

IN THE  
**Supreme Court of the United States**

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

*v.*

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

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

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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 respectfully request a second 30-day extension of time, to and including July 15, 2024, to file a petition for a writ of certiorari in this case.

1. The Fifth Circuit entered judgment on February 16, 2024. *See* App. A. On May 9, a first application for a 30-day extension of time in which to file a petition for a writ of certiorari was granted. Absent a second extension, applicants' petition would be due on June 15. This Court's jurisdiction would be invoked under 28 U.S.C. §1254(1).

2. 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 a Fifth Circuit panel dismissed plaintiffs’ claim as moot, bound by the en banc 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.

3. The requested extension is warranted because undersigned counsel of record has only recently become 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 several other filings due in the weeks

leading up to and immediately following the current filing deadline here. These include a reply brief in *Medtronic, Inc. v. Commissioner of Internal Revenue*, Nos. 23-3063 & 23-3281 (8th Cir.), due June 5; a reply brief in *Fakhreddine v. University of Pennsylvania*, No. 2:24-cv-01034 (E.D. Penn.), due June 6; and an opening brief in *Democratic National Committee v. Scanlan*, No. 2024-0247 (N.H.), due June 17.

4. This extension request complies with Rule 13.5 because the total extension sought—from the original deadline of May 16 through July 15—does “not exceed[] 60 days.”

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

May 28, 2024

Respectfully submitted.

*/s/ Seth P. Waxman*

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SETH P. WAXMAN

*Counsel of Record*

DANIEL S. VOLCHOK

JOSEPH M. MEYER

WILMER CUTLER PICKERING

HALE AND DORR LLP

2100 Pennsylvania Avenue N.W.

Washington, D.C. 20037

(202) 663-6000

seth.waxman@wilmerhale.com

# **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

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No. 24-20005

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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.*

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

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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 28, 2024, counsel for all parties required to be served have been served copies of the foregoing application via Federal Express and electronic mail at the addresses below:

SETH BARRETT HOPKINS  
HARRIS COUNTY ATTORNEY'S OFFICE  
1019 Congress Street, 15th Floor  
Houston, TX 77002  
(337) 540-9120 / seth.hopkins@harriscountytexas.gov  
*Counsel for Harris County, Texas*

MURRAY JULES FOGLER  
FOGLER BRAR O'NEIL & GRAY, LLP  
909 Fannin Street, Suite 1640  
Houston, TX 77010  
(713) 481-1010 / mfogler@foglerbrar.com

SUZANNE RENE' BRADLEY  
VERONICA JONES  
HARRIS COUNTY ATTORNEY'S OFFICE  
1019 Congress Street, 15th Floor  
Houston, TX 77002  
(713) 274-5330 / suzanne.bradley@harriscountytexas.gov  
(713) 274-5181 / veronica.jones@harriscountytexas.gov  
*Counsel for Sheriff Ed Gonzalez*

LANORA CHRISTINE PETTIT  
BENJAMIN EDWARD PRENGLER  
OFFICE OF THE TEXAS ATTORNEY GENERAL  
SOLICITOR GENERAL DIVISION  
300 W. 15th Street  
Austin, TX 78701  
(512) 463-2127 / lanora.pettit@oag.texas.gov  
(512) 936-2923 / ben.prenghler@oag.texas.gov  
*Counsel for State of Texas*

JEREMY DAKOTA CUTTING  
ALEC GEORGE KARAKATSANIS  
CIVIL RIGHTS CORPS  
1601 Connecticut Avenue, N.W., Suite 800  
Washington, D.C. 20009  
(202) 681-2409 / alec@civilrightscorps.org  
(202) 844-4975 / cody@civilrightscorps.org  
*Counsel for Plaintiffs*

*/s/ Seth P. Waxman* \_\_\_\_\_  
SETH P. WAXMAN