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IN THE

Supreme Court of the United States

FANE LOZMAN,

Applicant,

v.

CITY OF RIVIERA BEACH, FLORIDA,

Respondent.

Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit

APPLICATION TO THE HONORABLE JUSTICE CLARENCE THOMAS AS CIRCUIT JUSTICE

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December 2, 2024

APPLICATION FOR EXTENSION OF TIME

Under this Court's Rule 13.5, Applicant Fane Lozman respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including February 13, 2025.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Fane Lozman* v. *City of Riviera Beach*, 119 F.4th 913 (11th Cir. 2024) (attached as Exhibit 1).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1254(1). The Eleventh Circuit issued its judgment on October 16, 2024, so a petition is currently due by January 14, 2025. This application is being filed more than 10 days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. This case—like Mr. Lozman's prior cases before this Court, see *Lozman* v. *City of Riviera Beach*, 585 U.S. 87, 91 (2018); *Lozman* v. *City of Riviera Beach*, 568 U.S. 115, 118 (2013)—raises important questions of federal law that have divided lower courts. And like those prior cases, this one arises from Mr. Lozman's long-running dispute with the City of Riviera Beach.

Mr. Lozman first moved to the City in 2006, taking up residence in a floating home on the City's marina. After several failed attempts to evict Mr. Lozman, the City brought suit under federal admiralty law, which led to this Court's ruling that Mr. Lozman's floating home was not a "vessel." 568 U.S. at 120. While that case was

progressing, Mr. Lozman was arrested after a city council meeting where he criticized local officials. When Mr. Lozman sued under 42 U.S.C. § 1983, this Court held that whether probable cause supported the arrest was irrelevant to his First Amendment retaliation claim, vacating the judgment against him. See 585 U.S. at 101–02.

The current case arises from the City's taking of Mr. Lozman's private property. Mr. Lozman purchased a parcel of waterfront land in the City in 2014, hoping to develop it for single-family homes, as nearby land has been developed. But thanks to a series of shifting local zoning and land-use restrictions, he cannot develop the land for this purpose—or any other. He thus brought suit against the City, alleging that it had deprived him of all economically beneficial or productive use of his property under *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003 (1992).

The Eleventh Circuit held this suit unripe because Mr. Lozman had not sought a permit, variance, or rezoning for his property. Ex. 1 at 8–9. The court relied on the rule that a regulatory takings claim is not ripe for judicial review "until the government entity charged with implementing the regulation[] has reached a final decision regarding the application of the regulation[] to the property at issue." *Williamson Cnty. Reg'l Plan. Comm'n* v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), *overruled on other grounds by Knick* v. *Twp. of Scott*, 588 U.S. 180 (2019). The Eleventh Circuit acknowledged that, under the City's governing regulations, the sole permissible use of this property is crystal clear: It can be used to build "[p]rivate residential fishing or viewing platforms and docks for non-motorized boats," and nothing else. Even so, the court held that Mr. Lozman should have "sought a permit

to develop his land" to "understand the nature and extent of permitted development for his *Lucas* claim." Ex. 1 at 10–12.

The Eleventh Circuit's decision raises two important questions. *First*, the Eleventh Circuit's approach conflicts with decisions from other circuits, which recognize that a takings claim is ripe "where 'the granting authority has dug in its heels and made it transparently clear that the permit, application or no, will not be forthcoming.'" *Pascoag Reservoir & Dam, LLC* v. *Rhode Island*, 337 F.3d 87, 93 n.5 (1st Cir. 2003); see also *Murphy* v. *New Milford Zoning Comm'n*, 402 F.3d 342, 349 (2d Cir. 2005) ("A property owner 'need not pursue such applications when a zoning agency lacks discretion to grant variances . . . .'"); *Kinzli* v. *City of Santa Cruz*, 818 F.2d 1449, 1454 (9th Cir. 1987) ("the requirement of the submission of a development plan is excused if such an application would be an 'idle and futile act'"). These other circuits correctly recognize that "the ripeness doctrine does not require a landowner to submit applications for their own sake." *Anaheim Gardens* v. *United States*, 444 F.3d 1309, 1315–16 (Fed. Cir. 2006).

Likewise, this Court has made clear that *Williamson County*'s "finality requirement is relatively modest. All a plaintiff must show is that there is no question about how the regulations at issue apply to the particular land in question." *Pakdel* v. *San Francisco*, 594 U.S. 474, 478 (2021) (per curiam) (cleaned up). There is no such question here; only docks or fishing decks are allowed, not development. Cf. *Suitum* v. *Tahoe Reg'l Plan. Agency*, 520 US 725, 739 (1997) ("Because the agency has no discretion to exercise over Suitum's right to use her land, no occasion exists for

applying *Williamson County*'s requirement that a landowner take steps to obtain a final decision about the use that will be permitted on a particular parcel."). The Eleventh Circuit's approach thus serves only to impose pointless burdens on property owners and insulate local land-use regulations from takings challenges.

Second, the Eleventh Circuit's decision implicates another recurring question: Whether the Court should reassess its standard for regulatory takings under *Lucas*. See *Bridge Aina Le'a, LLC* v. *Haw. Land Use Comm'n*, 141 S. Ct. 731, 731 (2021) (Thomas, J., dissenting from denial of certiorari). Under "current regulatory takings jurisprudence," a "regulation effects a taking . . . whenever it 'goes too far.'" *Id.* In applying this test, "the Court has generally eschewed any set formula for determining how far is too far, requiring lower courts instead to engage in essentially ad hoc, factual inquiries." *Id.* (cleaned up). The result is that "nobody—not States, not property owners, not courts, nor juries—has any idea how to apply this standardless standard." *Id.*

The Eleventh Circuit's decision reflects this confusion. The court believed that private docks or fishing decks might constitute economically beneficial or productive options for use of the property, such that Mr. Lozman needed to determine whether he could engage in such uses. See Ex. 1 at 12. That belief conflicts with basic sense—private residential uses are not economically productive—and with authority from other jurisdictions. The Court should clarify the standard that governs such claims.

2. An extension is warranted because Mr. Lozman has recently asked the Carter G. Phillips/Sidley Austin LLP Supreme Court Clinic at Northwestern Pritzker

School of Law to help prepare his petition. An extension will allow the Clinic students to research, draft, and revise a complete and cogent petition without conflicting with their academic or holiday schedules.

In addition, the Clinic and undersigned counsel are responsible for forthcoming petitions in *Brannan* v. *United States*, No. 24A453 (due December 13), *Kovac* v. *Wray*, No. 24A335 (due December 19), and *Tucker* v. *United States*, No. 24A353 (due December 19); replies in support of the petitions in *Aquart* v. *United States*, No. 24-5754 (brief in opposition due December 11), and *Fields* v. *Colorado*, No. 24-5460 (brief in opposition due December 23); and an amicus brief in support of petitioner on the merits in *Riley* v. *Garland*, No. 23-1270 (expected to be due in mid-January 2025).

CONCLUSION

For these reasons, Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including February 13, 2025.

Respectfully submitted,

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