

App No. _____

**In The
Supreme Court of the United States**

DESIREE MARTINEZ,

Applicant,

v.

CHANNON HIGH, Officer, in her individual capacity,

Respondent.

**On Application for an Extension of Time to File Petition for a Writ of
Certiorari to the United States Court of Appeals for the Ninth Circuit**

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To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

In accordance with this Court’s Rules 13.5, 22, 30.2, and 30.3, Applicant respectfully requests that the time to file her petition for a writ of certiorari be extended for 59 days, up to and including Friday, August 2, 2024. The Court of Appeals issued its opinion on January 26, 2024 (Exhibit B) and issued its order denying rehearing en banc on March 6, 2024 (Exhibit A). Absent an extension of time, the petition would be due on June 4, 2024. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). The application is unopposed.

Judgment Sought to Be Reviewed

This case presents an important question for this Court’s review: Are government officials entitled to qualified immunity in cases not involving time-pressured decisions so long as there is no prior precedent recognizing the unconstitutionality of an identical fact pattern, or can prior precedent clearly establish a constitutional violation despite some factual variation?

Applicant Desiree Martinez (“Ms. Martinez”) was subjected to brutal domestic violence at the hands of her partner, Officer Kyle Pennington, because Officer Pennington’s colleague, Respondent Officer Channon High—who worked at the police records unit—disclosed Ms. Martinez’s confidential domestic violence report to Officer Pennington. Officer High did so while knowing that Ms. Martinez and Officer Pennington were in a room together, after hearing Ms. Martinez answer “no” when Officer Pennington asked her whether she was “telling the cops” about his abuse.

Officer High also knew that Officer Pennington just recently came back from a forced leave due to unrelated domestic violence complaints against him. Ex. B at 2-3, 13.

Following Officer High's disclosures, Mr. Pennington sexually and physically assaulted Ms. Martinez, choking, dragging, and beating her, all while threatening to kill her. Ex. B at 13.

Once Ms. Martinez finally broke free of Officer Pennington and obtained a jury verdict and restraining order against him, she sued Officer High among others for causing her constitutional violations. The district court eventually granted summary judgment to Officer High on Ms. Martinez's substantive due process claim, holding that "it was not clearly established in 2013 that Defendant's conduct violated due process." Ex. C. at 2. The Ninth Circuit affirmed, even though in 2006 it held that "state officials could be held liable where they affirmatively and with deliberate indifference placed an individual in danger she would not otherwise have faced." Ex. B at 17 (quoting *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1063 (9th Cir. 2006)).

In *Kennedy*, the plaintiff whose husband was shot and killed by her neighbor sued police officers for causing the husband's death by disclosing to the neighbor that she filed a police report against him. *Id.* at 1058. The plaintiff also claimed that the police misrepresented the level of danger by falsely assuring her that they would patrol the neighborhood. *Id.* at 1063. This latter factor, in the Ninth Circuit's view, is what distinguished the two cases, making Officer High's violation not clearly established. Ex. B at 18. But in this case, Ms. Martinez was already trapped in a dangerous situation when the confidential report was disclosed. Officer High knew it, because

she was on speakerphone when Officer Pennington called her in order to confront Ms. Martinez. So the case is in many ways worse than *Kennedy*. At least in *Kennedy*, when the officers disclosed the police report, the neighbor was not already at the house ready to pounce. In this case, Officer Pennington was, and Officer High knew it and happily provided an excuse for him to do so.

Despite the two cases' similarity, the Ninth Circuit stated that "we cannot say that 'every reasonable official would have understood' from *Kennedy* that an officer violates the constitution by disclosing a report to a violent perpetrator." Ex. B at 18. As a result, it held that Ms. Martinez's constitutional rights were not clearly established. *Ibid.*

The Ninth Circuit did reach the first prong of qualified immunity and held, over Judge Bumatay's disagreement, Ex. B at 19, that "going forward," "an officer is liable under the state-created danger doctrine when the officer discloses a victim's confidential report to a violent perpetrator in a manner that increases the risk of retaliation against the victim." *Ibid.*

Ms. Martinez petitioned for rehearing en banc. The Ninth Circuit denied Ms. Martinez's petition. Ex. A.

Reasons Why an Extension of Time Is Warranted

Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. On May 20, 2024, Applicant retained new, pro bono representation to file a petition. The undersigned were not previously involved in litigating

this case, and they require additional time to familiarize themselves with the record and prepare the petition.

There is also the press of business, including litigation in:

- *Murphy v. Schmitt*, S. Ct. Case No. 22-1726;
- *Pollreis v. Martzolf*, S. Ct. Case No. 23-617;
- *Gonzalez v. Trevino*, S. Ct. Case No. 22-1025 (Pending Decision);
- *Taylor v. LeBlanc*, 5th Cir. Case No. 21-30625;
- *Jimerson, et al. v. Lewis*, 5th Cir. Case No. 22-10441;
- *Mohamud v. Weyker*, 8th Cir. Case No. 24-1875;
- *King v. United States*, W.D. Mich. Case No. 1:16-CV-00343;
- *Rosales v. Lewis*, W.D. La. Case No. 1:22-CV-05838;
- *Quiñonez v. Does 1 through 5*, N.D. Cal. No. 3:22-CV-03195;
- *Petersen v. City of Newton*, S.D. Iowa No. 4:23-CV-00408;
- *Hadley v. City of South Bend*, N.D. Ind. No. 3:24-CV-00029.

Applicant has not previously sought an extension of time from this Court.

Conclusion

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 59 days to and including Friday, August 2, 2024.

May 20, 2024

Respectfully submitted,



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