

No. 24A_____

IN THE
Supreme Court of the United States

ANGELA RICHARDSON,
Applicant,

v.

KRYSTLE DUNCAN,
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**

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March 14, 2025

APPLICATION

To the Honorable Brett Kavanaugh, Associate Justice of the Supreme Court of the United States:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Angela Richardson respectfully requests a 60-day extension of time, to and including May 22, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

1. The Eighth Circuit entered judgment in Ms. Richardson's case on September 20, 2024. *See* App. 1a. Ms. Richardson filed a petition for panel rehearing and rehearing en banc, which was denied on December 23, 2024. *Id.* at 13a.

2. Unless extended, the time for Ms. Richardson to file a petition for a writ of certiorari will expire on March 24, 2025. This application is being filed at least ten days before the petition is due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Applicant seeks a 60-day extension of time in order to allow recently retained counsel to review the issues presented in Ms. Richardson's case and due to counsel's competing work obligations.

3. Applicant Angela Richardson is a state prisoner in the Arkansas Department of Correction. Ms. Richardson filed a pro se 42 U.S.C. § 1983 lawsuit against prison security officer Krystle Reed Duncan, alleging sexual misconduct in violation of the Eighth Amendment. Ms. Richardson alleged numerous sexual encounters with the defendant between November 2018 and January 2019; that the defendant deposited money in Ms. Richardson's account; and that the defendant told

Ms. Richardson that the prison staff were “out to get her and the defendant would protect her.” App. 11a-12a. The defendant was fired from the prison in January 2019. Arkansas law makes it a felony for a corrections officer to engage in sexual contact with a prisoner. Ark. Code § 5-141-27(a)(2).

4. The defendant never answered Ms. Richardson’s complaint or otherwise participated in the litigation, and the clerk of court entered the defendant’s default. App. 3a. But the District Court concluded that Ms. Richardson failed to state a claim on the ground that she did not allege that the sexual encounters with the defendant were not consensual, and the court dismissed the complaint. *Id.*

5. In light of the defendant’s default, the Eighth Circuit invited the Arkansas Attorney General’s Office to file as *amicus curiae* on appeal, which the Attorney General’s Office accepted.

6. The Eighth Circuit affirmed in a divided opinion. *Id.* at 1a-12a. The majority applied the circuit’s 1997 decision in *Freitas v. Ault*, 109 F.3d 1335 (8th Cir. 1997), which held that “welcome and voluntary sexual interactions, no matter how inappropriate, cannot as matter of law constitute ‘pain’ as contemplated by the Eighth Amendment,” *id.* at 1339; *see* App. 5a-6a. The panel concluded that this Court’s decision in *Wilkins v. Gaddy*, 559 U.S. 34 (2010) (per curiam), “did not abrogate [its] circuit precedent in *Freitas*,” reasoning that sexual abuse claims should not be analyzed under the excessive-force framework. App. 6a. The majority thus relied on *Freitas* to dismiss Ms. Richardson’s case on the pleadings, determining that

she “did not allege that her sexual contact with [the defendant] was not consensual.”
Id. at 7a.

7. Judge Melloy dissented, and would have remanded either to reinstate the default judgment or to provide Ms. Richardson an opportunity for a counseled hearing to address the issue of consent. *Id.* at 10a-12a.

8. Ms. Richardson sought rehearing, which was supported by *amici curiae* the American Civil Liberties Union (ACLU) and the ACLU of Arkansas Foundation. The Eighth Circuit denied panel rehearing and rehearing en banc. *Id.* at 13a. Judge Jane Kelly and Judge Ralph Erickson would have granted the petition for rehearing en banc. *Id.*

9. Ms. Richardson intends to file a certiorari petition seeking this Court’s review of the Eighth Circuit’s decision, which is at odds with this Court’s precedents and makes it an outlier among the circuits.

