No. 20-1402

IN THE
SUPREME COURT OF THE UNITED STATES

STEPHEN HAMMONDS,

Petitioner,

v.

ROBERT THEAKSTON, M.D. and MATTHEW MARTIN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Respondents insist this case is a disagreement about "treatment" Hammonds received verses the treatment he wanted. Opp. 20-22. Respondents assert they are entitled to qualified immunity because Hammonds' right to adequate medical care as a pretrial detainee was not clearly established. *Id*. Respondents' definition of the "adequate medical care" for an insulin-dependent detainee includes confiscating Hammonds' life sustaining medication; confining Hammonds without the ability to sufficiently administer and monitor his condition; threatening Hammonds' family with arrest for checking on him; depriving Hammonds adequate insulin resulting in organ failure, diabetic ketoacidosis, and neuropathy; denying treatment and mocking Hammonds' deteriorating condition; denying Hammonds a diabetic diet; refusing to follow the hospital's discharge orders; and destroying evidence of Respondents' constitutional violations Pet. 2-15. According to Respondents, a reasonable official might not have realized this inhumane treatment was unconstitutional.

This argument defies belief, this Court's precedent, and the decisions rendered by other circuits establishing that Respondents are not entitled to qualified immunity because the unconstitutionality of their conduct was both obvious and clearly established. At minimum, the contrary decision below warrants summary reversal to correct the Eleventh Circuit's deviation from this Court's decisions.

I. The Decision Below Conflicts With This Court's Precedent and with Decisions of Other Circuits Denying Qualified Immunity In Similarly Analogous Circumstances.

Respondents attempt to reduce this case to semantic differences of medical

opinion and the treatment provided to Hammonds fails. That substantial risk of serious harm to Hammonds was "especially obvious here," but the Eleventh Circuit issued its opinion contrary to the guidance from decisions of this Court now requiring consideration by the Supreme Court to secure and maintain uniformity of decisions as outlined in Hammonds' petition. Pet. pp. 15-16.

The Court's decisions on qualified immunity have changed over the course of time. None of the decisions rendered by this Court relieve the courts below of their obligation to examine Respondent's deliberate indifferent violations of Hammonds' existing constitutional right before granting qualified immunity to Respondents.

This Court replaced its good-faith approach with the current "clearly established" test (compare *Pierson v. Ray*, 386 U.S. 547 (1967), *with Harlow v. Fitzgerald*, 457 U.S. 800 (1982)). Then the Court modified its decision requiring courts to begin with a mandatory evaluation of the underlying constitutional claim and awarding qualified immunity when the constitutional right was not clearly established. Compare *Saucier v. Katz*, 533 U.S. 194. (2001) to *Pearson v. Callahan* 555 U.S. 223, 231 (2009) (holding the *Saucier* mandatory two prong procedure should not be an inflexible requirement and qualified immunity should be awarded when the constitutional right was not clearly established).

Respondent erroneously asserts *Pearson* completely abrogated the factual review required for violations of an existing constitutional right. Opp. 21. This Court held in *Pearson* that qualified immunity should be granted without further review if the right *"was not clearly established"* at the time of the action that the officers' conduct was

unconstitutional. *Pearson v. Callahan*, 555 U.S. 223, 232, 243-245 (2009). In contrast, Hammonds' constitutional right to reasonable medical care was clearly established in 2014. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Disregarding this right, the trial court and the Eleventh Circuit below held Hammonds' right to reasonable medical care as an insulin dependent diabetic was not clearly established is in conflict with decisions rendered by this Court and the circuits below.

