No. _____

In the Supreme Court of the United States

CITY OF FERGUSON, MISSOURI AND OFFICER EDDIE BOYD, III,

***Applicants*,**

v.

FRED WATSON,

***Respondent*.**

Application for an Extension of Time to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

To the Hon. Brett Kavanaugh

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TO THE HONORABLE BRETT KAVANAUGH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE OF THE EIGHTH CIRCUIT:

Pursuant to Rule 13.5, Applicants City of Ferguson, Missouri ("City") and Eddie Boyd, III ("Officer Boyd") (collectively, "Applicants") respectfully request a 21-day extension of time—up to and including March 17, 2025—in which to file their petition for a writ of certiorari to review a judgment of the United States Court of Appeals for the Eighth Circuit issued on October 21, 2024 (Apx.1a-38a). Applicants filed a petition for rehearing in the Eighth Circuit on November 4, 2024, which was denied on November 26, 2024. (Apx. 39a). In the absence of an extension, the deadline to file the petition for writ of certiorari will expire on February 24, 2025. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case involves both "an important question of federal law that has not been, but should be, settled by this Court" and a decision of the Eighth Circuit "that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). Namely, whether the First Amendment affords a right to be free from a retaliatory use-of-force that is otherwise objectively reasonable under the circumstances and whether, at the time of Respondent Fred Watson's ("Watson") stop, clearly established law so held? This case arises out of an August 1, 2012 traffic stop by Officer Boyd wherein Watson claims that Officer Boyd pulled a gun on him for about ten seconds during the stop, after he reached for his cell phone inside the vehicle. (Apx. 2a-4a). With respect to Watson's Fourth Amendment claim for unreasonable use of force, the District Court found that "'an objectively reasonable concern for officer safety or suspicion of danger

existed' when he pulled his gun because he 'was facing a non-compliant occupant of a vehicle who made a movement within the vehicle.'" (Apx. 11a). Nevertheless, the Eighth Circuit, after affirming summary judgment on every other constitutional claim asserted by Watson, held that Watson presented sufficient evidence to present a jury question on the issue of whether "Officer Boyd's use-of-force was motivated by Watson's exercise of his constitutional rights," reversing summary judgment on the First Amendment and *Monell* claims as to the City. (Apx. 26a). In other words, the Eighth Circuit concluded that despite Officer Boyd's objectively reasonable use-of-force in drawing his gun for ten seconds, that use-of-force could nonetheless support a First Amendment retaliation claim.

2. In so deciding, the Eighth Circuit defined the "clearly established right" too broadly, using the exact general statement of law the Supreme Court expressly rejected by the Court in *Reichle v. Howards*, 566 U.S. 658 (2012). The Eighth Circuit rejected qualified immunity for Officer Boyd on the grounds that "[i]t was clearly established at the time of the event that 'the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out.'" Apx. 35a (quoting *Hartman v. Moore*, 547 U.S. 250, 256 (2006)). Following the clear guidance set forth in *Reichle*, "the right in question is not the general right to be free from retaliation for one's speech, but the more specific right" to be free from a retaliatory use-of-force that is otherwise reasonable under the circumstances. *Reichle*, 566 U.S. at 664–65. The Supreme Court has never held that such a specific right exists. If it did, then an objectively reasonable use of force sufficient to defeat

a Fourth Amendment unreasonable use of force claim could nonetheless support a First Amendment retaliation claim. The Tenth Circuit recently recognized that there is no such clearly established right in *Hoskins v. Withers*, 92 F.4th 1279 (10th Cir. 2024), wherein it affirmed an officer was entitled to qualified immunity for a First Amendment retaliatory use-of-force claim where the officer pointed his gun at the plaintiff for approximately eight seconds during a stop. *Id.* at 1284, 1294. The Tenth Circuit found that a First Amendment claim for retaliatory use-of-force was not clearly established and further that a reasonable officer could have concluded that his conduct was not a violation of the First Amendment. *Id.* at 1294; *see also Phelps v. Holliman*, CIV-23-755-F, 2025 WL 310686, at *15 (W.D. Okla. Jan. 27, 2025) (applying *Hoskins* holding). Had the Eighth Circuit conducted the proper analysis mandated by this Court, it would have found that the "clearly established" standard has not been satisfied, that Officer Boyd is entitled to qualified immunity on Watson's First Amendment retaliatory use-of-force claim, and that the District Court properly dismissed the *Monell* claim against the City.

3. The Panel Opinion also conflicts with the Supreme Court's decision in *Nieves v. Bartlett,* 587 U.S. 391 (2019), wherein the Court held that before a court may analyze whether an arrest is retaliatory (as before analyzing whether a prosecution is retaliatory), it must first make a threshold determination that the conduct at issue was objectively *un*reasonable under the circumstances. *Id.* at 400, 402–04, 408. The Court imposed this requirement to satisfy its long-standing precedent that the conduct of law enforcement officers is reviewed under an objective

reasonableness standard. *Id.* at 398–404; *Graham v. Connor*, 490 U.S. 386, 397 (1989). Although the Supreme Court has not addressed the precise issue here—whether a retaliatory use-of-force that is otherwise reasonable under the circumstances may nevertheless violate the First Amendment—the *Nieves* rationale is just as applicable in the retaliatory use-of-force context. Yet the Eighth Circuit skipped this step, moving directly to the question whether Watson produced evidence sufficient to satisfy the elements of a retaliatory use-of-force claim and holding that Watson had done so by presenting evidence that "Officer Boyd's use-of-force was motivated by Watson's exercise of his constitutional rights." (Apx. 26a).

4. The undersigned counsel respectfully request a twenty-one (21) day extension to file a petition for writ of certiorari, up to and including March 17, 2025. The undersigned counsel consist of a solo practitioner who has had other briefing deadlines due in February that would make this Court's current deadline of February 24 difficult to meet. Specifically, undersigned counsel for Officer Boyd had a deadline of February 12, 2025 in the case of U.S. Supreme Court case of *NVWS Properties, LLC v. Casun Invest, A.G.*, No. 24A663, for the filing of Petition for Writ of Certiorari. Additionally, undersigned counsel for City has been involved in a hearing before the Civil Service Commission for the City of St. Louis spanning from January 6, 2025 through February 11, 2025 (case involving a pretermination hearing instituted by the Mayor of St. Louis seeking to oust his client, the St. Louis City Director of Personnel). Moreover, as late as this week, the Parties have been in settlement discussions which have not been successful. This case presents important and complex issues and the

requested extension would enable undersigned counsel to devote the necessary time to brief these issues in the depth they deserve.

Accordingly, Officer Boyd and the City respectfully request an extension of time up to and including March 17, 2025, in which to file their petition for a writ of certiorari.

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