

24A311

In The
SUPREME COURT OF THE UNITED STATES
October Term 2024

Donna Chisesi,
Applicant,

v.

Matthew Hunady and Huey “Hoss” Mack, Jr.,
Respondents.

Second Application for Extension of Time Within
Which to File a Petition for a Writ of Certiorari to
the Court of Appeals for the Eleventh Circuit

APPLICATION TO THE HONORABLE
CLARENCE THOMAS AS CIRCUIT JUSTICE

JACK SAMUEL TENENBAUM
NORTHWESTERN BLUHM LEGAL CLINIC
COMPLEX CIVIL LITIGATION AND
INVESTMENT PROTECTION CENTER
375 East Chicago Avenue
Chicago, IL 60611

TOBIAS S. LOSS-EATON*
SIDLEY AUSTIN LLP
1501 K STREET NW
Washington, D.C. 20005
(202) 736-8291
tlosseaton@sidley.com

JEFFREY T. GREEN
DANIELLE HAMILTON
CARTER G. PHILLIPS CENTER
FOR SUPREME COURT AND
APPELLATE ADVOCACY
375 East Chicago Avenue
Chicago, IL 60611

Attorneys for Applicant

October 25, 2024

* Counsel of Record

SECOND APPLICATION FOR AN EXTENSION OF TIME

Under this Court’s Rule 13.5, Applicant Donna Chisesi respectfully requests a 25-day extension of time within which to file a petition for a writ of certiorari, to and including December 3, 2025.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Chisesi v. Hunady*, 2024 WL 1638587, No. 21-11700 (11th Cir. Apr. 16, 2024) (attached as Exhibit 1), *reh’g en banc denied*, No. 21-11700 (11th Cir. July 11, 2024) (attached as Exhibit 2).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1254. The Eleventh Circuit issued its judgment on April 16, 2024, and denied Ms. Chisesi’s timely petition for rehearing *en banc* on July 11, 2024. On October 1, 2024, Justice Thomas extended the deadline to file a petition to November 8, 2024. Under Rule 13.5, this application is being filed more than 10 days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. This § 1983 case raises two serious questions related to qualified immunity. The case arises from the shooting death of Jonathan Victor by Sheriff’s Deputy Matthew Hunady at the scene of a car accident. When Officer Hunady shot and killed Mr. Victor, he was—according to eyewitness testimony, supported by video—“just standing there.” Ex. 1 at 7. Officer Hunady knew from other first responders that Mr. Victor appeared injured and was acting erratically. Mr. Victor

was not armed. *Id.* at 6. Instead of attempting to deescalate the situation, Officer Hunady aimed a rifle at, shouted at, and ultimately killed Mr. Victor.

First, this case implicates the standards governing failure-to-train claims against supervisory law enforcement officials. Ms. Chisesi, administratrix of Mr. Victor’s estate, sued both Officer Hunady and the Sherriff himself, Huey Mack. The claim against Sherriff Mack was based on his total failure—as reflected in fact and expert evidence—to train Officer Hunady on how to deal safely with injured people who shows signs of an altered state of mind. The district court denied Sherriff Mack’s summary-judgment motion asserting qualified immunity, finding disputed factual issues, but the Eleventh Circuit reversed. The court of appeals asserted that the evidence was too “equivocal” on whether there was an “obvious need for more or different training” in this area. Ex. 1 at 17–18.

This holding implicates disagreements among the courts of appeals about whether and when such failure-to-train claims turn on questions of fact. The Eleventh Circuit treated this as a purely legal question, so it did not analyze what a reasonable juror could conclude or infer from the evidence about the need for training on this subject. *See id.* By contrast, other circuits treat this kind of question as at least partly factual. For example, the Tenth Circuit holds that whether a plaintiff showed “the ‘need for more or different training’ . . . is not a purely legal question,” and thus an appellate court “[can] not review it on an appeal from the denial of summary judgment.” *See Valdez v. Macdonald*, 66 F.4th 796, 818–19 (10th Cir. 2023). Thus, the Eleventh Circuit’s divergent approach goes to

both the proper merits resolution—since material factual disputes foreclose summary judgment—and whether the court even had appellate jurisdiction in the first place. *See Johnson v. Jones*, 515 U.S. 304, 314 (1995).

Second, this case is an ideal vehicle to—as Justice Thomas has urged—“reconsider [the Court’s] qualified immunity jurisprudence.” *Ziglar v. Abbasi*, 582 U.S. 120, 160 (2017) (Thomas, J., concurring). The Court has “not attempted to locate [the current qualified-immunity] standard in the common law as it existed in 1871 . . . and some evidence supports the conclusion that common-law immunity as it existed in 1871 looked quite different from our current doctrine.” *Id.* at 159 (citing Baude, *Is Qualified Immunity Unlawful?*, 106 Cal. L. Rev. 45, 51–62 (2018)). What’s more, new evidence shows that “the Reconstruction Congress that passed Section 1983 meant to explicitly displace common law immunities,” which seriously undermines the very concept of qualified immunity in § 1983 cases. *See* Alexander A. Reinert, *Qualified Immunity’s Flawed Foundation*, 111 Cal. L. Rev. 201, 201 (2023); *Price v. Montgomery Cnty.*, 144 S. Ct. 2499, 2500 & n.2 (2024) (Sotomayor, J., respecting the denial of certiorari). And in practice, the doctrine is increasingly unworkable. *See Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring) (“courts of appeals are divided—intractably—over precisely what degree of factual similarity must exist” to clearly establish law). Unlike in many similar cases, whether qualified immunity should be overruled has been preserved in this case from the outset.

2. An extension is also warranted because Ms. Chisesi has asked the Northwestern Supreme Court Practicum to help prepare her petition in collaboration with the Complex Civil Litigation and Investor Protection Center. The extension will provide time for the Practicum's and the Center's students to collaborate on a cogent and well-researched petition while also discharging their other academic responsibilities. In addition, the Practicum and undersigned counsel are also responsible for forthcoming petitions in *Kovac v. Wray*, No. 23-10284 (5th Cir.), *Tucker v. United States*, No. 23-1781 (7th Cir.), and *Brannan v. United States*, No. 23-40098 (5th Cir.), and replies in support of the petitions in *Fields v. Colorado*, No. 24-5460, and *Aquart v. United States*, No. 24-5754.

CONCLUSION

For these reasons, Applicant respectfully requests an extension of 25 days, to and including December 3, 2024, within which to petition for review in this case.

Respectfully submitted,

JACK SAMUEL TENENBAUM
NORTHWESTERN BLUHM LEGAL CLINIC
COMPLEX CIVIL LITIGATION AND
INVESTMENT PROTECTION CENTER
375 East Chicago Avenue
Chicago, IL 60611

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