Pearson's modification to *Saucier's* two-prong approach does not change the fact that the Eleventh Circuit's opinion below conflicts with decisions rendered by this Court and its sister circuits concerning the medical rights of a detained diabetic. Despite other circuits holding qualified immunity is not a defense for those who knowingly mistreat diabetic detainees, the Eleventh Circuit does not hold the same for Hammonds in light of the egregious facts and it ignores the constitutional violations recognized in *Estelle* and *Harlow*. Pet. App. A, ECF 105-1, pp. 5,8; see *Estelle v. Gamble*, 429 U.S. 97, 104,(1976) and *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). That approach also ignores the principle that there is no such immunity for constitutional violations and allows the defense of qualified immunity to pretermit any consideration of the claim itself. *Id.*

A. The Eleventh Circuit's Holding That Respondents Are Entitled to Qualified Immunity Despite the Obvious Unconstitutionality of Their Conduct Conflicts with this Court's Precedent.

Modern qualified immunity jurisprudence requires officers must be "on notice their conduct is unlawful" before being subjected to suit for damages. *Saucier v. Katz*, 533 U.S. 194, 206 (2001). That is, officers must have "fair warning that their conduct

violated the Constitution." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Also, an official's conduct may also be so "obvious[ly]" illegal that no "body of relevant case law" is necessary. *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004) (per curiam) (citing *Hope*, 536 U.S. at 738); see also, *Hope*, 536 U.S. at 753 (Thomas, J., dissenting) ("Certain actions so obviously run afoul of the law that an assertion of qualified immunity may be overcome even though court decisions have yet to address 'materially similar' conduct.")

Respondents do not distinguish *Hope's or Brosseau's* holdings because they are precisely on point. Instead, Respondents offer *Pearson* to support their argument that a constitutional review is not warranted because they claim Respondents lacked fair warning that their conduct violated the constitution. Opp. 20, 25. The appellate and trial courts below acknowledged that Hammonds had a serious medical condition which was admittedly known to the Respondent, and they knew the risks of inadequate treatment. (Pet. D, ECF 105-1, pp. 2-3, 8; R.O.A. 96, p. 9). No reasonable official could believe that exposing Hammonds as an insulin-dependent diabetic to such "obvious" risk was lawful. Hammonds' experience reflects precisely the kind of cruel and degrading mistreatment *Hope* identified as obviously unconstitutional and therefore unprotected by qualified immunity. 536 U.S. 730, 741 (2002).

The Eleventh Circuit below correctly determined that Respondents exposed Hammonds to an "especially obvious" risk of bodily harm, but it failed to follow that determination to its logical conclusion: Respondents' deliberate indifference and delay of Hammonds' right to care was obviously unconstitutional. (Pet. App. A - ECF Doc.

105-1, p. 3; see also, R.O.A. 91-1, pp. 29-33 at depo pp. 119-129; R.O.A. 91-1, pp. 29-33 at depo pp. 119-129.) The Eleventh Circuit and district court acknowledged that Hammonds is an insulin-dependent Type-I diabetic who suffers with a known serious medical condition. (R.O.A. 105-1, pp. 2-16, 8). Though aware of this, Dr. Theakston ignored Hammonds' prior course of treatment, deprived him of adequate insulin and then failed to respond to his declining condition. (R.O.A. 91-1, pp. 16, 24-25 at depo pp. 63-64, 96-97). Due to insulin deprivation, Hammonds was left to decline into DKA. (R.O.A. 82-33, at depo p. 118; 82-43, at depo pp. 51-53; 82-43, at depo pp. 51-53; 91-2, pp. 2-4; R.O.A. 91-12, pp. 3-4). After suffering for days in isolation, he was finally taken to the hospital with a glucose level of 689 mg/dl. (R.O.A. 82-23, pp. 2-6).

"Fair warning" of deliberate indifference to serious medical needs of a pretrial detainee is established when Respondents admit their knowledge of the obvious serious medical need and the risk of improper treatment. *Brosseau v. Haugen*, 543 U.S. 194, 198, 199 (2004) (per curiam) (*citing Hope*, 536 U.S. at 738). Respondents admitted they knew Hammonds would suffer from DKA and death if they failed to adequately treat his condition. (R.O.A. 91-1, p. 26 at depo p. 103, 104; 82-6, p. 24 at depo p. 89) Expert testimony supports the egregious indifference of the medical defendant here. (R.O.A. 91-12) The Eleventh Circuit's limitation of these concepts is in conflict with this Court and other circuits.

