

No. _____

In the Supreme Court of the United States

RALPH HARRISON BENNING,

Applicant,

v.

COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS; MARGARET PATTERSON,
GEORGIA DEPARTMENT OF CORRECTIONS; JENNIFER EDGAR, GEORGIA DEPARTMENT OF
CORRECTIONS.

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

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Ralph Harrison Benning, respectfully requests a 58-day extension of time, to and including Friday, January, 12, 2024, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Eleventh Circuit issued its opinion on June 23, 2023. A copy of the opinion is attached (Exhibit A). The Eleventh Circuit denied Applicant's timely rehearing petition on August 17, 2023. A copy of the order is attached (Exhibit B). This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on November 15, 2023. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case concerns an important qualified immunity issue: Whether censorship of prisoner emails, without any notice that the emails are being censored, nor any opportunity to challenge the decision before a neutral decisionmaker, obviously violates the Due Process Clause of the Fourteenth Amendment under this Court's decision in *Procunier v. Martinez*, 416 U.S. 396, 418 (1974), which clearly established that censoring outgoing physical mail without notice and an opportunity to challenge the decision before a neutral decisionmaker violates the Due Process Clause of the Fourteenth Amendment. Review of that question offers the Court the opportunity both to safeguard critically important First Amendment interests and to clarify the contours of qualified immunity doctrine.

4. In *Procunier v. Martinez*, this Court held that “[t]he interest of prisoners and their correspondents in uncensored communication by letter, grounded as it is in the First Amendment, is plainly a ‘liberty’ interest within the meaning of the Fourteenth Amendment even though qualified of necessity by the circumstance of imprisonment. As such, it is protected from arbitrary governmental invasion.” 416 U.S. 396, 418 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401, 413-414 (1989). Prison officials must therefore provide “minimum procedural safeguards” before censoring a prisoner’s mail. *Id.* Those safeguards are: (1) the inmate must receive notice of the rejection of a letter written by or addressed to him; (2) the author of the letter must be given

“reasonable opportunity to protest that decision,” and (3) “complaints [must] be referred to a prison official other than the person who originally disapproved the correspondence.” *Id.* at 418-19. These safeguards are critical to protecting prisoners’ First Amendment rights; “without notice of rejection, censorship of protected speech can escape detection by inmates and therefore go unchallenged.” *Martin v. Kelley*, 803 F.2d 236, 243 (6th Cir. 1986); *Perry v. Sec’y, Fla. Dep’t of Corr.*, 664 F.3d 1359, 1367 (11th Cir. 2011).

5. This case originates in the Georgia Department of Corrections (GDC). The GDC partnered with a private company, JPay, to provide electronic mail services to incarcerated individuals. Slip. op. at 3. One of the GDC’s Standard Operating Procedures, SOP 204.10, governs the use of JPay Kiosks and GOAL devices. Slip. op. at 3. That SOP, among other things, prohibited inmates from “request[ing] emails to be forwarded, sent, or mailed to others” and from “send[ing] information ... about another offender.” Slip. op. at 3. The SOP also provided that any communications that violated SOP 204.10 would “be intercepted without explanation and no refund [would] be provided to the sender.” Slip. op. at 3.

6. Applicant Ralph Harrison Benning is a prisoner in GDC custody serving a life sentence in Georgia. Slip. op. at 4. In September and October of 2017, Mr. Benning attempted to send three emails to his sister, Elizabeth Knott—one on September 24, 2017, and two on October 9, 2017. Slip. op. at 4. Those emails were intercepted by the GDC and never delivered to Ms. Knott due to violations of SOP 204.10. Slip. op. at 4. The three emails were about gang problems and fraud and corruption in the GDC. Slip. op. at 4.

7. As relevant here, respondent Margaret Patterson, a GDC analyst, intercepted the September 24 email because Mr. Benning had asked Ms. Knott to forward it to third parties. Slip. op. at 4. Respondent Jennifer Edgar, another GDC analyst, intercepted the October 9 emails for the same reason. Slip. op. at 4. Neither Ms. Patterson nor Ms. Edgar notified Mr. Benning that his emails had been intercepted and withheld. Slip. op. at 4. Nor did they give him an opportunity to appeal their decisions to a different GDC official. Slip. op. at 4.

