IN THE
SUPREME COURT OF THE UNITED STATES

No. 25A992

RICHARD HERSHEY,

Applicant,

v.

CITY OF BOSSIER CITY; BOBBY GILBERT, individually and in his capacity as Deputy Marshal; DANIEL STOLL; DAVID SMITH; TYSHON HARVEY; EUGENE TUCKER,

Respondents.

APPLICATION TO THE HON. SAMUEL A. ALITO JR. FOR A FURTHER EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Richard Hershey hereby moves for a second extension of time of 30 days, to and including June 12, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be May 13, 2026.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Fifth Circuit rendered its decision on October 7, 2025. *See* First Applic. For Extension, Exhibit 1. This Court has jurisdiction under 28 U.S.C. §1254(1).

2. On March 6, 2026, undersigned counsel for Applicant, Paul D. Clement, applied for an extension of time of 30 days, to and including May 13, 2026, for the filing of a petition for a writ of certiorari.

3. On March 11, 2026, Justice Alito granted that application.

4. In support of the first application for an extension, counsel explained that this case concerns a glaringly obvious denial of First Amendment rights—specifically, the forcible removal of a peaceful distributor of religious leaflets on a public sidewalk in a public park. While the Fifth Circuit recognized that the actions here violated the First Amendment and gave rise to a potential claim under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), the Fifth Circuit managed to excuse the officers involved based on the view that the rule laid down in *Hope v. Pelzer*, 536 U.S. 730 (2002), that some constitutional rights are sufficiently obvious to eliminate the need for on-point precedent, was somehow limited to the Eighth Amendment context. That decision is obviously wrong and plainly certworthy. This case is being remanded for a trial on the *Monell* claim and the claims against the officers should be part of that remand. Accordingly, the case for this Court's intervention at this juncture is particularly strong.

5. The question presented here is whether public officials are entitled to qualified immunity despite obviously violating one of the most basic First Amendment rights—namely, an individual's right to distribute religious leaflets on a public sidewalk. When it comes to such issues of "religious speech," the First Amendment is "doubly" protective. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022). "Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities." *Id.* And, of course, "[t]he First Amendment reflects a profound national commitment to the principle that debate on public issues,"

including religion, “should be uninhibited, robust, and wide-open,” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011)—a commitment that is perhaps at its zenith on public sidewalks, which “occupy a special position in terms of First Amendment protection,” *McCullen v. Coakley*, 573 U.S. 464, 476 (2014). To that end, spreading one’s religious beliefs by “[l]eafletting” on a public sidewalk is one of the most “classic forms of speech that lie[s] at the heart of the First Amendment” and thus receives robust protection. *See Schenck v. Pro-Choice Network*, 519 U.S. 357, 377 (1997); *Jimmy Swaggart Ministries v. Bd. of Equalization*, 493 U.S. 378, 385-86 (1990).

6. Understanding those well-settled principles, Petitioner Richard Hershey sued Bossier City, Louisiana, two police officers, and three security officers after the officers prohibited him from peacefully distributing religious leaflets on a public sidewalk in the public park surrounding Brookshire Grocery Arena (formerly CenturyLink Center) in Bossier City, Louisiana, and threatened him with jailtime if he were to ever return. *See* First Applic. For Extension ¶¶4-8. Mr. Hershey alleged violations of his First Amendment right to peacefully distribute religious leaflets on a public sidewalk and of 42 U.S.C. §1983, because the City’s failure to train its employees caused the constitutional violation. *Id*. (citing *Monell*, 436 U.S. 658).

7. After the City and the officers moved to dismiss, the matter was referred to a magistrate judge, who issued a report and recommendation advising the district court to grant qualified immunity to the two police officers because there is not “a single decision from any court that has held, before or after the date of this incident, that an officer violated the rights of a leafletter who was removed from a similar

arena premises." CA5.ROA.243. The magistrate also recommended dismissal of Mr. Hershey's *Monell* claim for failure to train against the City, CA5.ROA.247, and of Mr. Hershey's claims against the three security officers. CA5.ROA.279-89. The district court adopted the magistrate judge's report and recommendations in full. CA5.ROA.277, 296.