Obviously, unconstitutional conduct is by its nature less likely to lead to the development of precedent to serve as clearly established law – because it is obviously unconstitutional, officials are or should be less likely to do it. *Safford Unified Sch. Dist.*

No. 1 v. Redding, 557 U.S. 364, 377-78 (2009) ("[O]utrageous conduct obviously will be unconstitutional, this being the reason … that the easiest cases don't even arise." (internal quotation marks and brackets omitted).

Hope held that the unconstitutionality of the prison officials' actions was clearly established because Hope was "treated in a way antithetical to human dignity he . . . and under circumstances that were both degrading and dangerous." *Id*. at 745. Hope's treatment and seven hour exposure pales in comparison to the insulin deprivation Hammonds endured over the span of two weeks. Respondents ignore the fact that recent decisions rendered by this Court have reaffirmed that obviously illegal conduct can defeat qualified immunity. *See Taylor v. Riojas*, 141 S.Ct. 52, 53-54 (2020)(Per Curiam); *City of Escondido v. Emmons*, 139 S. Ct. 500, 504 (2019) (per curiam); *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018); *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam).[1] Tellingly, Respondents only briefly quoted dicta *White*. Opp. 21-22, 26.

Respondents point to this Court's statement that courts must identify a case where an officer acting under similar circumstances . . . was held to have violated the Constitution based on "clearly established law [which] must be 'particularized' to the facts of the case." *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam). Opp 22. Respondents then assert that existing precedent must have placed the statutory or constitutional question beyond debate and that their alleged constitutional violations

[1]The Eleventh Circuit's opinion below stated the rules set forth by this Court in *Estelle* are not applicable to Hammonds and would not be followed. (R.O.A. 105-1, p. 8).

were not clearly established. *Id.* at 550-551 Opp. 26. These two statements are inconsistent: Precedent can be sufficiently similar to "put the officer on notice that his conduct would be clearly unlawful," *Saucier v. Katz*, 533 U.S. 194, 202 (2001), while not placing the constitutional question "beyond debate. . ." *White*, 137 S. Ct. at 551.

This Court holds the clearly established inquiry turns on whether "a reasonable officer might not have known for certain that the conduct was unlawful" and whether a reasonable officer "could ... have predicted" the unlawfulness. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1867 (2017). These two statements are as inconsistent as those in *White*: Precedent may allow an officer to "predict" unlawfulness while being insufficient for an officer to "know[it] for certain." 137 S. Ct. 548, 552 (2017) (per curiam)"

Respondents do not address this Court's holding in *Estelle* concluding that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' . . . . This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *Estelle v. Gamble*, 429 U.S. 97, 104,(1976). "Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983." *Id.* In response, the Eleventh Circuit stated "Estelle's general rule does not obviously apply to the specific circumstances of this [Hammonds'] case-treatment of Type 1 diabetes." App. A, ECF 105-1, p.8.

The appellate and trial courts below acknowledged Respondents knew the risks

of inadequate treatment toward Hammonds' serious medical need and that he had a right to medical care. Pet. D, ECF 105-1, pp. 2-3, 8; R.O.A. 96, p. 9. However, the appellate court forced a new and higher subjective evidentiary burden on Hammonds in order to overcome qualified immunity. Pet. D, ECF 105-1, pp. 11-12, 14-15. Its new burden conflicts with *Farmer* and *Estelle*. Deliberate indifference exists when a jail doctor or administrator "knows of and disregards an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. at 837 (1994). Yet, the Eleventh Circuit found qualified immunity could be granted without reviewing the underlying factual claim of deliberate indifference towards an existing constitutional right to adequate medical care. Pet. A. pp. 5-6, Ped. D. ECF 105-1, pp. 5-6. This approach finds the claim viable only if existing appellate cases with specific facts therein align perfectly even when the constitutional right is established.

