

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

JOY HO SCHERER,

Applicant,

v.

WESSAM ISMAIL and NELSON MARTINEZ,

Respondents,

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS TO THE NINTH CIRCUIT

**TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR
THE NINTH CIRCUIT:**

Pursuant to Supreme Court Rule 13.5, Applicant Joy Ho Scherer hereby moves for an extension of time of 60 days, to and including November 20, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for the petition is September 21, 2026.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Ninth Circuit rendered its decision in *Scherer v Ismail, et al.*, No. 25-2651, on May 14, 2026 (Exhibit 1) and

denied en banc rehearing on June 23, 2026 (Exhibit 2).¹ This Court has jurisdiction under 28 U.S.C. §1254(1). Pursuant to Supreme Court Rule 13.1, the current deadline to file a petition for certiorari is September 21, 2026, or 90 days from the Ninth Circuit’s denial of en banc rehearing. This application is filed more than 10 days in advance of the deadline, in accordance with Rule 13.5.

2. This case concerns a gross violation of Ms. Scherer’s First Amendment right to petition the government for redress of her grievances. Respondents, Los Angeles Police Department officers, threatened to arrest Ms. Scherer if she pressed charges against a man who beat and attempted to rape her. In the first appeal, *Scherer v City of Los Angeles, et al.*, No. 23-55603 (9th Cir., Nov. 4, 2024), a unanimous panel of the Ninth Circuit Court of Appeals recognized that Respondents’ actions violated the First Amendment. On appeal for a second time, after the District Court denied qualified immunity for Respondents, a divided panel reversed because it found “no case or body of case law clearly establishing a First Amendment violation in a situation like this one, where a police officer is responding to the scene of a domestic assault and advising both parties about their respective rights to press charges, even when advisals about going to jail are plausibly regarded as threats that would chill a person of ordinary firmness from pressing charges.” Ex.1 at 4.

3. Judge Nguyen dissented because, “[t]aken together, [Circuit precedents] ‘clearly establish[ed]’ the unconstitutionality of the officers’ conduct.” Ex.1. at 13–14

¹ On remand, the District Court entered judgment in favor of Respondents and dismissed the case. *Scherer v City of Los Angeles, et al.*, No. 22-cv-01931 (C.D. Cal., judgment entered July 27, 2026).

(Nguyen, J., dissenting). Judge Nguyen noted that “[a]lthough courts must not define rights at too high a level of generality, neither may they define them so narrowly as to require a case on identical facts.” Ex.1 at 13 (citing *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) and *Ioane v. Hodges*, 939 F.3d 945, 956 (9th Cir. 2019)). Judge Nguyen pointed out that “[a] right may be clearly established even in novel circumstances, . . . including where the unlawfulness of the conduct is ‘obvious,’ . . . , or where the ‘intersection of multiple cases’ places the unconstitutionality of the officers’ conduct ‘beyond debate[.]’ ” Ex.1 at 13 (citing *Ballentine v. Tucker*, 28 F.4th 54, 64 (9th Cir. 2022), *Hardwick v. County of Orange*, 844 F.3d 1112, 1117 (9th Cir. 2017), and *Polanco v. Diaz*, 76 F.4th 918, 930, 930 n.8 (9th Cir. 2023)). Thus, Judge Nguyen concluded, “[a]ny reasonable officer would understand that threatening a domestic violence victim with arrest for seeking to press charges would chill her right to petition—particularly when our cases have condemned far less coercive forms of retaliatory intimidation.” Ex.1 at 14.

4. The question presented here is whether, for purposes of qualified immunity, the principles of *Hope v. Pelzer* apply to First Amendment retaliation claims such that officials have notice that threatening to arrest the victim of domestic violence and attempted rape if she presses charges against her attacker violates clearly established law, even without a prior published decision involving fundamentally or materially similar facts.

