

**In the Supreme Court of the United States**

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JOSEPH M. HOSKINS,

*Applicant,*

*v.*

JARED WITHERS; JESS L. ANDERSON.

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

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To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Joseph M. Hoskins respectfully requests a 60-day extension of time, to and including October 31, 2024, within which to file a petition for a writ of certiorari. The U.S. Court of Appeals for the Tenth Circuit issued an opinion on February 20, 2024. A copy of that opinion is attached as Exhibit A. The U.S. Court of Appeals for the Tenth Circuit denied rehearing in an order issued on June 3, 2024. A copy of that order is attached as 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 September 1, 2024. 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 seeks review of an extraordinary grant of qualified immunity by the Tenth Circuit in a decision that conflicts with several other circuits and the Tenth Circuit's own precedent. While Respondent Officer Jared Withers was on highway patrol in Tooele County, Utah, he stopped Applicant Joseph M. Hoskins in what began as a routine traffic stop for an equipment violation. The stop escalated when Officer Withers brought a narcotics dog to Mr. Hoskins's car, grabbed his cell phone, shoved him, and detained him. Mr. Hoskins verbally expressed his frustration with profanity directed towards Officer Withers, who then drew a gun and pointed it at Mr. Hoskins in retaliation for his use of profanity. Mr. Hoskins was not charged with any crime after the stop.

4. Mr. Hoskins filed a civil rights lawsuit against Officer Withers under 42 U.S.C. § 1983 alleging, among other violations, that Officer Withers' use of his gun violated Mr. Hoskins's First Amendment rights. The District Court dismissed the claims against Officer Withers construing the complaint to allege facts sufficient to furnish non-retaliatory grounds for Officer Withers's conduct. The Tenth Circuit affirmed on qualified immunity grounds, holding that even pointing the gun at Mr. Hoskins was retaliatory and even if Mr. Hoskins's speech was protected, Officer Withers was entitled to qualified immunity. The Court held that Officer Withers' actions did not violate the Constitution because there was no precedent finding specifically that pointing a gun at a suspect in retaliation for protected speech was a First Amendment violation.

5. This case raises an exceptionally important question warranting this Court's review. The question is whether, in a retaliation case like this one, to overcome qualified immunity a plaintiff need only establish that the right retaliated against was clearly

established, or instead, as the Tenth Circuit held, the plaintiff must establish that both that the right retaliated against was clearly established *and* that it was clearly established that government officials are forbidden from retaliating against that specific right in the specific manner used in the plaintiffs' case.

6. Courts of appeals are in disarray over the answer to that question. Some circuits hold that qualified immunity must be denied if it is clearly established that the plaintiff had a constitutional right and the officer's conduct would chill a person of ordinary firmness from exercising that right. Others hold that it needs to be clearly established that the specific type and nature of the retaliation is a violation of a constitutional right, with a case squarely on point involving the same constitutional right and the same method of retaliation.

7. The Tenth Circuit's decision is one of many contributing to both inter-circuit and intra-circuit splits. This case presents an ideal avenue to clarify the scope of qualified immunity and the proper test for assessing qualified immunity in retaliation cases. The existing doctrine is convoluted, with the applicable test differing dramatically between and even within circuits, and it affects both civil rights plaintiffs and defendants each time qualified immunity is invoked. This area of confusion and disagreement must be resolved to provide clarity to officials and the general public.

8. Review of this case would allow the Court to clarify the scope of qualified immunity and resolve confusion for litigants and courts about what exactly needs to be clearly established in retaliation cases. It would also give this Court an avenue to address the continued existence and survival of the qualified immunity doctrine.

9. Mr. Hoskins respectfully requests an extension of time to file a petition for a writ of certiorari. Counsel was retained in this matter after the panel issued its decision, and a 60-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 has a number of other pending matters that will interfere with counsel's ability to file the petition on or before September 1, 2024.

*Wherefore*, Mr. Hoskins respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including October 31, 2024.

Dated: July 1, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew T. Tutt", with a large, stylized flourish at the end.

Andrew T. Tutt

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