

**10-1018 FILARSKY V. DELIA**

DECISION BELOW: 621 F.3d 1069

LOWER COURT CASE NUMBER: 09-55514

QUESTION PRESENTED:

In *Richardson v. McKnight*, 521 U.S. 399, 408 (1997), a bare majority of this Court declined to extend qualified immunity to private prison guards, but expressly noted a historical basis of immunity for private lawyers working "at the behest of the sovereign." *Id.* at 407. The *Richardson* majority also expressly did not preclude qualified immunity for private parties working as "adjunct[s] to government." *Id.* at 413. Based on *Richardson*, the Sixth Circuit has accorded immunity to such "private" lawyers. *Cullinan v. Abramson*, 128 F.3d 301 (6th Cir. 1997). Contravening *Richardson* and expressly disagreeing with *Cullinan*, the Ninth Circuit in this case denied qualified immunity to a "private" lawyer retained by the government solely because of his "private" status, even though it accorded qualified immunity to all of the individual government actors involved, thereby completely exonerating them for the very same conduct, which did not violate any clearly established rights. App., *infra*, 4-5, 12-24. The question thus presented is:

Whether a lawyer retained to work with government employees in conducting an internal affairs investigation is precluded from asserting qualified immunity solely because of his status as a "private" lawyer rather than a government employee.

CERT. GRANTED 9/27/2011