

No. _____

IN THE

Supreme Court of the United States

LATRISHA WINDER, INDIVIDUALLY, AS NEXT FRIEND OF J.W., A MINOR, AND
AS PERSONAL REPRESENTATIVE OF THE ESTATE OF STEPHEN WAYNE WINDER,
DECEASED; LILY WINDER; STEPHEN TYLER WINDER; KOLENE WINDER, AS NEXT FRIEND
OF E.W., A MINOR

Petitioners

v.

JOSHUA M. GALLARDO; ROBERT TRAVIS BABCOCK; YOUNG COUNTY, TEXAS

Respondents

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

TO: The Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit

Pursuant to Supreme Court Rule 13.5 and 28 U.S.C. § 2101(c), Petitioners¹ respectfully request an extension of fourteen days to file a petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit in *Latricia Winder et al. v. Joshua Gallardo, et al.*, No. 24-10017. This application is unopposed by Respondents.

¹ Petitioners are Latrisha Winder, Individually, as next friend of J.W., a minor, and as personal representative of the Estate of Stephen Wayne Winder, Deceased; Lily Winder; Stephen Tyler Winder; and Kolene Winder, as next friend of E.W., a minor.

The Fifth Circuit's opinion, filed on September 27, 2024, is attached as Appendix A. The Fifth Circuit's judgment was also filed on September 27 and is attached as Exhibit B. A timely petition for rehearing en banc was denied on November 5, 2024 in an order attached as Appendix C.

This Court has jurisdiction to review the Fifth Circuit's judgment pursuant to 28 U.S.C. § 1254. A petition for a writ of certiorari is currently due by February 3, 2025. This application is filed more than ten days before that date. The requested fourteen-day extension would extend that due date to February 17, 2025. As grounds for this request, Petitioners state as follows:

1. This case involves these important questions:
 - a. Whether the Court should reexamine and overrule its precedent on qualified immunity in civil actions under 42 U.S.C. § 1983 (Appendix A at 6) in light of recent scholarship and continued criticism of qualified immunity by Justices, Judges, and scholars.²
 - b. Whether a Fourth Amendment violation occurred in the shooting

² *Price v. Montgomery Cnty.*, 144 S. Ct. 2499, 2500 & n.2 (2024) (Sotomayor, J., respecting the denial of certiorari) ("recent scholarship details that the 1871 Civil Rights Act included language abrogating common-law immunities that was, for unknown reasons, omitted from the first compilation of federal law") (citing Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 CAL. L. REV. 201, 235 (2023)); *Baxter v. Bracey*, 140 S. Ct. 1862, 1864-65 (2020) (Thomas, J., dissenting from cert. denial) ("There likely is no basis for the objective inquiry into clearly established law that our modern cases prescribe. ... I continue to have strong doubts about our § 1983 qualified immunity doctrine."); *Ziglar v. Abbasi*, 582 U.S. 120, 159-60 (2017) (Thomas, J., concurring in part) ("Our qualified immunity precedents instead represent precisely the sort of 'freewheeling policy choice[s]' that we have previously disclaimed the power to make. ... In an appropriate case, we should reconsider our qualified immunity jurisprudence."); *Rogers v. Jarrett*, 63 F.4th 971, 979-80 (5th Cir. 2023) (Willett, J., concurring) (citing and discussing A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 CAL. L. REV. 201).

death of a mentally ill and emotionally disturbed man *in his own home* by a 23-year-old rookie sheriff's deputy who entered the home³ during a welfare check without a warrant and without exigent circumstances—any exigent circumstances had dissipated⁴—and confronted and killed the man, a husband and father of four. This question fairly comprises whether the deputy's unconstitutional entry invokes the Fifth Circuit's questionable "moment-of-threat" doctrine on Petitioners' excessive-force claim. On October 4, 2024, the Court granted "cert." on the Fifth Circuit's moment-of-threat doctrine in *Barnes v. Felix*, No. 23-1239. The deputy's unconstitutional entry led to the putative moment of threat and the shooting of a man who Petitioners plausibly pleaded was unarmed, and which, but for the moment-of-threat doctrine, should result in denial of qualified immunity at the pleadings stage on Petitioners' excessive-force claim.

