

No. 24-919

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**SUPREME COURT OF THE UNITED STATES**

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DILLON ROCK,

Respondent,

v.

MIKE MILLER, Officer, (#1115), individually

Petitioner.

On Petition for Writ of Certiorari to  
The United States Court of Appeals  
For the Ninth Circuit

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**AMENDED EMERGENCY MOTION TO STAY  
TRIAL PROCEEDINGS PENDING PETITION FOR  
WRIT OF CERTIORARI**

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Pursuant 28 U.S.C. § 2101(f), Defendant Officer Mike Miller respectfully requests an emergency stay of trial proceedings pending the Supreme Court's decision of his Writ of Certiorari.

## **I. BACKGROUND**

### United States District Court

In September 2020, Dillon Rock initiated his § 1983 action in the United States District Court, District of Arizona, Case No. 2:20-cv-01837-DWL. Dillon Rock alleged that Officer Miller violated the Fourth Amendment's prohibition against the use of excessive force by, *inter alia*, allowing a canine to continue biting him for too long. On September 9, 2022, after the close of discovery, Officer Miller moved for summary judgment on the basis of qualified immunity. On July 3, 2023, the Court issued an order concluding that Officer Miller was not entitled to qualified immunity with respect to Rock duration of bite claim. However, the Court concluded that Officer Miller was entitled to qualified immunity as to the decision to deploy his canine to locate, bite and apprehend Rock. On July 17, 2023, Officer Miller filed a notice of appeal of the order denying his request for qualified immunity as to the duration of bite claim. The District Court granted Officer Miller's request to stay the proceedings as

to that claim.

### Interlocutory Appeal

On August 14, 2024, the Ninth Circuit issued its memorandum decision affirming the July 2023 summary judgment order. On August 28, 2024, Officer Miller filed a petition for rehearing and rehearing *en banc*, and on September 26, 2024, that petition was denied. Miller filed his timely Petition for Writ of Certiorari thereafter.

### Post-Remand Proceedings

On November 15, 2024, Officer Miller filed in District Court a pending motion for stay, which was denied, with trial later set for May 12, 2025.

### The Decision to Seek Relief from the U.S. Supreme Court

On April 29, 2025, undersigned received the U.S. Supreme Court confirmation of the May 2, 2025 Conference on the Petition for Writ of Certiorari, and the request for a formal Response from Rock by May 29, 2025,<sup>1</sup> as well as the Ninth Circuit Court of Appeals record. With the

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<sup>1</sup> Rock's Response would have been due on March 28, 2025. Rock opted not to respond by that date. That the Supreme Court requested a response, albeit late, suggested to undersigned that the Petition for Writ was under serious consideration for grant as of April 29, 2025.

May 2, 2025 Conference pending, undersigned anticipated an Orders List by 9:30 a.m. on May 5, 2025 indicating whether the Petition was granted, or denied. Prior to May 2, 2025, undersigned spoke with Plaintiff's counsel who was inclined to stipulate to stay the district court trial if this Court granted the Petition for Writ. If denied, the trial would proceed. The May 5, 2025 Orders List, however, did not indicate a grant, or a denial, and Plaintiff's counsel did not agree to stipulate to a stay absent an affirmative grant of the Petition for Writ of Certiorari.

By the time all of this was known, and due to the time limitations with an impending trial date of May 12, 2025, Officer Miller felt it would be most expedient to file this Motion to Stay directly with the Supreme Court, rather than the Ninth Circuit Court of Appeals, as this Court has the authority for a single Justice to issue a stay of the sort requested here is conferred by 28 U.S.C. § 2101(f), and is in the best position to evaluate whether the first element supporting a stay was met. *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991).

## **II. ARGUMENT**

Jury trial in this matter is set to begin next week on May 12, 2025 in the district court. On December 26, 2024, Officer Mike Miller filed his

Petition for Writ of Certiorari, triggering a response date for Respondent Rock of March 28, 2025. No response was filed. On April 16, 2025, the Petition was distributed for conference to be held on May 2, 2025. On April 29, 2025, this Court requested a response with a due date of May 29, 2025, and simultaneously requested the record. The Ninth Circuit Court of Appeals transmitted the index of the appellate record the same day. On May 5, 2025, the U.S. Supreme Court's Order List was published, showing no denial of Miller's Petition for Writ. Because a jury trial is set to begin in five days, instead of filing with an emergency motion to stay with the Ninth Circuit, Miller files this emergency motion so he is not forced to go to trial while the sole issue of the jury trial is under review by the Highest Court in our Nation. The Supreme Court has the authority for a single Justice to issue a stay of the sort requested here is conferred by 28 U.S.C. § 2101(f). *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991). The practice of the Justices has settled upon three conditions that must be met before issuance of a § 2101(f) stay is appropriate. *Id.* There must be a reasonable probability that certiorari will be granted (or probable jurisdiction noted), a significant possibility that the judgment below will be reversed, and a

likelihood of irreparable harm (assuming the correctness of the applicant's position) if the judgment is not stayed. *Barnes, id.*, citing *Times–Picayune Publishing Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers); *see also, Indiana State Police Pension Trust v. Chrysler, L.L.C.*, 556 U.S. 960 (2009). Miller asserts all three of these conditions are met here.

