

In the Supreme Court of the United States

MARQUES A. JOHNSON,

Applicant,

v.

CHRIS NOCCO, IN HIS OFFICIAL CAPACITY AS SHERIFF, PASCO COUNTY, FLORIDA,

AND JAMES DUNN, IN HIS INDIVIDUAL CAPACITY,

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

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Marques A. Johnson respectfully requests a 60-day extension of time, to and including September 12, 2024, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Eleventh Circuit issued its original opinion on October 2, 2023. A copy of that opinion is attached as Exhibit A. Then, the Eleventh Circuit issued a subsequent opinion on January 30, 2024 vacating the opinion and substituting a new opinion. A copy of that opinion is attached as Exhibit B. The Eleventh Circuit denied Applicant's timely rehearing petition on April 15, 2024. A copy of that order is attached as Exhibit C. 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 July 14, 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 opinion by a divided Eleventh Circuit. The question presented is whether, consistent with the Fourth Amendment, a passenger in a car not suspected of any wrongdoing may be arrested solely for refusing to immediately identify himself. The Eleventh Circuit panel majority held that there is no clearly established right under the Fourth Amendment for a passenger in a stopped vehicle suspected of no wrongdoing to refuse an officer's request to identify himself.

4. The decision is contrary to the Supreme Court decisions holding that individuals cannot be arrested for declining to provide their identity where there is no suspicion of criminal conduct. *See Brown v. Texas*, 443 U.S. 47, 52–53 (1979); *Berkemer v. McCarty*, 468 U.S. 420 (1984); *Florida v. Bostick*, 501 U.S. 429, 434–35 (1991); and *Hiibel v. Sixth Jud. Dist. Ct.*, 542 U.S. 177, 180 (2004).

5. Five other circuits, relying on *Hiibel* and *Brown*, have held that the Fourth Amendment prohibits arresting vehicle passengers for declining to identify themselves, and the Tenth Circuit has squarely held that “clearly established law would have put a reasonable officer ... on notice that “arresting a passenger ... after he did not produce identification in response to the officer’s demand for ID” “violated [the passenger’s] Fourth Amendment right to be free from unlawful arrest.” *Corona v. Aguilar*, 959 F.3d 1278, 1280 (10th Cir. 2020); *United States v. Landeros*, 913 F.3d 862, 870 (9th Cir. 2019) (“[P]olice could not lawfully order [a passenger] to identify himself.”); *Johnson v. Thibodaux City*, 887 F.3d

726, 733 (5th Cir. 2018) (“Under the Fourth Amendment, police officers may not require [a passenger’s] identification absent an otherwise lawful detention or arrest based on reasonable suspicion or probable cause.”); *United States v. Henderson*, 463 F.3d 27, 46-47 (1st Cir. 2006) (holding it violates the Fourth Amendment to “demand [passenger’s] identifying information and ... prolong[] the stop” to investigate passenger’s identity); *Stufflebeam v. Harris*, 521 F.3d 884, 888 (8th Cir. 2008) (noting that court’s conclusion that Arkansas law does not permit arresting a passenger of a car for refusal to identify himself is consistent with *Hiibel*).

6. The Eleventh Circuit panel majority, despite decades of precedent to the contrary, held that a law enforcement officer was entitled to qualified immunity for his unlawful actions. In a shocking omission, the panel majority failed to engage with either *Hiibel* or *Brown*. Caught between the published lead opinion (captioned “Opinion of the Court”) and the dissent—the former ignoring *Hiibel* and *Brown*; the latter applying them—the concurrence declined to adopt the lead opinion’s reasoning. Instead, it stated that because the lead opinion and dissent disagreed on the outcome, Johnson’s Fourth Amendment right must not have been clearly established.

7. This case presents an important question about the conduct of police during traffic stops. The Eleventh Circuit’s decision is in conflict with the law on in, at minimum, the First, Fifth, Eighth, Ninth, and Tenth Circuits.

8. This case also presents an opportunity for this Court to revisit issues associated with the application of the qualified immunity doctrine.

9. Applicant respectfully requests an extension of time to file a petition for a writ of certiorari. 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 have a number of other pending matters and personal obligations that will interfere with counsel's ability to file the petition on or before July 14, 2024, including a previously booked international vacation and assisting the senior partner in the firm who is dealing with a very serious health condition.

Wherefore, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including September 14, 2024.

Dated: May 14, 2024

Respectfully submitted,

/s/ Ryan D. Barack

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