³ *Kyllo v. United States*, 533 U.S. 27, 37 (2001) ("there is certainly no exception to the warrant requirement for the officer who barely cracks open the front door and sees nothing but the nonintimate rug on the vestibule floor"); *id.* ("we made clear that any physical invasion of the structure of the home, 'by even a fraction of an inch,' was too much") (quoting *Silverman v. United States*, 365 U.S. 505, 512 (1961)).

⁴ The Fifth Circuit failed to address, much less accept as true, Petitioners' factual allegations (Appendix A at 6) on the dissipation of exigent circumstances at the time of the warrantless entry and shooting. See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508 n.1 (2002) ("we must accept as true all of the factual allegations contained in the complaint"); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (the "complaint must contain sufficient factual matter, *accepted as true*, to 'state a claim to relief that is plausible on its face.' ") (emphasis added) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). This departure from the Court's Rule 12(b)(6) precedent calls for the Court to exercise its supervisory power.

c. Whether the Fifth Circuit's application of its judicially created exigent-circumstances test for a claim for disability discrimination involving law enforcement under Title II of the Americans with Disabilities Act⁵ (Appendix A at 12) conflicts with the ADA and with other circuits.⁶ Here, the county received a call for a welfare check, was informed of the subject's mental-illness disability in that call, and failed to make reasonable accommodations for the subject's disability before and while responding to the call.⁷

2. Good cause exists for the requested and unopposed fourteen-day extension for filing the petition. The undersigned is the sole attorney preparing the petition, which will be the undersigned's first cert. petition and is involving a steep learning curve on the Court's petition requirements. Further, the undersigned, who acknowledges the precedence of this Court's business,⁸ has had preexisting and

⁵ 42 U.S.C. §§ 12102(1), 12112(b)(5)(A), 12132; 28 C.F.R. § 35.108(d)(2)(ii), (iii)(K).

⁶ *Hainze v. Richards*, 207 F.3d 795, 801-02 (5th Cir. 2000) (creating exigent-circumstances exception and holding Title II does not apply to officer's on-the-street response before officer's securing scene and ensuring no threat to life). *But see Sheehan v. City & Cnty. of San Francisco*, 743 F.3d 1211, 1233 (9th Cir. 2014), *rev'd in part on other grounds, cert. dismiss'd in part*, 575 U.S. 600 (2015) ("there is a triable issue whether the officers failed to reasonably accommodate Sheehan's disability when they forced their way back into her room without taking her mental illness into account or employing generally accepted police practices for peaceably resolving a confrontation with a person with mental illness"); *Seremeth v. Bd. of Cnty. Comm'rs Frederick Cnty.*, 673 F.3d 333, 337-39 (4th Cir. 2012) (law enforcement must make reasonable modifications in policies, practices, or procedures when necessary to avoid disability discrimination).

⁷ This question fairly comprises Petitioners' above-discussed factual allegations that any exigent circumstances at the scene had dissipated.

⁸ The undersigned recently obtained an extension for an appellate brief that had been due on January 27, 2025 in *WCJ Assets, LTD. v. US Trinity Bridgeport, LLC*, No. 02-24-00232-CV,

pressing work commitments⁹ that, along with family commitments during the recent holiday season, have inhibited the undersigned's time and ability to adequately prepare the petition by the current due date of February 3, 2025.

Therefore, Petitioners respectfully request a fourteen-day extension for their petition for a writ of certiorari, rendering it due on February 17, 2025. This short extension is not sought for the purpose of delay but to enable Petitioners' counsel additional time to prepare an adequate petition for a writ of certiorari in this important case.

Respectfully submitted,

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Dated: January 22, 2025

in the Court of Appeals for the Second District of Texas to allow the undersigned to devote more time to preparing the petition. The undersigned had already obtained an extension until January 21, 2025 for an appellate brief in *Stormie Callaway v. Elise Pigg*, No. 02-24-00315-CV, in the Court of Appeals for the Second District of Texas, making the undersigned loath to seek another.

⁹ For example, in *Phyllis Costino v. Pinnacle Health Facilities of Texas III, et al.*, No. 048-303182-18, in the 48th District Court, Tarrant County, Texas, a malpractice case that was specially set for trial on February 24, 2025, the undersigned prepared for and attended seven expert depositions (two out of state and one in San Antonio) between December 11, 2024 and January 3, 2025, and they consumed fourteen days of the undersigned's time.