

No. 23A

IN THE
Supreme Court of the United States

DWIGHT RUSSELL, *et al.*,
on behalf of themselves and others similarly situated,
Applicants,

v.

HARRIS COUNTY, TEXAS, *et al.*,
Respondents.

**APPLICATION FOR A 30-DAY EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

TO THE HONORABLE SAMUEL ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT AND
CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to this Court’s Rule 13.5, applicants Dwight Russell, Johnnie Pierson, Joseph Ortuno, Maurice Wilson, and Christopher Clack request a 30-day extension of time, to and including June 15, 2024, to file a petition for a writ of certiorari in this case. The Fifth Circuit entered judgment on February 16, 2024. *See* App. A. Absent an extension, therefore, applicants’ petition for a writ of certiorari would be due on May 16, 2024. This Court’s jurisdiction would be invoked under 28 U.S.C. §1254(1).

This case presents an important question about the ability of federal courts to adjudicate claims that a jurisdiction is engaging in widespread violations of fundamental constitutional protections by regularly depriving presumptively innocent people—many thousands of people every year—of physical liberty pending their criminal trials.

Plaintiffs here allege that Harris County, Texas, is doing precisely that, by detaining

arrested people who cannot afford to buy their pretrial freedom by making an upfront cash payment. The district court and Fifth Circuit panel here dismissed plaintiffs' claim as moot, bound by the Fifth Circuit's holding in a similar case (*Daves v. Dallas County, Texas*, 64 F.4th 616 (5th Cir. 2023) (en banc), *cert. denied*, 144 S.Ct. 548 (2024)) that a newly enacted Texas law regarding bail rendered that case moot—despite abundant evidence in the record (here as in *Daves*) that the challenged practices continued unchanged after the Texas law's enactment.

The mootness holding here conflicts with this Court's precedent. *See, e.g., New York State Rifle & Pistol Association v. City of New York*, 140 S.Ct. 1525, 1526 (2020) (per curiam). The question presented—whether legislation enacted during a lawsuit moots the asserted claims if the legislation does not provide the relief sought in the litigation—arises frequently. And the resolution of that question in this case is important, both because of the grievous and often irreparable harms that pretrial detention inflicts, *see, e.g., Rosales-Mireles v. United States*, 138 S.Ct. 1897, 1907 (2018), and because the right to physical liberty is among the most fundamental of all rights.

The requested extension is warranted because undersigned counsel of record has only recently been involved with this litigation. Additional time is warranted to allow counsel to review the record; coordinate with Messrs. Russell, Pierson, Ortuno, Wilson, and Clack and their other counsel; and allow counsel to consult interested parties regarding the impact of the decision below. The extension is further warranted because applicants' counsel have numerous other filings due, and oral arguments scheduled, in the weeks leading up to the current filing deadline here. These include a merits brief in *Glossip v. Oklahoma*, No. 22-7466 (U.S.), due April 23; oral argument in *New York*

University v. New York, No. 2023-02896 (N.Y. App. Div.), on May 2; oral argument in *Bonner v. American Studies Association*, No. 23-cv-0240 (D.C.), on May 8; and a reply brief in *Medtronic, Inc. v. Commissioner of Internal Revenue*, Nos. 23-3063 & 23-3281 (8th Cir.), due May 8.

Applicants therefore request that the time for filing a petition for a writ of certiorari in this case be extended to and including June 15, 2024.

May 1, 2024

Respectfully submitted.

/s/ Seth P. Waxman

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 16, 2024

Lyle W. Cayce
Clerk

No. 24-20005

DWIGHT RUSSELL; JOHNNIE PIERSON; JOSEPH ORTUNO;
MAURICE WILSON; CHRISTOPHER CLACK,

Plaintiffs—Appellants,

versus

HARRIS COUNTY, TEXAS; ED GONZALEZ, *Sheriff,*

Defendants—Appellees,

STATE OF TEXAS,

Intervenor—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-226

UNPUBLISHED ORDER

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellants' unopposed motion for summary
affirmance is GRANTED.

CERTIFICATE OF SERVICE

I, Seth P. Waxman, a member of the bar of the Court, certify that on May 1, 2024, counsel for all parties required to be served have been served copies of the foregoing application via overnight courier and electronic mail at the addresses below:

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