5. The proposed petition concerns an issue that has recently been the subject of a public separate writing by a Member of this Court regarding the scope of

qualified immunity in the context of First Amendment claims. *See Hoggard v. Rhodes*, 141 S. Ct. 2421, 2422 (2021) (Thomas, J., statement respecting denial of certiorari) (“why should university officers, who have time to make calculated choices . . . receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting?”). The requested extension will permit counsel to evaluate that writing and other such writings in detail, and to better direct discussion in the forthcoming petition to concerns expressed by Members of this Court.

6. It also recently came to counsel’s attention that this Court is currently considering a similar petition in *Hershey v. City of Bossier City*, which involves the question of “[w]hether the principles of *Hope v. Pelzer* are limited to Eighth Amendment claims or extend to Free Speech and Free Exercise claims such that petitioner’s constitutional claims should not be barred by qualified immunity.”² *See Hershey v. City of Bossier City, et al.*, No. 25-1389 (U.S. filed Jun. 12, 2026) (pending). The *Hershey* petition is accompanied by fifteen amicus filings. Because the *Hershey* petition involves several issues that overlap with issues in Ms. Scherer’s case, the requested extension will permit counsel to closely evaluate the *Hershey* submissions and refine the issues raised in Ms. Scherer’s petition with appropriate precision. Moreover, the additional time requested will allow counsel to consult with interested stakeholders and determine whether coordinated or complementary amicus participation would assist the Court.

² The petitioner in *Hershey* is represented by former United States Solicitor General Paul D. Clement of Clement & Murphy, PLLC.

7. In the period following the Ninth Circuit’s denial of Ms. Scherer’s petition for en banc rehearing up to the current date, in addition to the research and drafting required for preparation of Ms. Scherer’s petition, Ms. Scherer’s counsel had substantial, preexisting professional obligations, including the drafting of moving documents in *Chapell v. County of Los Angeles*, Los Angeles County Superior Court Case No. 25STCP04402 (motion filed July 6, 2026, re-filed on July 30, 2026); the filing of an Answering Brief in *Stenhouse v. County of Los Angeles, et al.*, No. 25-3419 (9th Cir.) (Answering Brief filed July 24, 2026); and the filing of motion opposition documents in *Gillig v. City of Torrance, et al.*, No. 2:26-cv-06493 (C.D. Cal.) (opposition filed August 7, 2026), *Westeren v. City of San Diego, et al.*, No. 3:26-cv-03596 (S.D. Cal.) (opposition filed August 10, 2026), *Seabra v. County of Riverside et al.*, No. 5:24-cv-02668 (C.D. Cal.) (opposition filed August 24, 2026), and *Salinas v. Palm Springs et al.*, No. 5:26-cv-03727 (C.D. Cal.) (opposition filed August 27, 2026).

8. In the period up to and immediately following the current September 21, 2026 deadline to file a petition for a writ of certiorari, Ms. Scherer’s counsel has additional professional obligations that must be attended to, including the filing of an opposition to a motion for summary judgment in *Judson Ball, et al., v. City of Whittier, et al.*, No. 2:25-cv-06912 (C.D. Cal.) (opposition documents due September 14, 2026); oral argument in *Alcantar, et al., v. Rotondo, et al.*, No. B338788 (Cal. Ct. App., 2d Dist.) (argument scheduled for September 17, 2026); the filing of an Opening Brief in *The People v. Perez*, No. G067145 (Cal. Ct. App., 4th Dist.) (Opening Brief due October 5, 2026); and the filing of motion opposition documents in *Chapell v.*

County of Los Angeles et al., No. 2:25-cv-07688 (C.D. Cal.) (opposition documents due October 7, 2026). The requested extension will allow counsel sufficient time to discharge those existing obligations while preparing a complete petition in this matter.

WHEREFORE, for the foregoing reasons, Applicant Joy Ho Scherer requests that an extension of time to and including November 20, 2026 be granted within which Applicant may file a petition for a writ of certiorari.

Dated: September 11, 2026

Respectfully submitted,



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