

No. _____

IN THE
Supreme Court of the United States

CHRIS DUTRA AND ERIC DEJESUS,

Applicants,

v.

KIM JACKSON,

Respondent.

**APPLICATION TO THE HON. ELENA KAGAN FOR AN
EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE
NINTH CIRCUIT**

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July 19, 2023

Pursuant to Supreme Court Rule 13.5, and 28 U.S.C. § 2101(c), Applicants Chris Dutra and Eric Dejesus respectfully requests a 59-day extension of time, to and including October 6, 2023, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

1. The United States Court of Appeals for the Ninth Circuit issued its decision on February 17, 2023. *See Jackson v. Dutra*, No. 22-15622, 2023 WL 2064543 (9th Cir. Feb. 17, 2023); App. 2. Applicants timely filed a petition for rehearing en banc. The court of appeals denied the petition on May 10, 2023. App. 7. Unless extended, the time to file a petition for certiorari will expire on August 8, 2023. This application is being filed more than ten days before a petition is due. Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case involves unsettled questions of qualified immunity. In November 2018, officers from the Sparks, Nevada Police Department helped Child Protective Services ("CPS") retrieve a three-year-old child who was under CPS' care from Respondent Kim Jackson's second-story apartment. The interaction was captured on the officers' body worn cameras. *See Jackson v. Dutra*, No. 3:20-cv-00288-RCJ-CLB, 2022 WL 943121, at *1 (D. Nev. Mar. 29, 2022); App. 10.

3. Initially, Jackson refused to release the minor child (A.M.) and CPS expressed concerns to the responding officers that Jackson was kidnapping A.M. App. 10-11. Jackson would not allow the officers into her apartment and an argument ensued between Jackson and CPS, with Jackson standing on her second-

story balcony and CPS outside. App. 11. During the confrontation, Jackson began moving with A.M. in her outstretched arms toward the second-story railing. App. 12. The footage shows the child would have fallen to the ground if Jackson had dropped her. *Id.* Luckily, Jackson went inside and let A.M. out the front. *Id.*

4. CPS whisked the child away and Officers Dutra and Dejesus remained outside Jackson's apartment. *Id.* Eventually, Jackson came outside and sat on the stairs leading to the third floor. *Id.* But, after an exchange with the officers, Jackson stood up and quickly went to the railing outside her door and tried to flee by climbing over. App. 13. Officer Dutra immediately grabbed Jackson's upper body and Officer Dejesus grabbed Jackson's right leg. *Id.*

5. Pulling a struggling Jackson away from the railing, the officers were finally able to get her right arm behind her back. App. 14. The officers did not use any taser, police dog, or neck restraint. Jackson acknowledged that she put the child over the railing and did not deny trying to jump over herself. *Id.* Jackson was arrested and charged with certain crimes. *Id.*

6. Jackson sued Officers Dutra, Dejesus, and others. Relying on the body cam footage, the district court granted summary judgment in favor of the officers on all claims for unlawful seizure, false arrest, excessive force, and supervisory liability. App. 26. For the excessive force claim, the district court determined that no juror could reasonably construe the force as excessive from the body cam footage. App. 24. The district court explained that, under the fast-moving circumstances, "[g]rabbing [Jackson], taking her away from the railing, and

attempting to pull her arm back to put her into handcuffs to restrain her by putting her under arrest and prevent her from jumping off the second-story railing is reasonable force." App. 25.

7. The Ninth Circuit affirmed in part and reversed in part. The Ninth Circuit agreed that all officers were entitled to qualified immunity on the unlawful seizure and false arrest claims because reasonable officers in their position could have concluded there was probable cause to suspect Jackson committed attempted child endangerment. App. 3. The court also affirmed summary judgment against Jackson's supervisory liability claim. App. 5.

8. However, the Ninth Circuit reversed summary judgment on the excessive force claim. String citing only Ninth Circuit precedent involving the use of tasers, police dogs, and neck restraints on already subdued suspects, the court tried to splice seconds of time when the officers' force allegedly transitioned from "non-excessive" to "excessive" as they were trying to pull Jackson away from the railing to handcuff her. App. 3-4 (citing *Hyde v. City of Willcox*, 23 F.4th 863, 871 (9th Cir. 2022); *Jones v. Las Vegas Metro. Police Dep't*, 873 F.3d 1123, 1130 (9th Cir. 2017); *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1059 (9th Cir. 2003); *Watkins v. City of Oakland*, 145 F.3d 1087, 1090 (9th Cir. 1998)).

9. The Ninth Circuit reviewed the video replay of the seconds-long sequence with slow-motion hindsight. The court described its millisecond dissection as follows: "Officers Dutra and Dejesus acted reasonably when they grabbed

Jackson to prevent her from climbing over the second-floor railing. Their use of force remained reasonable as Jackson resisted and they attempted to handcuff her and move her away from the railing." App. 4. Yet mere moments later, the Ninth Circuit concluded, "[b]ut the officers continued to pull Jackson's arms in opposite directions even after they had moved her away from the railing. A question of fact exists as to when Jackson ceased resisting and whether the officers' use of force continued after the emergency had ended." *Id.* But no precedent from this Court clearly establishes that the officers' conduct was unlawful in like circumstances.

10. This case presents a clean vehicle to address a critical, but unsettled, issue in qualified immunity doctrine: whether circuit precedent alone constitutes "controlling authority" for qualified immunity. Writing for the Court in *District of Columbia v. Wesby*, 138 S. Ct. 577, 591 n.8 (2018), Justice Thomas noted "[w]e have not yet decided what precedents—other than our own—qualify as controlling authority for purposes of qualified immunity." The Court has since simply "assum[ed] that controlling Circuit precedent clearly establishes law for purposes of § 1983." *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021); *See* Sup. Ct. R. 10(c).

11. Even if circuit precedent is enough, the Ninth Circuit's cited precedents involving the use of tasers, police dogs, and neck restraints on already hand-cuffed or subdued detainees is not sufficiently similar to the encounter involving Jackson captured on the body cam footage.

12. Jordan T. Smith, of Pisanelli Bice PLLC, Las Vegas, Nevada was recently retained by Applicants to file a petition for certiorari in this Court.

Mr. Smith was not involved in the proceedings below and requires additional time to familiarize himself with the record, research the legal issues presented, and prepare a petition that comprehensively addresses the important issues in the manner most helpful to the Court. Although counsel has been diligently working on this matter, over the next several weeks, Mr. Smith has substantial appellate and trial court commitments, including a reply brief in support of a writ of mandamus in *MSG Las Vegas, LLC v. Eighth Judicial District Court*, Case No. 86642 (Nev.), due August 4, 2023; a reply in support of a preliminary injunction in *Daisey Trust v. Federal Housing Finance Agency*, Case No. 2:23-cv-00978-APG-EJY (D. Nev.), due July 28, 2023; oppositions to motions for summary judgment and oral argument on a motion for jury instructions in *Pacific West LLC v. CY 4422Y, LLC*, Case No. A-21-844833-B (Nev. Dist. Ct.), on July 26, 2023 and August 14, 2023, respectively; and enlarged oral argument in *Valley Health Systems, LLC v. Dwayne Murray*, Case No. 79658 (Nev.) on September 6, 2023.

13. For these reasons, Applicants request an order extending the time to file a petition for certiorari to and including October 6, 2023.

Respectfully submitted,



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