

In the Supreme Court of the United States

No. 23A_____

JARIUS BROWN, APPLICANT

v.

JAVARREA POUNCY, ET AL.

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

To the Honorable Samuel A. Alito
Associate Justice of the U.S. Supreme Court
and Circuit Justice for the Fifth Circuit

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for Applicant Jarius Brown respectfully request a 30-day extension of time, to June 19, 2024, 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 *Brown v. Pouncy*, 93 F.4th 331 (5th Cir. 2024) (attached as Exhibit A). The Court of Appeals entered judgment on February 19, 2024, and absent an extension, the time within which to file a petition for a writ of certiorari will expire on May 20, 2024. This application is being filed more than 10 days before the petition is due. *See* S. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. Applicant has good cause for a 30-day extension. Rule 13.5. This case presents a substantial and important question of federal law regarding the appropriate statute of limitations for federal claims under 42 U.S.C. § 1983. Because

Section 1983 does not expressly provide a statute of limitations, courts have applied the forum state's general or residual statute of limitations for personal injury claims to Section 1983 claims. *Owens v. Okure*, 488 U.S. 235 (1989). The result of this regime is that civil rights plaintiffs are subject to a 50-state patchwork system with varying statutes of limitations that apply to their *federal* Section 1983 claims. In 2019, Applicant Jarius Brown was beaten by Louisiana police officers in an unprovoked attack for which the officers have recently pleaded guilty to federal criminal charges. Although Mr. Brown filed his Section 1983 claim within two years of the attack, his claim was dismissed as time-barred because he resides in Louisiana, which is one of only three states tied for the shortest residual limitations period in the nation at a single year. La. Civ. Code art. 3492.

While *Owens* held that a state's residual statute of limitations should generally apply, it also acknowledged that a state's limitations period could be too short and therefore "inconsistent with federal interests." 488 U.S. at 251 n.13. Indeed, the Court expressly reserved the question of whether "applying a 1-year limitations period to § 1983 actions would be inconsistent with federal interests." *Id.* Here, Louisiana's one-year limitations period is inconsistent with the federal interests of Section 1983 because it both discriminates against federal civil rights claims and fails to account for the practicalities of filing a Section 1983 claim, especially for victims of police misconduct that suffer physical and mental trauma. *See Burnett v. Grattan*, 468 U.S. 42, 50 (1984). This case thus presents an ideal vehicle for the Court to address the question it explicitly reserved in *Owens*.

2. This case also presents the Court with the opportunity to revisit the 50-state patchwork regime for Section 1983 claims in light of 28 U.S.C. § 1658, enacted two years after *Owens*. To supply a statute of limitations, 42 U.S.C. § 1988 directs courts to employ a three-step method that first considers whether a “suitable” federal rule exists before borrowing from state law. *Burnett*, 468 U.S. at 47. Before Congress enacted Section 1658, the answer to that question was no, and federal courts were forced to borrow individual states’ statutes of limitations. *See Owens*, 488 U.S. at 240. But the law has since changed, and granting review in this case would allow the Court to consider the text of Section 1988 in light of this development.

3. In the decision below, the Fifth Circuit held that Applicant’s claims are time-barred under Louisiana’s one-year prescriptive period. While the court “read Supreme Court precedent, and our cases applying that precedent, to foreclose Brown’s position,” it acknowledged that, “[o]nly the Supreme Court, having already solved the problem of uncertainty in the absence of a federal limitations period for Section 1983 claims, *can clarify how lower courts should evaluate practical frustration without undermining that solution.*” *Brown*, 93 F.4th at 338 (emphasis added).

4. Counsel for Applicant also have numerous filing deadlines in other matters on similar deadlines that further justify a 30-day extension, including (i) an amicus brief in the Tenth Circuit due May 7, 2024; (ii) oral argument before the en banc Fifth Circuit on May 16, 2024; (iii) an opening merits brief due in the Eleventh Circuit on May 15, 2024; (iv) a reply brief due in the Colorado Supreme Court on May 20, 2024; (v) a reply brief due in the Fifth Circuit on May 20, 2024; (vi) an amicus brief in the

Fourth Circuit due May 27, 2024; and (vii) and other deadlines in non-public matters. Additionally, Applicant's counsel is also aware of several third parties who intend to file amicus briefs in support of Applicant's petition for a writ of certiorari to help the Court understand the importance of the questions presented. An extension that enables their participation would therefore benefit the Court's consideration of the issues presented in this case. Applicant thus requests a modest extension for counsel to prepare a petition that fully addresses the complex and important issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

CONCLUSION

For the reasons stated above, Applicant respectfully requests that the time to file a petition for a writ of certiorari be extended 30 days to, and including, June 19, 2024.

Respectfully submitted,

/s/ Lauren Willard Zehmer

LAUREN WILLARD ZEHMER

Counsel of Record

Michael X. Imbroscio

Sameer Aggarwal

COVINGTON & BURLING LLP

850 Tenth Street, NW

Washington, DC 20001

(202) 662-6000

lzehmer@cov.com

Nora Ahmed
ACLU FOUNDATION OF LOUISIANA
1340 Poydras Street
Suite 2160
New Orleans, LA 70112
(504) 522-0628
nahmed@laaclu.org

Caleb M. W. Ellis
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018
(212) 841-1000

May 8, 2024

Counsel for Applicant Jarius Brown