

No. _____
IN THE
Supreme Court of the United States

CALVIN JOHNSON, WARDENS,

Petitioner,

v.

LUIS CARDENAS-ORNELAS,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEAL FOR 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 this Court's Rule 13.5, the Petitioner, Warden Calvin Johnson, respectfully request a 30-day extension of time, to and including August 20, 2026, within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

The Ninth Circuit issued an opinion and a related memorandum addressing this case on January 29, 2026, and denied a petition for rehearing on April 22, 2026. Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 21, 2026. This application has been filed at least 10 days before this date. The jurisdiction of this Court is invoked under 29 U.S.C. § 1254(1). A copy of the Ninth Circuit's opinion is attached as Exhibit A, the related memorandum is attached as Exhibit B, and the order denying rehearing is attached as Exhibit C.

1. This case raises important questions of federal law involving application qualified immunity and the Eighth Amendment’s prohibition on cruel and unusual punishment. Plaintiff Luis Cardenas-Ornelas has alleged a violation of his right to be free from cruel and unusual punishment under the Eighth Amendment based upon restrictions imposed on yard time for inmates in the Nevada Department of Corrections during the height of the COVID-19 pandemic. Warden Johnson moved for summary judgment on the Eighth Amendment claim by asserting qualified immunity. And the Ninth Circuit affirmed the denial of summary judgment on appeal as to Warden Johnson.

The Ninth Circuit started its analysis by discussing general principles of law on application of the Eighth Amendment when “considering whether, at the time of the alleged deprivation, Cardenas-Ornelas has a clearly established right to outdoor exercise or otherwise meaningful opportunities for recreation.” Exhibit A at 9–10. After concluding that its precedent clearly establishes such a right, the court moved on to the question “whether a reasonable jury could find that Warden Johnson violated that clearly established right,” and resolved that question in Cardenas-Ornelas’s favor. Exhibit A at 10–13.¹

2. The Ninth Circuit’s analysis on qualified immunity is in conflict with this Court’s many decisions on qualified immunity, which include repeated warnings to lower courts not to answer the “clearly established law” prong of the analysis by

¹ In its opinion, the Ninth Circuit reversed the denial of summary judgment on an equal protection claim. Exhibit A at 13-15. And in the related memorandum, it reversed the denial of summary judgment on a state constitutional claim based on sovereign immunity under the Eleventh Amendment. Exhibit B.

relying on general statements of law. This Court’s most recent statement on qualified immunity in *Zorn v. Linton*, 146 S. Ct. 926 (2026), helps emphasize the Ninth Circuit’s obvious error. The initial inquiry for qualified immunity is to look at the specific facts of the case to decide whether there is a violation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Then the Court addresses the clearly established law question. *Id.* But as *Zorn* explains, when defining the clearly established law, “courts generally ‘need too identify a case where an officer acting under similar circumstances . . . was held to have violated’ the Constitution.” 146 S. Ct. at 930. “In short, officers receive qualified immunity unless they could have ‘read; the relevant precedent beforehand and ‘know[n]’ that it proscribed their specific conduct.” *Id.* (quoting *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 616 (2015)).

Of course, this Court has said that a court may skip to the clearly established law factor and grant qualified immunity based solely on the absence of a clearly established right. *See, e.g., Pearson v. Callahan*, 555 U.S. 223, 236 (2009). But by inverting qualified immunity analysis and taking the two prongs out of order, the Ninth Circuit defined the clearly established law at too high a level of generality. And to make matters worse, the Ninth Circuit is interpreting the Eighth Amendment in relation to COVID-19 in a way that creates an impossible situation for state departments of corrections that are still responding to lawsuits that challenge their responses to COVID-19. Here, the Ninth Circuit said there is a clearly established right under the Eighth Amendment “to outdoor exercise or otherwise meaningful opportunities for recreation” that could be violated by restrictions on yard time

intended to limit the possible opportunities for exposure to COVID-19. Exhibit A at 5–6, 9–13. But in other cases, the Ninth Circuit has suggested that the Eighth Amendment includes a clearly established right “to be free from exposure to a serious disease,” which overcomes the assertion of qualified immunity as a defense to an Eighth Amendment challenge to a prison’s response to COVID-19. *Hampton v. California*, 83 F.4th 754, 769-70 (9th Cir. 2023); *see also Maney v. Oregon*, No. 24-2715, 2025 WL 1794110 (9th Cir. June 30, 2025).²

