No. 19-725

In The
Supreme Court of the United States

JONMICHAEL GUY,

Petitioner,

v.

ROBERT O. LAMPERT, Director of the Wyoming Department of Corrections, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Wyoming Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should overturn its long settled qualified immunity precedent, which looks at what an objectively reasonable prison official might understand about the status of a right at law under the particular facts of the case.

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STATEMENT OF THE CASE

Respondents Robert O. Lampert, individually and in his official capacity as Director of the Wyoming Department of Corrections; Julie Tennant-Caine, individually and in her official capacity as Deputy Administrator of the Wyoming Department of Corrections; the Wyoming Department of Corrections, by and through Robert O. Lampert, and the State of Wyoming (Lampert) assert the factual and procedural background is as follows.

JonMichael Guy is an inmate in the custody of the Wyoming Department of Corrections who wanted to establish a Humanism religious group in prison. (Pet'r's App. 2a). The Department houses inmates who practice many different, and sometimes incompatible, religions. (R. at 136). To maintain facility "security, safety, health and good order," the Department created a policy for the "orderly management of inmate religious activities." (R. at 135-36). This policy includes direction on how to manage situations where a prisoner serves in a position of spiritual leadership over other prisoners. (*Id.* at 145-46).

On February 7, 2017, Guy turned in the form necessary for him to receive approval to congregate with other yet to be identified inmates to practice his faith in a group setting. (*Id*. at 165-68). He stated that he wanted to establish group activities, such as Darwin Day, for those inmates who might want to practice Humanism, but that the Department first needed to add Humanism to its list of approved religions. (*Id.*).

Because Guy's request did not provide the Department with enough information for it to make a safety determination, his application did not meet the requirements of the Department's policy. (R. at 153-55).

On December 8, 2017, Guy and the American Humanist Association filed a complaint under 42 U.S.C. § 1983 alleging that the Department violated Guy's rights under the United States and Wyoming Constitutions to freely exercise and associate with others who share his chosen religion. (Pet'r's. App. at 3a-5a, 52a-75a). Guy and the Association sought monetary damages from and declaratory and injunctive relief against the named government officials and agencies. (*Id.* at 71a-75a).

The complaint provided the Department with more information about Guy's request than it had received up to that point. (*Compare* R. at 165-67 (application form)) (*with* Pet'r's App. at 52a-75a (complaint)). With this additional information, Lampert issued a Director's Executive Order on December 29, 2017, formally and immediately recognizing Humanism as a religion in the prison system by adding Humanism to the Department's handbook of beliefs and practices. (R. at 133). The order also added three days to the Department's religious calendar to recognize the days requested for celebrating Darwin Day, Summer Solstice, and Winter Solstice. (*Id.*).

Having provided Guy everything he asked for on his application form, Lampert filed a motion to dismiss the complaint. (R. at 95-426). Lampert raised six grounds for dismissing the complaint, which argued that Guy and the Humanist Association: (1) failed to state a plausible claim for relief; (2) could not state a freestanding claim under Wyoming's constitution; (3) lacked standing to continue the case because many of the claims raised were moot on account of the recognition of Humanism by the Department, or were unripe because Guy never asked during the administrative process for some of the relief he was seeking in the case; (4) could not establish associational standing; (5) could not recover from the government officials because the defendants were immune from suit; and (6) were precluded by the doctrine of res judicata from relitigating the claims Guy previously raised or could have raised in a separate federal action. (*Id*. at 100-29); (*see also* R. at 170-426 (relevant documents from docket underlying decision in *Guy v. Lampert*, 2:17-cv-0013-ABJ, 2017 WL 8784492 (D. Wyo. Dec. 26, 2017), *aff'd*, 748 Fed. Appx. 178 (10th Cir. Aug. 31, 2018))).

