

In the Supreme Court of the United States

BRIAN ESTRADA,

Applicant,

v.

JACOB SMART.

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

To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Brian Estrada respectfully requests a 30-day extension of time, to and including January 9, 2025, within which to file a petition for a writ of certiorari. The U.S. Court of Appeals for the Tenth Circuit issued an opinion on July 16, 2024. A copy of that opinion is attached as Exhibit A. The U.S. Court of Appeals for the Tenth Circuit denied rehearing in an order issued on September 11, 2024. A copy of that 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 December 10, 2024. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case seeks review of a decision by the Tenth Circuit that contravenes both the Prison Litigation Reform Act's statutory text and the Seventh Amendment. Applicant Brian Estrada was an inmate in a county jail when Officer Jacob Smart transported him to a local courthouse for a judicial proceeding. Officer Smart strip searched Mr. Estrada prior to transport, and Mr. Estrada's hands and feet were shackled. While in a courtroom on the second-floor of the courthouse, Mr. Estrada made a move towards the courtroom door. Another public safety officer pushed the shackled Mr. Estrada and he fell over, losing a shoe in the process. Mr. Estrada stood up, one-shoed and shackled, and made another move towards the door. Despite the presence of multiple law enforcement officers and despite having a taser on his belt, Officer Smart responded by shooting Mr. Estrada three times, leaving four bullet wounds. Mr. Estrada was left with lasting physical and psychological injuries.

4. Mr. Estrada filed a civil rights lawsuit against Officer Smart under 42 U.S.C. § 1983 alleging unconstitutional excessive force. His lawsuit was unrelated to his status as a prisoner or anything that happened in a prison, and the relevant Colorado prison grievance policy was silent as to application to incidents occurring outside of prison, so Mr. Estrada did not file a grievance complaint with the prison before bringing suit. The District Court denied Officer Smart qualified immunity, but then, without an evidentiary hearing, granted Officer Smart's motion for summary judgment for failure to exhaust. The Tenth Circuit affirmed, finding that (1) judges, not juries, decide issues of fact related to exhaustion; and (2) a courthouse is a "prison" within the meaning of "prison conditions" in the PLRA's exhaustion provision, so Mr. Estrada needed to exhaust before filing his civil

rights suit. In reaching its decision, the Tenth Circuit did not consider the Seventh Amendment or this Court’s recent guidance in *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024). The Tenth Circuit also did not consider whether a reasonable jury could find that Mr. Estrada needed to exhaust; instead, it determined for itself that the record established that Mr. Estrada was required to exhaust under the grievance policy. The decision below thus “affirm[ed] the district court’s decision to resolve all disputed issues on administrative exhaustion, including all disputed facts (if any existed).”

5. This case raises an exceptionally important question warranting this Court’s review: whether the Seventh Amendment requires that a jury, not a judge, decide disputed issues of fact related to exhaustion.

6. On October 4, 2024, this Court granted certiorari in *Perttu v. Richards*, No. 23-1324. The question presented in that case, as stated by the petitioner, is: “In cases subject to the Prison Litigation Reform Act, do prisoners have a right to a jury trial concerning their exhaustion of administrative remedies where disputed facts regarding exhaustion are intertwined with the underlying merits of their claim?”

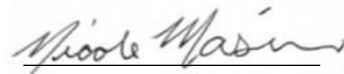
7. Briefing has not yet been submitted in *Perttu v. Richards*. Absent an extension, petitioner’s opening brief in that case is due November 18, 2024, and respondent’s response brief is due December 18, 2024. Mr. Estrada believes that the question presented by his petition may be resolved by *Perttu v. Richards*, and his counsel would benefit from reviewing the merits briefing in that case prior to filing a petition for certiorari in this case in order to determine whether, and to what extent, the issues in Mr. Estrada’s case could be resolved in *Perttu*.

8. Mr. Estrada respectfully requests an extension of time to file a petition for a writ of certiorari. Counsel believes a 30-day extension would allow counsel sufficient time to examine the relationship between the scope of arguments presented in *Perttu* and the question to be presented in this case. A 30-day extension would provide counsel with adequate time to prepare the petition for filing.

Wherefore, Mr. Estrada respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including January 9, 2025.

Dated: October 21, 2024

Respectfully submitted,



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