

No. _____

In the Supreme Court of the United States

ROY SARGEANT,

Applicant,

v.

ARACELIE BARFIELD

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

To the Honorable Amy Coney Barrett, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Seventh Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Roy Sargeant respectfully requests a 60-day extension of time, to and including August 16, 2024, within which to file a petition for a writ of certiorari. A divided panel of the United States Court of Appeals for the Seventh Circuit issued an opinion on November 28, 2023. A copy of that opinion is attached as Exhibit A. The United States Court of Appeals for the Seventh Circuit denied Mr. Sargeant's petition for rehearing en banc in an order issued on March 19, 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 June 17, 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. The question presented in this case is whether this Court's precedents recognize a cause of action for damages under the Eighth Amendment against prison officials who exhibit deliberate indifference to a serious risk that a prisoner will be the victim of inmate-on-inmate violence.

4. Applicant Roy Sargeant was at all relevant times a federal prisoner at FCI Thomson in Thomson, Illinois. In retaliation for filing grievances against her, Defendant-Appellee Aracelie Barfield intentionally assigned Mr. Sargeant to live in housing with known violent inmates that she knew would attack him. As a direct consequence of Ms. Barfield's retaliatory conduct, Mr. Sargeant suffered intimidation, violent attacks, and physical harm at the hands of those inmates. The only issue on appeal is whether Mr. Sargeant has a remedy for this severe constitutional violation. Because Mr. Sargeant is no longer in custody at Thomson, the only possible redress for Mr. Sargeant is an action for damages.

5. Under this Court's *Bivens* jurisprudence, a case may proceed under *Bivens* if either of two conditions are met: (1) the case arises in a previously recognized "*Bivens* context"; or (2) arises in a "new *Bivens* context" but there is no "reason to think that Congress might be better equipped to create a damages remedy." *Egbert v. Boule*, 142 S. Ct. 1793, 1803-04 (2022). Mr. Sargent meets the first condition because his claim arises in the same *Bivens* context as *Carlson v. Green*, 446 U.S. 14 (1980).

6. The district court construed Mr. Sargeant's *pro se* complaint to raise a First Amendment retaliation claim under *Bivens* and appointed counsel for Mr. Sargeant solely to argue the First Amendment claim. The trial court held that no First Amendment *Bivens* claims were cognizable. Mr. Sargeant appealed. Mr. Sargeant argued that the district court had erroneously failed to construe his case as raising a cognizable Eighth Amendment claim for deliberate indifference to the risk of inmate on inmate violence which, as this Court's decisions in *Carlson* and *Farmer v. Brennan*, 511 U.S. 825 (1994) establish, arises in an existing *Bivens* context.

7. A divided Seventh Circuit panel rejected that argument over a powerful dissent by Judge Hamilton. The majority held that the *Bivens* context recognized by *Carlson* is limited to Eighth Amendment claims of inadequate medical care and do not extend to claims asserting an Eighth Amendment violation arising from deliberate indifference to inmate on inmate violence. In reaching the conclusion the majority joined the Fourth Circuit in holding that the reach of the *Carlson* context is limited to inadequate medical care claims, but recognized that its decision directly contravened the Third Circuit, which has held that the *Carlson* context extends to claims for deliberate indifference to the risk of inmate-on-inmate violence in light of this Court's decision in *Farmer*.

8. This is an important question about which federal courts of appeals have reached conflicting holdings. Compare *Bistrain v. Levi*, 912 F.3d 79, 90–91 (3d Cir. 2018) (recognizing that *Farmer* ratified the context of *Carlson* to encompass Eighth Amendment claims founded on deliberate indifference to the risk of inmate-on-inmate violence), *with*

Bulger v. Hurwitz, 62 F.4th 127, 139 (4th Cir. 2023) (ruling, as the Seventh Circuit did below, that such claims are not cognizable).

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 that will interfere with counsel's ability to file the petition on or before June 17, 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 August 16, 2024.

Dated: May 15, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew T. Tutt", written over a horizontal line.

Andrew T. Tutt

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