Guy's petition asserts that Lampert's sole argument on qualified immunity before the district court advocated for the adoption of the rule from *Kalka v. Hawk*, 215 F.3d 90, 99 (D.C. Cir. 2000), which he argues requires a plaintiff to point to binding precedent demonstrating his religion is judicially recognized. (Pet'r Br. at 5) (citing Defs. Mem. of Law in Support of Mot. to Dismiss 25 (R. at 121)). Lampert

presented several arguments, none of which advocated for the adoption of the rule from *Kalka*. (R. at 121-23). Lampert cited to *Kalka* and several other cases discussing how courts have wrestled with the status of Humanism to demonstrate that the right claimed by Guy (to the extent it could be identified from the complaint) was not beyond debate. (*Id.* at 121, 124).

Lampert's arguments below were that, taking into consideration the various judicial interpretations on the question of Humanism as a religion, it could not be said that the status of Humanism as a religion and its legal consequences to him in the realm of qualified immunity, were beyond debate. (R. at 121-22) (quoting *Currier v. Doran*, 242 F.3d 905, 923 (10th Cir. 2001) ("Ordinarily, in order for the law to be clearly established, there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains" (citation omitted)).

The district court granted Lampert's motion to dismiss. (Pet'r's App. at 26a-51a). The court held that it lacked subject matter jurisdiction to consider Guy's and the Association's claims for monetary damages because the case was mooted by the Department's actions, depriving both Guy and the Association standing to sue. (*Id.* at 33a-38a). The district court found that Guy and the Association's claims were "completely eradicated" by the Department's action to recognize Humanism as a religion. (*Id.* at 38a). The district court also concluded that Guy failed to exhaust

his administrative remedies as required by 42 U.S.C. § 1997e(a). (*Id*. at 38a-40a). However, the district court declined to address Lampert's additional defenses related to qualified immunity, res judicata, and the failure to state a plausible claim for relief. (*Id.* at 40a n.9).

Based on its finding that the Department granted Guy all the relief he requested, the district court also dismissed the claims for declaratory and injunctive relief because Guy and the Association failed to present a justiciable claim. (*Id.* at 40a-47a). Finally, the district court concluded as a matter of law that Guy and the Association could not maintain a direct action under the Wyoming Constitution and denied Guy and the Association's request to amend their complaint. (*Id.* at 48a-51a).

Guy, but not the Association, appealed to the Wyoming Supreme Court.[1] (R. at 574-75). Relevant to this appeal, Guy argued that, (1) the voluntary cessation exception to the mootness doctrine should apply in Wyoming and prevent the Department's action from mooting the case; (2) the district court erred in concluding at the dismissal stage that Guy failed to exhaust his administrative remedies; and (3) the individual capacity defendants were not entitled

[1] Guy also sought attorney's fees below by arguing that he was a prevailing party under the "catalyst theory" of recovery that this Court overturned in *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 601 (2001). (R. at 504-73, 608-16, 622-25, 627-28). However, that issue is not before this Court.

to qualified immunity from suit for monetary damages. (Pet'r's App. 3a). On this last point about qualified immunity, which is the main subject of Guy's petition in this Court, Lampert conceded on appeal that the district court's mootness finding did not dispose of Guy's claim for monetary relief. (*Id.* at 11a).

The Wyoming Supreme Court held that the voluntary cessation exception that federal courts apply to the standing analysis derived from Article III of the United States Constitution, does not apply in cases before Wyoming state courts. (*Id.* at 7a-10a). The court also declined to reverse the district court's conclusion at the motion to dismiss stage that Guy failed to exhaust his administrative remedies because it too found nearly all of Guy's claims moot. (*Id.* at 10a-11a). Finally, the Wyoming Supreme Court reached the merits of the qualified immunity question and held that the individual capacity defendants were entitled to qualified immunity. (*Id.* at 11a-18a).

Applying this Court's longstanding analytical structure for deciding whether a government official is entitled to qualified immunity, the Wyoming Supreme Court concluded that the right claimed by Guy was not clearly established at the time so as to put a reasonable officer on notice that what they did was unlawful. (*Id*.). The court held that the issue was not beyond debate. (*Id.*).