8. Mr. Benning later discovered his emails never reached his sister, so in 2018, Mr. Benning filed this *pro se* civil rights suit pursuant to 42 U.S.C. § 1983. Slip. op. at 5. His complaint named the GDC Commissioner and Ms. Patterson and Ms. Edgar—the GDC analysts who had intercepted his emails in September and October of 2017—as defendants. Slip. op. at 5.

9. Mr. Benning alleged that the GDC, Ms. Patterson, and Ms. Edgar unconstitutionally censored certain emails he tried to send, and failed to provide him notice, thereby violating his rights under the First Amendment and the Due Process Clause of the Fourteenth Amendment. Slip. op. at 6. He requested specific declaratory and injunctive relief, as well as compensatory, nominal, and punitive damages. Slip. op. at 6.

10. The defendants filed a motion for summary judgment. Slip. op. at 6. They argued in part that Mr. Benning did not have a constitutional right to communicate through email and that, even if he did, the interception and withholding of his emails was constitutional. Slip. op. at 6. Ms. Patterson and Ms. Edgar also asserted that they were entitled to qualified immunity from Mr. Benning's claims for damages. Slip. op. at 6. The

district court granted summary judgment in favor of the defendants. Slip. op. at 6. Mr. Benning appealed, and counsel thereafter appeared on his behalf. Slip. op. at 6.

11. The Eleventh Circuit reversed in part and affirmed in part. Slip. op. at 32-33. The Eleventh Circuit held that the GDC's standard operating procedure violated the Due Process Clause under *Martinez* because it permitted prison officials to censor prisoner emails without notice or an opportunity to contest the decision before a neutral decisionmaker. Slip. op. at 28-29. But the Court granted qualified immunity to Ms. Patterson and Ms. Edgar because it was not "beyond debate" that *Martinez's* prohibition on censoring physical prisoner mail also applied to prisoner emails. Slip. op. at 28-29.

12. The Eleventh Circuit's holding that a reasonable prison official could have believed that *Martinez's* holding was limited to letters, and did not extend to other forms of correspondence, opened a direct circuit conflict with the Eighth Circuit. The Eighth Circuit held, in *Bonner v. Outlaw*, that it was clearly established by 2009 that *Martinez's* reasoning "applies to all forms of correspondence" and that "[i]t is the inmate's interest in 'uncensored communication' that is the liberty interest protected by the due process clause, regardless of whether that communication occurs in the form of a letter, package, newspaper, magazine, etc." 552 F.3d 673, 677 (8th Cir. 2009); *see also id.* ("Although [*Martinez*] discusses letters, that is because letters were simply the form of correspondence at issue in that specific case."). Thus, the Eighth Circuit denied qualified immunity to a prison official that censored a prisoner's *packages* without notice and an opportunity to contest the decision. *Id.* at 679-80.

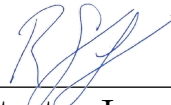
13. This case raises important questions related to due process and qualified immunity. The Eleventh Circuit's decision sows confusion about when a legal rule is "clearly established." It twists the law of qualified immunity law into a caricature of itself, in which even the smallest difference in the facts between an earlier case and a later one can constitute grounds for qualified immunity. And it opens a square conflict with the Eighth Circuit over how to conduct qualified immunity analysis in cases involving prison censorship.

14. Applicant respectfully requests an extension of time to file a petition for a writ of certiorari. A 58-day extension would allow counsel sufficient time to fully examine the decision's consequences, research and analyze the issues presented, and prepare the petition for filing. Additionally, the undersigned counsel have a number of other pending matters that will interfere with counsel's ability to file the petition on or before November 15, 2023.

Wherefore, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including Friday, January 12, 2024.

Dated: October 23, 2023

Respectfully submitted,



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