

In the Supreme Court of the United States

KAREN BROOKINS, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF MARCUS
RICHARD BOONE,

Applicant,

v.

CITY OF PHILADELPHIA, ET AL.

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

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Third Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Karen Brookins, individually and as Administratrix of the Estate of Marcus Richard Boone, respectfully requests a 60-day extension of time, to and including October 26, 2026, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Third Circuit issued its opinion and entered judgment on May 29, 2026. A copy of the opinion, including the opinion of Judge Roth concurring in part and dissenting in part, is attached as Exhibit A. No petition for rehearing was filed, and there is accordingly no order respecting rehearing. 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 August 27, 2026. This application is being filed more than 10 days in advance of that date, and no

prior application has been made in this case by Applicant. The extension is sought solely for Applicant Karen Brookins, individually and as Administratrix of the Estate of Marcus Richard Boone.

3. This case presents an important and recurring question of federal law on which the courts of appeals are divided: whether the Constitution forbids conscience-shocking executive conduct, or whether the Constitution permits conscience-shocking executive conduct so long as it does not also violate a fundamental right.

4. Applicant Karen Brookins is the mother of Marcus Boone, who died in March 2022 after jumping from an overpass in Philadelphia. While Boone lay dying on the road below, a Philadelphia police officer used his personal cellular telephone to photograph him, contrary to a departmental policy forbidding officers to photograph scenes with their personal phones, and then sent the photograph to nine fellow officers. The photograph was posted to social media, and within days people who did not know Applicant sent it to her. The district court held that the officer had violated Applicant's substantive due process rights by depriving her of "a protected liberty interest in non-interference with a family's remembrance of a decedent," and described his conduct as "reprehensible," "inexcusabl[e]," and "a shocking departure from what we expect of our police." It granted the officer qualified immunity nonetheless, because it was "the first court in this Circuit to reach this conclusion." A divided panel of the Third Circuit affirmed. The majority observed that the officer "(sensibly) does not dispute that his conduct was conscience-shocking," Ex. A, at 3 n.2, but held that Applicant was also required to prove she had a clearly established right to "control over a loved one[']s death-scene images," *id.* at 8. Judge Roth concurred

in part and dissented in part; she would have held that Applicant had that fundamental right and that the officer's conduct was "so obviously wrongful" that qualified immunity should have been denied.

5. The majority below committed a basic error. There are two ways an executive official can violate a person's substantive due process rights: by "engaging in conduct that shocks the conscience, or [by] interfer[ing] with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987) (citations omitted) (brackets added) (cleaned up). The court of appeals converted those alternative routes into cumulative requirements, holding that a plaintiff must establish both.

6. *Rochin v. California*—the case that originated the "shocks the conscience" standard—asks only one question: whether the official subjected the person to "conduct that shocks the conscience." 342 U.S. 165, 172 (1952). Courts long understood it exactly that way. Judge Friendly read *Rochin* that way, concluding that a complainant who shows conduct that shocks that conscience has "stated a claim." *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973) (Friendly, J.). Scholars have also long read it the same way, describing *Rochin* as "equat[ing] conscience-shocking with the ultimate conclusion that government conduct violated substantive due process." Robert M. Chesney, *Old Wine or New? The Shocks-the-Conscience Standard and the Distinction Between Legislative and Executive Action*, 50 Syracuse L. Rev. 981, 1001 (2000). And they have identified the departure: "some circuits have misconstrued Supreme Court precedent as foreclosing substantive due process claims unless the claim identifies a fundamental right." Rosalie Berger Levinson,

Reining in Abuses of Executive Power Through Substantive Due Process, 60 Fla. L. Rev. 519, 536 (2008).

7. The decision below conflicts with other court of appeals decisions, which have treated conscience-shocking executive conduct as itself the violation. *See, e.g., DeMarcus v. University of South Alabama*, 133 F.4th 1305, 1316 (11th Cir. 2025) (“Regardless of the interest claimed,” the test for whether executive action violates substantive due process “is whether it ‘shocks the conscience.’”); *T.D. v. Patton*, 868 F.3d 1209, 1213 (10th Cir. 2017) (holding conduct “shocks the conscience and thus amounts to a substantive due process violation under the Fourteenth Amendment”; affirming denial of qualified immunity).

8. Other decisions by the courts of appeals have required a second showing, and have acknowledged that their circuits’ decisions point in both directions and that the question remains unsettled. *See Siefert v. Hamilton County Board of Commissioners*, 951 F.3d 753, 766 (6th Cir. 2020) (“Sometimes, this court has said that this component of the Fourteenth Amendment comes in two varieties: (1) deprivations of a particular constitutional guarantee; and (2) actions that shock the conscience. And other times, the court has suggested both prongs are required.”) (cleaned up); *Martínez v. Cui*, 608 F.3d 54, 63-67 & n.9 (1st Cir. 2010) (discussing the same intracircuit conflict in the First Circuit’s cases). The petition will set out the conflicting decisions in full.

9. The question is exceptionally important and recurrent. The shocks-the-conscience standard exists to reach reprehensible executive conduct in forms that cannot be catalogued in advance. Under the decision below, an official who concedes that his conduct shocked the conscience nevertheless prevails whenever his conduct does not also

thereby invade a fundamental right. And because a court need not determine that the right exists to hold it is not clearly established (the move the majority made in this case), the precedent establishing the fundamental right never gets made.

10. The case presents the question in a posture in which it is outcome-determinative. The officer does not dispute that his conduct was conscience-shocking. No factual dispute bears on the question presented, the issue was pressed and passed upon at every stage, and the court of appeals identified no alternative ground for affirmance. Applicant's claim failed solely because of the additional element.

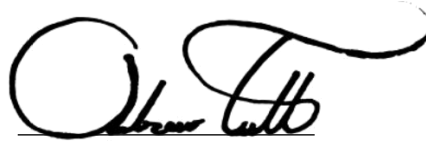
11. Good cause exists for the requested 60-day extension. Counsel has significant competing obligations, including in matters pending before this Court. Additional time would allow counsel to review the record and the decisions below, further research the conflict among the courts of appeals, coordinate with co-counsel and the client, and prepare a petition that will be of assistance to the Court.

12. This request is made in good faith and not for purposes of delay.

Wherefore, Applicant respectfully requests that the time to file a petition for a writ of certiorari be extended to and including October 26, 2026.

Dated: August 13, 2026

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew T. Tutt", written over a horizontal line.

Andrew T. Tutt

Counsel of Record

TRIAL LAWYERS FOR JUSTICE

421 W. Water Street

Decorah, IA 52101

(866) 854-5529

Andrew@TL4J.com

Counsel for Applicant Karen Brookins