

No. _____

In the Supreme Court of the United States

DANIEL KINSINGER,

Applicant,

v.

SHERELLE THOMAS, ADMINISTRATOR OF THE ESTATE OF TERELLE THOMAS;
T.T., A MINOR, INDIVIDUALLY, AS CHILD OF DECEDENT TERELLE THOMAS
AND AS HIS SOLE SURVIVOR.

**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 Daniel Kinsinger respectfully requests a 60-day extension of time, to and including June 6, 2024, within which to file a petition for a writ of certiorari. The U.S. Court of Appeals for the Third Circuit issued an amended opinion on December 6, 2023. A copy of that opinion is attached as Exhibit A. The U.S. Court of Appeals for the Third Circuit denied rehearing in an order issued on January 8, 2024. A copy of that order is attached as Exhibit B. 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 April 8, 2024. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case seeks review of an extraordinary and unprecedented qualified immunity denial by a divided Third Circuit panel over a powerful dissent by Judge Phipps. Applicant Officer Kinsinger, along with other officers, believed decedent Terelle Thomas had ingested crack cocaine, but Mr. Thomas denied that he had ingested cocaine, told officers he felt okay, and showed no obvious signs of overdose or poisoning. The officers knew that medical personnel at the county jail, which was only minutes away, would be able to further evaluate his condition. Yet, the two-judge Third Circuit majority held that this conduct, taking decedent to the county jail minutes away where he was evaluated by medical staff, rather than straight to a hospital, not only constituted deliberate indifference to decedent's serious medical needs,¹ but that it was *so obvious* that Applicant could not raise the defense of qualified immunity even though the panel majority conceded there is no "closely analogous precedent" that would have put the officers on notice.

4. This case raises an exceptionally important question warranting this Court's review. As *every* judge below recognized, neither this Court nor a robust consensus of the Courts of Appeals has recognized the right to medical care at a hospital after the ingestion of drugs where the arrestee denies ingesting the drugs, declines medical care, and shows

¹ As a basic legal standard, this Court has held that the Eighth Amendment protects a prisoner from deliberate indifference to his serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976). The Fourteenth Amendment affords pretrial detainees the same protections as those available to inmates under the Eighth Amendment. *City of Revere v. Mass. Gen. Hospital*, 463 U.S. 239, 244 (1983).

no obvious signs of overdose or poisoning. And contrary to the panel majority, it is not remotely “obvious” that officers’ sincere efforts to get such an arrestee prompt medical attention and evaluation—just at the county jail rather than at a hospital—constitute deliberate indifference to that arrestee’s serious medical needs.

5. Applicant Daniel Kinsinger is a probation officer in Dauphin County, Pennsylvania. In December 2019, he was on patrol with a Harrisburg police officer when he encountered Terelle Thomas. Mr. Thomas spoke to the officers as if there was something in his mouth and spat out white liquid. Applicant’s patrol partner told Applicant that she believed Mr. Thomas may have ingested crack cocaine, but Mr. Thomas showed no signs of distress, told officers he was feeling okay, and repeatedly denied having ingested any drugs. Mr. Thomas was arrested for possession of crack cocaine and other drug-related offenses. Applicant’s interaction with Mr. Thomas ended when another officer transported Mr. Thomas to the Dauphin County Prison, which had a medical unit operated by PrimeCare Medical, Inc. During transport, Mr. Thomas again denied ingesting drugs, showed no clear signs of distress, and verbally assured the officer he did not require attention.

6. Upon arrival at Dauphin County Prison, the officer informed booking center staff, including medical personnel, that Mr. Thomas may have ingested crack cocaine. Booking center staff examined Mr. Thomas and placed him in a holding cell. More than an hour after arrival at the booking center, Mr. Thomas collapsed in his cell. He was transported to a nearby hospital, where he died three days later. An autopsy revealed the cause of death as cocaine and fentanyl toxicity.

