

No. \_\_\_\_\_

---

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

---

NEIL DUPREE,

*Applicant,*

*v.*

KEVIN YOUNGER.

---

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

---

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and  
Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Neil Dupree respectfully requests a 60-day extension of time, to and including Thursday, January 9, 2025, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Fourth Circuit issued its opinion on June 17, 2024. A copy of the opinion is attached as Exhibit A. The Fourth Circuit denied Applicant's timely rehearing petition on August 12, 2024. A copy of the 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 November 10, 2024. This application is being filed more than 10 days in advance of that date. Applicant previously sought an extension to file a petition for certiorari related to the Fourth Circuit's first panel opinion in this case dated March 11, 2022. *See* Application, *Dupree v. Younger*, No. 21A734 (May 13, 2022) (application extending deadline to file

petition for certiorari granted by the Chief Justice); *cert. granted* 143 S. Ct. 645 (2023) (Mem.).

3. This case concerns a nationally important question concerning the interpretation of the Prison Litigation Reform Act (PLRA)—namely, whether in determining whether a state grievance remedy is “available” to inmates for purposes of the PLRA’s exhaustion requirement federal courts must give at least *some* weight to the longstanding, consistent interpretation of state law by state officials.

4. As relevant here, Applicant Neil Dupree was sued by Kevin Younger for damages stemming from a prison assault committed by three other correctional officers. Mr. Dupree moved for summary judgment, arguing that Mr. Younger’s claims were barred for failure to exhaust his administrative remedies as required by the PLRA. The District Court denied Mr. Dupree’s motion for summary judgment, and the case proceeded to a jury trial, which entered a verdict for Mr. Younger. Mr. Dupree appealed, and the Fourth Circuit dismissed the appeal. This Court granted certiorari to resolve whether a purely legal challenge resolved at summary judgment must be renewed in a post-trial motion to preserve that challenge for appellate review. “The answer is no .... a post-trial motion ... is not required to preserve for appellate review a purely legal issue resolved at summary judgment.” *Dupree v. Younger*, 598 U.S. 729, 731, 736 (2023).

5. While the case was pending on remand from this Court, the Fourth Circuit decided the related matter of *Younger v. Crowder*, 79 F.4th 373 (2023). In *Crowder*, the court first held that Mr. Crowder’s exhaustion argument “present[ed] a purely legal issue,” and he was accordingly “not required to re-raise this issue in a Rule 50 motion to preserve

it for appeal.” *Id.* at 379. But despite siding with Mr. Crowder on the key issue on which the Supreme Court remanded the case, the court nevertheless ruled for Mr. Younger on a different ground. Specifically, the court held—as a matter of Maryland law—that administrative remedies were not “available” under the PLRA because “an inmate cannot successfully file an administrative grievance over an event that is the subject of an [internal] investigation.” *Id.* at 380. In reaching its decision, the *Crowder* panel acknowledged that Maryland prisoners have availed themselves of the precise processes the panel claimed were unavailable. *Id.* But the *Crowder* panel gave zero weight to the fact that the State of Maryland has consistently maintained in arguments before this Court and other federal courts for decades that remedies are available in *exactly* the circumstances of this case. Based entirely on *Crowder*, the panel in this case concluded the same grievance procedures were unavailable to Mr. Younger. *See Younger v. Dupree*, No. 21-6423, 2024 WL 3025121 (4th Cir. June 17, 2024).

6. This case is exceptionally important. The PLRA is a statute founded on federalism principles. The purpose of the PLRA is “to eliminate unwarranted federal-court interference with the administration of prisons,” *Woodford v. Ngo*, 548 U.S. 81, 93 (2006), “to reduce the quantity and improve the quality of prisoner suits,” *Porter v. Nussle*, 534 U.S. 516, 524 (2002), and “to ... afford[ ] corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case,” *id.* at 525. Yet the Fourth Circuit interpreted Maryland law without giving *any* consideration whatsoever to the State’s consistent, decades-long understanding and application of its own law and without crediting more than a dozen instances of Maryland prisoners obtaining relief

through the very procedures the panel claimed to be nonexistent. The Fourth Circuit’s free-wheeling approach contravenes this Court’s repeated emphasis of the serious federalism concerns at the heart of the PLRA—and the hazards of federal court pronouncements on the subject untethered from state law or practical reality.

7. 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 has a number of other pending matters that will interfere with counsel’s ability to file the petition on or before November 10, 2024.

*Wherefore*, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to Thursday, January 9, 2025.

Dated: August 27, 2024

Respectfully submitted,

A handwritten signature in black ink, reading "Brian Williams", written over a horizontal line.

Brian M. Williams

*Counsel of Record*

ARNOLD & PORTER KAYE SCHOLER LLP  
1144 Fifteenth Street, Suite 3100  
Denver, CO 80202  
(303) 863-1000  
brian.williams@arnoldporter.com

*Counsel for Applicant Neil Dupree*