Contrary to Guy's argument in his petition, the Wyoming Supreme Court did not adopt the *Kalka* case as binding precedent in Wyoming. Instead, the

Wyoming Supreme Court merely quoted from *Kalka* to provide context to the question presented, and it also discussed Guy's reliance on the case *American Humanist Ass'n v. United States*, 63 F. Supp. 3d 1274 (D. Or. 2014), before it held that the right at issue was not beyond debate to defeat Lampert's qualified immunity under this Court's longstanding "clearly established" test. (Pet'r's App. 17a-18a).

The Wyoming Supreme Court affirmed the district court's order dismissing Guy's complaint. (*Id.* at 25a). Guy now seeks a writ of certiorari from this Court to review the Wyoming Supreme Court's qualified immunity analysis. (Pet'r's Br. at 1).

SUMMARY OF THE ARGUMENT

Guy asks this Court to overturn the Wyoming Supreme Court's decision which held that Lampert was entitled to qualified immunity. He specifically takes issue with the Wyoming Supreme Court's citation to the *Kalka* opinion in the context of explaining its holding. This Court should deny the petition because the Wyoming Supreme Court followed this Court's binding precedent requiring Guy to prove that the law recognizing the right he claims was violated was beyond debate. Because the Wyoming Supreme Court applied the correct law when considering Guy's arguments, it would be a waste of judicial resources to take this case and review the correct application of existing law.

Guy's case is not appropriate for resolving the concerns he raises about the *Kalka* case because Guy has already received the relief he has requested. Even so, a reversal by this Court is not likely to result in anything different because Guy's complaint is still deficient for the reasons raised but not fully resolved below. Those defects include the fact that Guy's complaint failed to state a plausible claim for relief and he is barred by the doctrine of res judicata from bringing these claims in a subsequent suit. Finally, even if Guy can make it past the pleading stage, he cannot overcome the fact that he failed to exhaust his administrative remedies before filing suit.

REASONS FOR DENYING THE PETITION

I. The Wyoming Supreme Court correctly applied this Court's jurisprudence on qualified immunity.

Guy argues that the Wyoming Supreme Court adopted the District of Columbia Circuit's analysis in *Kalka*. (Pet'r's Br. at 7-14). He claims that this was in error because the holding in *Kalka* allegedly contradicts this Court's precedent for analyzing whether qualified immunity shields officials from liability under 42 U.S.C. § 1983. (*Id*.). A closer inspection of the Wyoming Supreme Court's entire analysis of the issue demonstrates that it followed this Court's long settled precedent in deciding that the right claimed by Guy was not clearly established. (*Id.* at 11a-18a).

This Court nearly three decades ago settled the matter at issue in this case when it created the clearly established law standard for determining whether qualified immunity shields a government official from suit. In 1982, this Court considered the immunities inherently available to government officials and balanced "the evils inevitable in any available alternative." *Harlow v. Fitzgerald*, 457 U.S. 800, 813 (1982). In reaching that balance for the doctrine of qualified immunity, this Court made clear that the costs associated with deciding the subjective good faith of a government official outweighed the benefit of the inquiry. *Id.* at 816-17. Accordingly, this Court held that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 818. It explained that "[i]f the law at [the time the action occurred] was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law forbade conduct not previously identified as unlawful." *Id.*

This Court has maintained the objectively reasonable official standard for decades and recently explained that "[b]ecause the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct." *Kisela v. Hughes*, ___ U.S. ___, 138 S. Ct. 1148, 1152 (2018) (citation omitted).

While this Court's case law "does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* (citation omitted); *but see District of Columbia v. Westby*, ___ U.S. ___, 138 S. Ct. 577, 591 n.8 (2018) (explaining that this Court has not resolved whether a decision from a court other than this one can "qualify as controlling authority for purposes of qualified immunity.").

This Court also recently reaffirmed the longstanding principle that "'clearly established law' should not be defined 'at a high level of generality.'" *White v. Pauly*, ___ U.S. ___, 137 S. Ct. 548, 552 (2017) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)). And this Court reiterated its decades old explanation that "clearly established law must be 'particularized' to the facts of the case." *Id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). "In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law." *Kisela*, 138 S. Ct. at 1152 (citation omitted).

