

App No. _____

In The
Supreme Court of the United States

ABIEL BRATHWAITE,

Applicant,

v.

ANTHONY GEORGLADES ET AL,

Respondents.

**On Application for an Extension of Time to File Petition for a Writ of
Certiorari to the United States Court of Appeals for the Fourth Circuit**

Abiel Brathwaite

Pro Se

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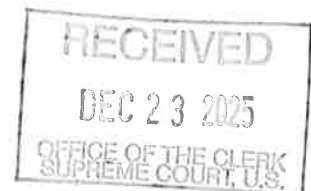
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December 19, 2025



To the Honorable Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant Abiel Brathwaite, respectfully requests that the time to file his petition for a writ of certiorari be extended for 30 days, up to and including Wednesday, January 21, 2026. The Court of Appeals issued its opinion on August 25, 2025 and denied rehearing en banc on September 23, 2025. Counsel for Respondents have been also mailed a copy of this application. Their position on this application is not known. Absent an extension of time, the petition would be due on December 22, 2025. The jurisdiction of this Court is based on 28 U.S.C. 1254(1).

Background

In §1983 claims for unconstitutional false arrest (a Fourth Amendment violation), the existence of probable cause is often treated as an absolute defense for officers. While this Court in *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001), reaffirmed that an arrest supported by probable cause is constitutional, lower courts are divided on whether such probable cause can be “dispelled” once new, plainly exculpatory information emerges. The circuits disagree on whether officers must consider exculpatory facts or affirmative defenses that undermine initial probable cause, raising a recurring question about the limits of Fourth Amendment reasonableness and §1983 accountability.

Applicant Abiel Brathwaite filed a pro se §1983 action alleging false arrest, unlawful search of person, and retaliation in violation of the First and Fourth Amendments. The district court dismissed the Third Amended Complaint with

prejudice at the Rule 12(b)(6) stage, reciting facts contrary to the pleadings—including adopting disputed hearsay and *sua sponte* inferring probable cause—without allowing leave to amend. The Fourth Circuit summarily affirmed in a one-paragraph, two-page unpublished per curiam opinion and subsequently denied panel rehearing and rehearing en banc under Fed. R. App. P. 35 and 40. This case presents a well-defined circuit split warranting this Court’s review. Had Petitioner Brathwaite’s constitutional claims been adjudicated in circuits on the opposite side of any of these splits, the district court’s dismissal with prejudice under Rule 12(b)(6) would have been vacated and remanded with leave to amend—particularly regarding the selective-enforcement exception recognized in *Nieves* and *Gonzalez*.

The district court *sua sponte* found probable cause for assault, though Respondents made no such argument, focusing instead on alleged firearm possession in a parking lot. Applicant’s research and a Maryland Aviation Administration FOIA response confirmed that the regulation restricting firearms applies only to secure areas, not the public cell phone lot. The district court’s assumption of probable cause thus contradicted both the record and Maryland law, while ignoring Applicant’s allegations that officers fabricated continuing suspicion after a false 911 call and retaliated when he protested their conduct.

At the Rule 12(b)(6) stage, courts must accept a plaintiff’s allegations as true. See *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *Tolan v. Cotton*, 572 U.S. 650 (2014). The panel below ignored this standard, disregarded the *Nieves* retaliation exception, and permitted dismissal with prejudice without any finding of futility—contrary to *Foman v. Davis*, 371 U.S. 178

(1962), and Rule 15's liberal amendment policy for pro se litigants. The lower courts also failed to certify to the Supreme Court of Maryland the unresolved state-law question whether firearm possession in the BWI cell phone lot is unlawful, despite Respondents' own admission that no Maryland court has ever decided that issue.

The lower courts dismissed with prejudice without affording Applicant, a pro se litigant, any opportunity to amend or any finding of futility. This practice creates a substantial and entrenched circuit split, which warrants Supreme Court review to ensure uniform access to the federal courts for unrepresented parties. While the Fourth Circuit affirmed dismissal here, numerous other circuits mandate a finding of futility or a grant of leave to amend before dismissing a pro se complaint with prejudice at the Rule 12(b)(6) stage, reflecting the liberal amendment policy embodied in Fed. R. Civ. P. 15(a) and the Supreme Court's instruction in *Foman v. Davis*, 371 U.S. 178, 182 (1962), that leave should be "freely given."

Finally, federal circuits are deeply divided on whether probable cause, once established, can be dissipated by plainly exculpatory evidence or newly discovered facts demonstrating innocence. The question implicates the Fourth Amendment's core protection against unreasonable seizure and the integrity of §1983 as a remedy for unconstitutional arrests. This entrenched split has far-reaching consequences for accountability and constitutional enforcement.

Reasons for Granting an Extension of Time

Although this application is filed fewer than ten days before the petition is due, extraordinary circumstances justify consideration. Applicant acted diligently and in good faith, but the timing of the mandate's issuance and the need to address

related appellate proceedings, extensive legal research materially compressed the time available to prepare a petition that adequately presents the issues for this Court's review. Applicant is proceeding pro se and works a full-time schedule, which materially limits the time available to prepare a petition that adequately presents the substantial constitutional and circuit-split issues for this Court's review. This is Applicant's first request for an extension. The request is not made for purposes of delay, and no party will be prejudiced by the requested extension.

Conclusion

For the foregoing reasons, Applicant respectfully requests an extension of 30 days to and including January 21, 2026 within which to file a Petition for a Writ of Certiorari.

Dated this 19th day of December, 2025.

Respectfully submitted,

A handwritten signature in black ink, reading "Abiel Brathwaite", is written over a horizontal line.

Abiel Brathwaite

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