The qualified immunity analysis in this Court's recent *Taylor v. Rojas* decision directly supports Hammonds' petition. 141 St. Ct. at 53-54, 55 (2020). In *Rojas*, this Court reversed the Fifth Circuit's grant of summary judgment for not applying this Court's qualified immunity test outlined by *Hope* to the facts in. Through directly applicable, Respondents do not address the *Rojas* or *Hope* decisions and they do not address the conflict created by Eleventh Circuit's refusal to apply *Estelle*.

II. The Court's Review Is Necessary To Resolve An Inter-Circuit Conflict Created By The Eleventh Circuit's Holding.

Requiring Hammonds to prove "preexisting law" in "the specific set of circumstances at issue" before qualified immunity can be avoided and violation of an

existing constitutional right even reviewed, the Eleventh Circuit placed itself in clear conflict with this Court and other circuits. The Third, Fourth, Sixth, and Seventh Circuits hold where an inmate was held without adequate insulin and/or was provided a different and ineffective course of insulin treatment, a clearly established constitutional violation existed.[2] Unlike the Eleventh Circuit here, those courts followed the direction set by this Court to examine whether the contours of the right [were] sufficiently clear that a reasonable official would understand that what he is doing violates that right. *See also*, *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

Respondents claim that all circuits, including the Eleventh Circuit, apply the usual rule that plaintiffs must identify "similar precedent" directly supporting plaintiff's facts to meet the clearly established requirement. Opp. Pp. 22, 26. This is demonstrably wrong. The circuit split is not based on the position that the Eleventh Circuit never denies qualified immunity without similar precedent; rather, it limited the claim's availability to only those fact settings already sustained in appellate decisions even when a constitutional right is clearly established. Pet. App. A, ECF 105-1, pp. 10-11.

Respondents acknowledge other circuits have denied qualified immunity to a doctor who did not sufficiently treat an insulin dependent diabetic. Opp. p. 24. Yet, Respondents try to recast this case as a disagreement of treatment - not a violation of

[2]Natale v. Camden Cty. Corr. Facility, 318 F.3d at 582-83 (3d Cir. 2003); *Scinto v. Stansberry,* 841 F.3d. at 228 (4th Cir. 2016); *Derfiny*v. Pontiac Osteopathic Hospital*,* 106 Fed.Appx. at 934-937 (6th Cir. 2004); Jackson v. Kotter, 541 F.3d at 697 (7th Cir.2008).

constitutional rights or a conflict between decisions rendered by other circuits which warrants this Court's review. Other circuits clearly hold that denying sufficient insulin to a Type-I diabetic constitutes a serious risk of harm leading to the constitutional violation. Pet. 25-32 and *ibid.* 1. *See also, Waldrop v. Wexford Health Sources, Inc.*, 646 Fed.Appx. 486, 490 (2016). Deliberate indifference to constitutional right to medical care may be inferred when the doctor disregarded the risks by changing an inmate's insulin treatment which did not sufficiently treat the inmate's diabetes. *Egebergh v. Nicholson*, 272 F.3d 925, 928 (7th Cir.2001) (officer's knowledge that diabetes can be fatal, coupled with decision to deprive arrestee of insulin, permits jury inference of deliberate indifference).

The fact that circuits below this Court base their holdings on the different positions this Court has taken on qualified immunity weighs in favor of this Court's review, not against it. Pet. 25-32 and *ibid.* 1. This Court's review is necessary to ensure state actors who violate pretrial detainee's constitutional rights must face repercussions because all individuals share the countervailing interest in having their constitutional rights fully protected. *Arizona v. Gant*, 556 U.S. 332, 349 (2009).

CONCLUSION

The Court should grant the Petition.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2021, I electronically filed the foregoing Reply Brief for Petitioner with the Clerk of the Court and, pursuant to agreement of the parties, electronically served a copy of the same on the following:

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