The Wyoming Supreme Court relied on these bedrock principles when it analyzed whether clearly established law recognized the right asserted by Guy under the facts of the case. (Pet'r's App. at 13a-14a). The court considered the single federal district court case cited by Guy, *American Humanist Ass'n*, and concluded that it was not enough to "represent the great weight of authority that has placed the question beyond debate[.]" (Pet'r's App. at 17a).

To provide context for its finding that a debate remains, the court quoted from the discussion in the *Kalka* case about this Court's footnote in *Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961), which made reference to Secular Humanism as a religion. (Pet'r's App. at 17a-18a). The Wyoming Supreme Court did not adopt the *Kalka* test. (*Id.*). In essence, all it did was provide citations to various lower court cases demonstrating that a debate remained on the legal status of Humanism as a religion. With that context in mind, it relied upon this Court's longstanding precedent to conclude Guy failed to meet his burden of demonstrating that the right he claimed Lampert violated was clearly established and beyond debate. (*Id.*).

Even though Guy and amici challenge the holding in *Kalka*, their arguments in favor of granting the petition in this case appear to be based on the notion that this Court got it wrong decades ago when it created the objective standard for determining whether a reasonable official would have known that their conduct would violate clearly established federal law. (Pet'r's Br. at 12-14; Cato Amicus Br. at 20-21; Muslim Advocates Amicus Br. at 9-11). Their arguments advocate for changing the focus from the objectively reasonable officer to the subjective interests of the prisoner. (*Id.*). In other words, they seek to have this Court disregard the doctrine of *stare decisis* and overturn more than thirty years of precedent regarding the clearly established law standard. They have not demonstrated that this

matter warrants overturning this Court's prior precedent.

"Overruling precedent is never a small matter." *Kimble v. Marvel Entm't, LLC*, ___ U.S. ___, 135 S. Ct. 2401, 2409 (2015) (explaining doctrine of *stare decisis* and high burden for overturning prior precedence once settled). This Court stands by its prior decisions, even if they were wrongly decided by today's standards, because it "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Id*. (quotation omitted). Standing by prior decisions also "reduces incentives for challenging settled precedents, saving the parties and courts the expense of endless relitigation." *Id.*

When reviewing a "judicially created doctrine designed to implement a federal statute" such as qualified immunity, this Court requires "special justification," "over and above the belief that the precedent was wrongly decided." *Id.* at 2409 (quotation omitted); *see also Arizona v. Rumsey*, 467 U.S. 203, 212 (1984) (citing examples rising to the level of a special justification).

For example, this Court has found a special justification in overturning its prior precedent that created a clearly unworkable procedural rule of jurisdictional magnitude, *see Swift & Co. v. Wickham*, 382 U.S. 111, 116 (1965) (overruling *Kelser v. Department of Public Safety*, 369 U.S. 153 (1962) because it did not

set a workable or clear rule for determining when a single district court judge or a panel of three judges were necessary for deciding whether a state statute was repugnant to the Supremacy Clause); and in overturning a single decision that had the unintended effect of impacting the well-established Fifth Amendment right not to have a state abridge a citizen's right to vote, *Smith v. Allwright*, 311 U.S. 649, 665-66 (1944) (overruling holding in *Grovey v. Townsend*, 295 U.S. 45 (1935), that privilege of membership in a political party is of no concern to a state, because that privilege becomes the action of the state when it is also the essential qualification for voting in a primary election that selects the nominees for the general election). Here, Guy and amici have not met the high burden required for overturning this Court's longstanding precedent because they have not identified a "special justification" worthy of review by this Court.

The arguments raised by Guy and the amici do not recognize that the Wyoming Supreme Court quoted from the *Kalka* case to provide context for the question presented and then, for its holding, relied upon this Court's opinions that set the appropriate standard for analyzing the issue. Simply because the Wyoming Supreme Court cited to the *Kalka* case at some point in its opinion does not warrant granting the petition to review the correct application of this Court's qualified immunity opinions. Guy fails to meet the high burden required before this Court will consider overturning its decades-long settled objectively reasonable official

standard that has formed the basis for each of this Court's opinions on qualified immunity.

