

No. A-_____

IN THE
Supreme Court of the United States

DARYL L. DAVIS,

Applicant,

v.

DON WARREN, ET AL.,

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 FOR THE FIFTH CIRCUIT**

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TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to this Court’s Rules 13.5 and 30.2, Applicant Daryl L. Davis respectfully applies for a 60-day extension of time, to and including September 18, 2026, within which to file any petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The court of appeals entered judgment on April 21, 2026. App. 16a–17a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 20, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). This Application is timely because it has been filed more than ten days before the date on which the time for filing is due to expire. S. Ct. R. 13.5.

1. This case presents an important question regarding how the § 1983 malicious-prosecution framework operates. In *Thompson v. Clark*, this Court determined that “[a] plaintiff need only show that the criminal prosecution ended without a conviction.” 596 U.S. 36, 49 (2022). In *Chiaverini v. City of Napoleon*, this Court explained that courts must evaluate malicious-prosecution suits “charge by charge” because the successful prosecution of “one valid charge in a criminal proceeding” doesn’t “categorically preclude” a claim for malicious prosecution of another charge. 602 U.S. 556, 562–63 (2024). But in the decision below, the Fifth Circuit departed from this Court’s precedent, determining that a *nolo contendere* plea to a new misdemeanor charge forecloses a malicious-prosecution claim on a dismissed felony charge.

2. Police pulled Mr. Davis over for an alleged traffic violation. Though he complied, officers accused him of swallowing a bag of crack cocaine and then jailed him without ever testing him for drugs. Upon release the next morning, Mr. Davis appeared before the probation department for a drug test, which came back negative. Seven months later, the district attorney indicted Mr. Davis for felony evidence tampering, later threatening a habitual-offender enhancement that exposed him to life imprisonment. Facing that prospect, he pleaded *nolo contendere* to a separate misdemeanor in exchange for dismissal of the felony.

3. Mr. Davis then brought a *pro se* § 1983 action alleging multiple claims, including for malicious prosecution. The district court dismissed his claims as time-barred and held the prosecution hadn't ended in his favor.

4. Mr. Davis timely appealed. The Fifth Circuit appointed Mr. Davis counsel, and affirmed in part and vacated in part the district court's order. App. 5a, 14a–15a. The Fifth Circuit held that Mr. Davis's malicious-prosecution claim was barred because the “government dropped the evidence-tampering charge as part of an agreement under which Davis entered a *nolo contendere* plea for interfering with public duties” and because “probable cause supported the charge to which [Mr. Davis] pleaded.” App. 8a–9a.

5. That holding conflicts with this Court's decisions in *Chiaverini* and *Thompson*. In *Chiaverini*, this Court instructed that “courts should evaluate [malicious-prosecution] suits * * * *charge by charge*.” 602 U.S. at 562–63 (emphasis added). And in *Thompson*, this Court held that a charge is favorably terminated when

it “end[s] *without a conviction.*” 596 U.S. at 49 (emphasis added). So the Fifth Circuit wrongly concluded both that Mr. Davis’s felony charge wasn’t favorably terminated because it was dismissed in connection with his plea to *a different charge* and that the presence of probable cause for *that pled-to charge* somehow barred his malicious-prosecution claim related to the dismissed charge.

6. Additional time is necessary for counsel to prepare a petition that would be helpful to the Court. Counsel for Mr. Davis has significant professional obligations during the period in which the petition would otherwise need to be prepared, including: *Woolard v. Thurmond*, No. 25A1287 (U.S.); *Am. Beverage Assoc. v. Paxton*, No. 26-50192 (CA5); *REH Co., LLC v. EPA*, No. 25-1180 (CADDC); *Eckford v. Nixon*, No. 26-0003 (Tex.); *State v. Gilead Scis., Inc.*, No. 23-0800 (71st Dist. Ct., Harrison Cnty., Tex.). Moreover, additional time is necessary here to allow counsel to address these important and complex questions of federal constitutional law. Mr. Davis isn’t aware of any party that would be prejudiced by a 60-day extension.

Accordingly, Mr. Davis respectfully requests that the time to file a petition for a writ of certiorari be extended by 60 days, to and including September 18, 2026.

Respectfully submitted,

/s/Allyson N. Ho

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