First, on April 16, 2025, in the matter of *Mike Miller v. Dillon Rock*, Supreme Court of the United States No. 24-919, the U.S. Supreme Court issued its Order noting a Conference date of May 2, 2025 regarding consideration of Miller’s Petition for Writ of Certiorari. The first Monday following that conference, the Petition was not denied for a failure to have a four-Justice vote in favor of accepting the Petition. Moreover, it seems apparent from this Court’s April 29, 2025 requests that the Court has an interest in whether the Ninth Circuit continues to deviate from the analytical paradigm set by this Court to evaluate a public official’s entitlement to qualified immunity in § 1983 cases. The failures in the evaluation conducted by the district court and the Ninth Circuit Court of Appeals are well-demonstrated in Miller’s Petition. The instant Petition also seeks to clarify the use of force in the matter of a law enforcement

tool, the use of canines, that occurs with daily frequency but which has not yet been reviewed by the Court. Based on the history of the Petition and sufficient importance of correcting the Ninth Circuit, as has been required many times before, Miller argues that a grant of certiorari by this Court is now probable. *See, e.g., Barnes*, 501 U.S. at 1303.

Second, when this Court accepts a Petition from the Ninth Circuit Court of Appeals' denial of qualified immunity, a reversal of denial is the result in the vast majority of cases. *See, e.g., Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021); *City of Escondido v. Emmons*, 586 U.S. 38 (2019); *Kisela v. Hughes*, 584 U.S. 100 (2018); *City and County of San Francisco v. Sheehan*, 575 U.S. 600 (2015); *Brosseau v. Haugen*, 543 U.S. 194 (2004). There is, accordingly, a fair prospect that a majority of the Court will conclude that the decision below was erroneous. Finally, as to the third condition, the likelihood of irreparable harm, qualified immunity, and its correct application, are uniquely directed at preventing public officials from "standing trial." *Behrens v. Pelletier*, 516 U.S. 299, 308, 116 S. Ct. 834, 133 L. Ed. 2d 773 (1996) (internal quotation marks and citation omitted) (emphasis in original). If forced into trial, including the specter of the many damages available in 42 U.S.C. § 1983 cases, upon an errant

denial of qualified immunity, the benefit of qualified immunity is irreparably lost. Officer Miller will be irreparably harmed if forced to go to trial while the sole issue of the trial is under review by the Highest Court in our Nation.

The conditions that are *necessary* for issuance of a stay are not necessarily *sufficient*. Even when they all exist, sound equitable discretion will deny the stay when “a decided balance of convenience,” *Magnum Import Co. v. Coty*, 262 U.S. 159 164 (1923), does not support it. It is ultimately necessary, in other words, “to ‘balance the equities’—to explore the relative harms to applicant and respondent, as well as the interests of the public at large.” *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers) (citations omitted). Here, Miller argues that holding a full jury trial, from the standpoint of equitable discretion, is contrary to interests of judicial economy and erodes the importance of a correct decision on qualified immunity, such that scales of equitable discretion tip in the favor of a stay.

## II. CONCLUSION

As time is of the essence and for the foregoing reasons, Petitioner Officer Mike Miller respectfully requests that a Justice of this Court



Order a Stay of all lower court proceedings pending the United States Supreme Court's decision of the pending Petition for Writ of Certiorari.

DATED this 7th day of May, 2025.

By s/ James M. Jellison  
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## **CERTIFICATE OF SERVICE**

I, James M. Jellison, counsel for Petitioner Officer Mike Miller, hereby certify that on May 7, 2025, I caused two copies of Petitioner's Motion to Stay Trial Proceedings to be served by overnight delivery upon the following:

Honorable Dominic W. Lanza  
United States District Court  
Sandra Day O'Connor US Courthouse, Suite 621  
401 West Washington Street, SPC 46  
Phoenix, Arizona 85003

C. Tony Piccuta  
Scottsdale Injury Lawyers, LLC  
8700 E. Pinnacle Peak Road, Suite 204  
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tony@scottsdaleinjurylawyers.com  
*Attorney for Plaintiff*

I further certify that all parties required to be served have been served.

By s/ James M. Jellison  
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