10. The conclusion in the decision below that a plaintiff must plead “pain” to state a claim that custodial sexual abuse violates the Eighth Amendment, *id.* at 6a, conflicts with this Court’s precedents. This Court’s precedents demonstrate that the “core judicial inquiry” in an Eighth Amendment claim is “the nature of the force—specifically, whether it was nontrivial and ‘was applied * * * maliciously and sadistically to cause harm’”—*not* “the extent of the injury.” *Wilkins*, 559 U.S. at 39 (quoting *Hudson v. McMillian*, 503 U.S. 1, 7 (1992)). Sexual abuse of a prisoner by a corrections officer can never serve a legitimate penological purpose and therefore suffices to state a claim under the Eighth Amendment, regardless of whether the

plaintiff plead “pain” resulting from the abuse. Indeed, the Tenth Circuit has observed that the Eighth Circuit’s “focus on objective pain may not be consistent with the Supreme Court’s more recent emphasis on force, rather than injury or harm.” *Graham v. Sheriff of Logan Cnty.*, 741 F.3d 1118, 1124 (10th Cir. 2013) (citing *Wilkins*, 559 U.S. at 37-38).

11. The decision below also conflicts with the decisions of other circuits. No other circuit requires a showing of “pain” or harm to demonstrate that staff sexual abuse violates the Eighth Amendment. *Ricks v. Shover*, 891 F.3d 468, 477 (3d Cir. 2018) (“the absence of force or injury will not doom a sexual abuse claim outright”); *Crawford v. Cuomo*, 796 F.3d 252, 257 (2d Cir. 2015) (plaintiff “need not allege that there was penetration, physical injury, or direct contact with uncovered genitalia” to state a claim for staff sexual abuse); *Bearchild v. Cobban*, 947 F.3d 1130, 1144, 1145 (9th Cir. 2020) (plaintiffs “need not prove that an injury resulted from sexual assault” nor that the “actions caused harm * * * in the form of physical or lasting emotional injury.” (citations and quotation marks omitted)).

12. The decision below is an outlier among the circuits to have considered evidence of consent in Eighth Amendment carceral-sexual-abuse claims. As the Ninth Circuit has recognized, the Eighth Circuit’s decision in “*Freitas* utterly failed to recognize the factors which make it inherently difficult to discern consent from coercion in the prison environment.” *Wood v. Beauclair*, 692 F.3d 1041, 1048 (9th Cir. 2012). The Ninth and Sixth Circuits “explicitly recognize[] the coercive nature of sexual relations in the prison environment” and therefore apply a rebuttable

“presumption that the conduct was not consensual.” *Id.* at 1049; see *Hale v. Boyle County*, 18 F.4th 845, 853-854 (6th Cir. 2021) (per curiam). The Tenth Circuit has likewise applied without formally adopting a rebuttable presumption against consent; in that particular case, the court found “overwhelming evidence of consent” on the extensive summary judgment record. *Graham*, 741 F.3d at 1126. In these circuits, therefore—and unlike in the Eighth Circuit—allegations of sexual contact between prison officials and prisoners generally suffice to state an Eighth Amendment claim.

13. Jo-Ann Tamila Sagar of Hogan Lovells US LLP, Washington, D.C., was retained by Ms. Richardson to file a petition for certiorari in this Court. Good cause exists for the extension, as counsel of record was retained in this matter only three days ago, on March 11, 2025, and additional time is needed to review the record in these proceedings and prepare a petition that best serves the needs of Ms. Richardson. In addition, counsel of record is occupied with briefing deadlines for a variety of matters, including: filing a petition for a writ of mandamus on March 13 in *In re: Ultragenyx Pharmaceutical, Inc.*, No. 25-01240 (4th Cir.); a petition for rehearing en banc on March 20 in *United States v. Williamson*, No. 22-12843 (11th Cir.); a petition for a writ of certiorari on April 30 in *Coinbase, Inc. v. Kramer*, No. 24A856 (U.S.); and an opening brief anticipated in early May in *SEC v. Gastauer*, No. 25-01194 (1st Cir.).

14. For these reasons, Ms. Richardson respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including May 22, 2025.

Respectfully submitted,

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