson v. Murray*, 415 U.S. 61, 90 (1974) ("Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough."). Roper does not point to any *specific* harm that would result from having to participate normal civil litigation, apart from his generalized (and newfound) objection to having to litigate.

Significantly, Roper's argument is foreclosed by his own conduct in choosing to litigate in the district court for months before moving for a stay. "[I]t is a wise rule in general that a litigant whose claim of urgency is belied by its own conduct should not expect discretionary emergency relief from a court." *W. Va. v. B.P.J., by Jackson*, 143 S. Ct. 889 (2023) (Alito, J., dissenting from denial of application to vacate injunction). Indeed, Justices of this Court have regularly turned away requests for emergency relief with periods of delay far shorter than the five-and-a-half months that Roper waited between the issuance of the mandate and his request to this Court. Thus, for example, Justice Marshall denied an application for a stay of district court proceedings that was filed twenty days after the petition for certiorari, finding that the delay "vitiate[d] much of the force of [applicant's] allegations of irreparable harm." *Beame*, 434 U.S. at 1313 (Marshall, J., in chambers); *accord, e.g.*, *Ruckelshaus*, 463 U.S. at 1318 (Blackmun, J., in chambers) (noting that by waiting seven weeks, applicant's "failure to act with greater dispatch tends to blunt his claim of urgency and counsels against the grant of a stay"); *Morland v. Sprecher*, 443 U.S. 709, 710 (1979) (denying request for mandamus to direct expedited consideration of appeal when applicant had delayed

three months before seeking expedition, holding “[i]n view of their conduct … we conclude that petitioners have effectively relinquished whatever right they might otherwise have had to expedited consideration”); *Foster v. Gilliam*, 515 U.S. 1301, 1303 (1995) (Rehnquist, J., in chambers) (rejecting stay request based on delay of “several weeks”); cf. *Calderon v. Thompson*, 523 U.S. 538, 552 (1998) (holding court of appeals could not recall the mandate four months after it was issued, noting the “promptness with which a court acts to correct its mistakes is evidence of the adequacy of its grounds”).

This Court should not reward Roper’s strategic choice to delay seeking a stay. Roper waited until he sought and obtained discovery from respondents before asking that further proceedings be halted. Roper’s choice to litigate for months imposed costs on respondents and the district court, which was required to resolve several motions and issue a number of orders. Only after imposing these burdens on others did Roper finally seek to stop proceedings. “There is simply no plausible explanation for the delay other than litigation strategy. A stay under [such] circumstances … only encourages the proliferation of dilatory litigation strategies.” *Price v. Dunn*, 139 S. Ct. 1533, 1538 (2019) (Thomas, J., concurring in the denial of certiorari); *see also, e.g.*, *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam) (“Equity must take into consideration … attempt[s] at manipulation.”); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004) (per curiam) (“[B]efore granting a stay, a district court must consider … the extent to which the [movant] has delayed unnecessarily in bringing the claim.”).

B. Respondents And The Public Interest Would Be Harmed By A Stay.

Not only has Roper failed to satisfy any of the other criteria for a stay, but the stay would cause harm to respondents, the district court, and the public interest. Staying district court proceedings would mean further delay in a case that has already lingered for more than four-and-a-half years. Despite filing the complaint in 2019, respondents have received virtually no discovery and remain far from obtaining justice for the killing of Tavis Crane.

Granting a stay will also harm the district court, which has an interest in the "just, speedy, and inexpensive determination" of cases before it. Fed. R. Civ. P. 1. The district court took this obligation seriously, issuing several orders during the long gap between the issuance of the mandate and Roper's motion to stay the case before it. The district court has the authority to stay cases before it when appropriate to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants," *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936), a judgment reviewed only for an abuse of discretion, *Clinton v. Jones*, 520 U.S. 681, 706-07 (1997). The district court here declined to stay the case, and instead adopted a scheduling order that can be "modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Roper now asks this Court to supplant the district court's judgment and disrupt its efforts to move this case toward resolution.

And the public at large has an interest in speedy resolution of civil cases. *E,g.*, *El Encanto, Inc. v. Hatch Chile Co.*, *Inc.*, 825 F.3d 1161, 1162-63 (10th Cir.

2016) (Gorsuch, J.) (noting court procedures are "supposed to be administered by courts and parties to ensure the speedy and inexpensive resolution of all cases"). "Orderly and expeditious resolution of disputes is of great importance to the rule of law. By the same token, delay in reaching the merits, whether by way of settlement or adjudication, is costly in money, memory, manageability, and confidence in the process." *Allen v. Bayer Corp.*, 460 F.3d 1217, 1227 (9th Cir. 2006). Thus, for example, the Civil Justice Reform Act requires district courts to report cases (like this one) that have pended for more than "three years after filing," 28 U.S.C. § 476(a)(3), reflecting a Congressional judgment that "unnecessary costs and delays in the federal judicial system had seriously decreased access to the courts," *Mindek v. Rigatti*, 964 F.2d 1369, 1374 (3d Cir. 1992). Roper's late request for further delay should be rejected.

IV. The Scope Of The Application's Requested Relief Is Improper.

"Traditionally, when a federal court finds a remedy merited, it provides party-specific relief." *United States v. Texas*, 143 S. Ct. 1964, 1980 (2023) (Gorsuch, J., concurring). Even if this Court chooses to grant relief to Roper, it should not grant Roper's requested stay of "all" proceedings. Alongside Roper as defendant is the City of Arlington, which has not requested a stay from this Court and is not entitled to one.

Roper has not identified any rationale that would justify staying proceedings against the City, which does not have a qualified immunity defense. *E.g.*, *Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 166 (1993) ("[U]nlike various government officials, municipalities do not enjoy

immunity from suit—either absolute or qualified—under § 1983."); *Owen v. City of Independence*, 445 U.S. 622, 638 (1980) (because "There is no tradition of immunity for municipal corporations," municipalities may not assert the immunity of their officials as a defense). Municipalities have no "right to be free from the burdens of trial" and, unlike individual defendants asserting immunity, may not file an interlocutory appeal. *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 43 (1995). Thus, a district court may typically proceed with litigation against the municipality even while an individual defendant pursues an interlocutory appeal on the denial of qualified immunity. *E.g.*, *Alice L. v. Dusek*, 492 F.3d 563, 564 (5th Cir. 2007); *Cunningham v. Gates*, 229 F.3d 1271, 1284 (9th Cir. 2000) ("The rule announced in *Mitchell v. Forsyth* that individual defendants can appeal from the denial of a motion for summary judgment to obtain review of the merits of their qualified immunity defense does not empower a federal court to consider the denial of a municipality's motion for summary judgment in a section 1983 action." (citation omitted)); *Pogue v. City of Dallas*, 38 F.3d 570 (5th Cir. 1994) ("[W]e have jurisdiction over some interlocutory appeals from a district court's denial of an individual officer's motion for summary judgment based on qualified immunity. … However, this right to an interlocutory appeal has not been extended to municipalities."). Roper has offered no argument or reason to extend any stay to parties other than him, and any stay that is entered should be limited to the party that requested it.

CONCLUSION

For all these reasons, Roper's application for a stay of district court proceedings pending disposition of petition for a writ of certiorari should be denied.

Respectfully submitted.

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