7. In July 2020, Mr. Thomas's estate commenced a 42 U.S.C. § 1983 action against the City of Harrisburg, PrimeCare Medical, Inc., and the individual officers, including Applicant. As relevant here, Mr. Thomas's estate alleged Applicant failed to render medical care in violation of the Fourteenth Amendment.

8. Applicant moved to dismiss the claim for failure to render medical care, in part on the basis of qualified immunity. The district court denied the motion for qualified immunity, finding there was a clearly established right to medical care at a hospital after the oral ingestion of drugs, and Applicant appealed.

9. A split panel of the Third Circuit affirmed the denial of qualified immunity. The majority opinion, authored by Judge Roth and joined by Judge Jordan, conceded that “[t]here has not yet ... been a recognition” by the Third Circuit “of the right to medical care after the ingestion of drugs,” but nonetheless found Applicant was not entitled to qualified immunity. The majority relied on the limited “obviousness” exception recognized by this Court in *Hope v. Pelzer*, 536 U.S. 730 (2002), and concluded “the facts here present a violation that is so obvious that every objectively reasonable government official facing the circumstances would know that the [officers’] conduct ... violate[d] federal law when [they] acted.” (quotation marks omitted).

10. Judge Phipps dissented. He concluded that it was not “clearly established that the Due Process Clause of the Fourteenth Amendment imposes a duty on law enforcement officers to transport a detained suspect who ingested drugs to a *hospital*.” In reaching this conclusion, Judge Phipps recognized that “the Majority Opinion offers no precedent for the proposition that as of [the date of the incident], the Due Process Clause

required that officers transport to a hospital a detained suspect who appears to have ingested drugs.” Following this Court’s guidance, Judge Phipps found that lack of precedent dispositive.

11. This case presents an important question about the scope of qualified immunity. Public officials are entitled to qualified immunity unless they violate a federal right that was clearly established at the time of the alleged violation. This Court has long instructed courts that “[t]o be clearly established, a legal principle must have a sufficiently clear foundation in then-existing precedent.” *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018). That means “[t]he precedent must be clear enough that *every reasonable official* would interpret it to establish the particular rule the plaintiff seeks to apply.” *Id.* (emphasis added). “[E]xisting precedent must place the lawfulness ... ‘beyond debate,’” and cases where the conduct is so “obvious” no existing precedent is needed are “rare.” *Id.* at 64 (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)). Further, this Court “ha[s] repeatedly told courts not to define clearly established law at too high a level of generality.” *City of Tahlequah v. Bond*, 595 U.S. 9, 12 (2021). This Court has regularly found its intervention, and summary reversal, is appropriate after a circuit court misapplies this standard to deny an officer qualified immunity. *See, e.g., id.*; *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021); *City of Escondido v. Emmons*, 586 U.S. --, 139 S. Ct. 500 (2019); *Kisela v. Hughes*, 584 U.S. 100 (2018); *White v. Pauly*, 580 U.S. 73 (2017).

12. At the time of the events in this case, several other courts of appeals had held that officers do not act with deliberate indifference when declining to provide emergency medical care to individuals who denied swallowing drugs, did not request medical attention,

and did not exhibit signs of overdose. *See e.g., Watkins v. City of Battle Creek*, 273 F.3d 682 (6th Cir. 2001); *Martinez v. Beggs*, 563 F.3d 1082,(10th Cir. 2009); *Brown v. Middleton*, 362 F. App'x 340 (4th Cir. 2010).

13. Applicant respectfully requests an extension of time to file a petition for a writ of certiorari. Counsel was retained in this matter only days ago, and a 60-day extension would allow counsel sufficient time to fully examine the decision's consequences, research and analyze the issues presented, and prepare the petition for filing. Additionally, the undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on or before April 8, 2024.

Wherefore, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including June 6, 2024.

Dated: March 28, 2024

Respectfully submitted,



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