3. Counsel of record in this case has remained extremely busy since the Ninth Circuit issued its order denying the petition for rehearing. In addition to the day-to-day press of business, Counsel is new to this case and needs to coordinate with the Senior Deputy that handled this case on appeal in drafting the petition. But Counsel has been busy handling multiple other professional obligations in recent months, including drafting a mandatory brief in opposition to a petition for writ of certiorari in a capital habeas corpus case in this Court, *Bejarano v. Bean*, No. 25-6689 (U.S.); assisting with preparation of an opposition to a motion for preliminary injunction in ongoing litigation involving Nevada’s lethal injection protocol in *Floyd v. Daniels*, No. 3:21-cv-00176-RFB-CLB (D. Nev.); reviewing and revising a reply brief in a matter involving a state-law challenge to Nevada’s lethal injection protocol, *Ybarra v. Board of State Prison Commissioners, et al.*, No. 91586 (Nev.); drafting a reply brief in a matter involving the Nevada Public Records Act, *Nevada Dep’t of Pub. Safety v. Low*, Nos.

² Oregon filed a petition seeking to challenge that decision in this Court, but it has since filed a motion to dismiss indicating that the parties resolved that case by settlement. Motion of Oregon, *et al.* to dismiss, *Oregon v. Maney*, No. 25-960 (June 30, 2026).

90637 and 91022 (Nev); and reviewing and revising an answering brief for an appeal to the Nevada Tax Commission that presents a complex dormant Commerce Clause challenge to Nevada tax laws, *In re ASD Specialty Health Care, Inc., ASD Specialty Healthcare, LLC*, and *AmerisourceBergen Drug Corporation*, Nos. 513775, 513777, 513461, 513462 (Nev. Tax Commission). Additionally, counsel currently has ongoing obligations as lead counsel in two important appeals in the Ninth Circuit, *Mork v. Naughton*, 25-4612 (9th Cir.), and *Lincoln County Water District v. Nevada Division of Water Resources*, No. 26-1323 (9th Cir.), and another appeal in the Nevada Supreme Court, *Dzurenda v. Ybarra*, No. 92304 (Nev.).

* * *

In light of the foregoing, Petitioners respectfully request the entry of an order extending their time to file a petition for writ of certiorari by 30 days, to and including August 20, 2026.

Respectfully submitted,

/s/Jeffrey M. Conner
AARON D. FORD
Attorney General of Nevada
Heidi Parry Stern
Solicitor General
Jeffrey M. Conner*
Chief Deputy Solicitor General
Chris Davis
Senior Deputy Attorney General
Office of the Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701
Telephone: (775) 684-1136
jconner@ag.nv.gov
*Counsel of Record

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CERTIFICATE OF SERVICE

I hereby certify that I am a member in good standing of the bar of this Court and that on this 9th day of July, 2026, I caused a copy of the foregoing Second Application for an Extension of Time Within Which to File a Petition for Writ of Certiorari to be served by first-class mail on counsel identified below, pursuant to Rule 29.5 of the Rules of this Court. All parties required to be served have been served.

Counsel for Respondent:

John S. Delikanakis, Esq.
Erin M. Gettel, Esq.
SNELL & WILNER L.L.P.
1700 South Pavilion Center Drive, Suite 700
Las Vegas, Nevada 89135

/s/ Jeffrey M. Conner

Jeffrey M. Conner