8. A majority of the Fifth Circuit affirmed the grant of qualified immunity to the two police officers and dismissal of the three security guards but reversed the district court's dismissal of the *Monell* claim against the City for failure to train. *See* First Applic. For Extension, Exhibit 1 at 1-2. The Fifth Circuit published that decision in a three-sentence per curiam order that contained no legal analysis. *Id.* Instead, each judge on the panel issued a separate opinion concurring in full or concurring in part and dissenting in part. *See* First Applic. For Extension ¶¶11-13. Most notably, Judge Ho joined the panel's qualified immunity decision but derided the Fifth Circuit's erroneous (but binding) circuit precedent that, in his view, cabined *Hope* and *Taylor*'s obviousness exception to qualified immunity to Eighth Amendment cases. *Id.* ¶15.

9. The Fifth Circuit also denied panel rehearing and rehearing en banc. *Id.* ¶¶14, 17. Judge Oldham, joined by Judges Jones, Smith, Richman, Duncan, Engelhardt, and Wilson, dissented from the denial of rehearing en banc. *Id.* ¶16. The dissenters "would have granted en banc rehearing to" settle the circuit's application of qualified immunity in the First Amendment context, among other issues. First Applic. For Extension, Exhibit 2, at 35 (Judge Oldham, J., dissenting).

10. Applicant's petition for writ of certiorari is currently due on May 13, 2026. While Applicant is still working with newly retained appellate counsel to formulate that petition, he anticipates filing a petition that highlights how the Fifth Circuit's decision below to grant the Respondent officers qualified immunity is in direct conflict with this Court's decisions in *Hope* and *Taylor*. The Fifth Circuit's grant of qualified immunity to the Respondent officers ignores the obviousness of the officers' constitutional violation, and all because Fifth Circuit precedent has purportedly treated *Hope* and *Taylor*'s obviousness exception as mere "dicta," *Morgan v. Swanson*, 659 F.3d 359, 373 (5th Cir. 2011) (en banc), or otherwise cabined it to the Eighth Amendment context. But nothing in this Court's decisions supports either theory. Indeed, multiple other circuits have rightfully applied *Hope* and *Taylor* beyond the Eighth Amendment context, denying qualified immunity in the First Amendment context on obviousness grounds. *See, e.g.*, *Bailey v. Wheeler*, 843 F.3d 473, 484-85 (11th Cir. 2016); *MacIntosh v. Clous*, 69 F.4th 309, 320-21 (6th Cir. 2023). The "oddity" of the Fifth Circuit's contrary approach—which ultimately "treat[s] claims from incarcerated criminals more favorably than law-abiding citizens," First Applic. For Extension, Exhibit 2, at 6 (Ho, J., concurring in denial of rehearing en banc)—cries out for this Court's attention, as does the exceptional importance of the question presented, *see* First Applic. For Extension ¶21.

11. Applicant's counsel, Paul D. Clement, was not involved in the proceedings below before the panel or the en banc court and was only recently retained. Applicant's counsel requires additional time to review the record, prior

proceedings, and the governing precedent relevant in this case in order to prepare and file a petition for certiorari that best presents the arguments for this Court's review.

12. Mr. Clement also has substantial oral argument and briefing obligations between now and May 13, 2026, including an amicus brief in *Holtec Int'l v. New York*, No. 25-2657 (2d Cir.) due May 4, 2026; oral argument in *Town of Pine Hill v. 3M Company*, No. 25-10746 (11th Cir.) on May 5, 2026; a petition for rehearing in *Petersen Energía v. Argentine Republic*, No. 23-23 (2d Cir. 2026) due May 8, 2026; and preparation for oral argument in *Perkins Coie LLP v. Department of Justice, et al.*, No. 25-5241 (D.C. Cir.) on May 14, 2026.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time, to and including June 12, 2026, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

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