Accordingly, this Court should deny the petition because it would be a waste of judicial resources to review the Wyoming Supreme Court's correct application of this Court's longstanding, and recently reaffirmed, precedent.

II. Guy has not presented an issue worthy of certiorari because his requests have been remedied and there are independent grounds for affirming the dismissal.

This case is not a proper vehicle for judicial review because a finding in Guy's favor will provide him little relief beyond what he has already received from the Department. Every federal claim Guy raised in his complaint, except for the claim to monetary damages, was found to be moot because the Department granted Guy's request to recognize Humanism as a religion. (Pet'r's App. at 6a-7a, 50a-51a). Further, even if this Court reached the merits of the issue raised in the petition, this case would not end there or even necessarily in Guy's favor. To get to the merits of the petition, this Court would have to look past Lampert's alternative arguments that Guy failed to state a plausible claim for relief; that the doctrine of res judicata bars Guy's claim; and that Guy failed to exhaust his administrative remedies before filing suit. (R. at 100-03, 124-29); (Pet'r's App. at 5a-6a, 10a-11a, 40a).

Guy's complaint failed to state a plausible claim for relief because it did not meet the minimal pleading standards established by this Court in *Ashcroft v. Iqbal*, 556 U.S. 62, 678-79 (2009). Guy's complaint made vague allegations that Lampert violated broad concepts in the United States Constitution, namely the Fee Exercise and Establishment Clauses of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. (R. at 100). Beyond referencing these provisions, Guy did not specifically allege or address the elements necessary to establish any of these constitutional claims. (*Id.* at 101-03).

Guy's action against Lampert also should be barred by the doctrine of res judicata. After Lampert allegedly violated Guy's First Amendment rights on the Humanism issue in February 2017, Guy filed a lawsuit in federal court in May 2017 against Lampert under 42 U.S.C. § 1983, alleging different First Amendment violations. (R. at 124-29, 170-426) (relevant documents from docket underlying decision in *Guy v. Lampert*, 2:17-cv-0013-ABJ, 2017 WL 8784492 (D. Wyo. Dec. 26, 2017)). In that collateral case Guy asserted that Lampert and several correctional officials retaliated against him for filing (over the course of three years) over 200 grievances, 200 first-level appeals, and 200 second-level appeals, and for filing during one year nine lawsuits against Department staff. (R. at 255-56). Guy also claimed retaliation because he attempted to exercise his First Amendment right to contact government officials to complain about the Department. (*Id.* at 255-56,

393-94). Guy could have, but did not, raise his First Amendment freedom of religion and association concerns in that litigation, which was ultimately dismissed. (*Id.* at 246). Guy should be precluded from raising in this case similar First Amendment allegations that arose at the same time and asserted against the same defendants (or their privies) in a separate federal action. *See Allen v. McCurry*, 449 U.S. 90, 94 (1980) (explaining res judicata effect on claims that could have been raised in a separate action, but were not).

Finally, even if Guy can overcome dismissal at the pleading stage based on a failure to state a plausible claim for relief and the doctrine of res judicata, he cannot prove that he exhausted his administrative remedies before filing suit. 42 U.S.C. § 1997e(a) (prohibiting suits under 42 U.S.C. § 1983 until "such administrative remedies as are available are exhausted."). As the collateral federal case mentioned above demonstrates, Guy understood the prison's administrative appeal system. (R. at 255-56). However, in his motion to dismiss Lampert asserted the affirmative defense that Guy failed to exhaust his administrative remedies on the Humanism matter because Guy did not properly see that administrative process through to its conclusion before he filed suit. (R. at 102, 111, 129); *see also Jones v. Bock*, 549 U.S. 199, 216 (2007) (concluding that failure to exhaust under § 1997e(a) is an affirmative defense). That issue remains even if this Court were to grant the petition and reverse the lower court.

Guy has already received the relief he requested and his complaint continues to suffer from significant defects that would eliminate any additional relief he might receive from the grant of his petition. Accordingly, this Court should decline to step in to review this matter as it will have little practical effect on the parties in the end.

CONCLUSION

For the foregoing reasons, Lampert requests that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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