No. ________

IN THE

Supreme Court of the United States

CHARLES WADE,

Petitioner,

v.

GORDON LEWIS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has repeatedly held that government officials lack qualified immunity when prior decisions provide "fair warning" of constitutional violations. *Hope v. Pelzer*, 536 U.S. 730, 740–41 (2002). Long before the events leading to this case, the Eleventh Circuit held that correctional officers violate the Constitution by delaying medical treatment for a prisoner's "bleeding cut" and ignoring the presence of "blood on the floor and on his coat and shirt." *Aldridge v. Montgomery*, 753 F.2d 970, 972–73 (11th Cir. 1985) (per curiam). But the Eleventh Circuit held here that *Aldridge* failed to clearly establish the unconstitutionality of ignoring a prisoner's cut that "leak[ed] blood . . . all over the place," relying on distinctions between a "pool of blood" and a "path of blood," as well as between a cut above the right eye and a similarly sized cut to the right hand. The question presented is:

Whether this Court's qualified immunity doctrine demands a nearly identical fact pattern before a case can clearly establish the law—as the Eleventh and Fifth Circuits have held—or whether a case can provide "fair warning" despite some factual variation—as the First, Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits have held.

PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding below were Petitioner Charles Wade and Respondent Gordon Lewis.

RELATED PROCEEDINGS

Wade v. United States, No. 20-11962 (11th Cir.) (judgment entered Sept. 17, 2021)

Wade v. United States, No. 1:16-cv-03691-AT (N.D. Ga.) (judgment entered Nov. 10, 2021)

Wade v. United States, No. 1:16-cv-03746-AT (N.D. Ga.) (administratively closed Nov. 3, 2016)

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INTRODUCTION

"[W]ith so many voices critiquing current law as insufficiently protective of constitutional rights, the last thing [the courts of appeals] should be doing is recognizing an immunity defense when existing law rejects it." *McCoy v. Alamu*, 950 F.3d 226, 237 (5th Cir. 2020) (Costa, J., dissenting), *vacated and remanded*, 141 S. Ct. 1364 (2021) (mem.). Yet that is precisely what the Eleventh Circuit did here.

Petitioner Charles Wade suffered a bone-deep, 1.34-inch cut to his hand while in prison that caused him to "bleed[] all over." Despite Wade's pleas for medical assistance, Respondent prison guard Gordon Lewis did not take Wade to the medical unit but instead handcuffed and escorted him to a special housing cell, leaving a "path of blood" behind them. Lewis then left Wade bleeding in handcuffs, and Wade remained without medical attention for over seven hours. Days later, Wade was finally transferred to a hospital where his wound was surgically cleaned and the infected skin cut away. Wade sued Lewis for deliberate indifference to a serious medical need in violation of the Eighth Amendment, and Lewis invoked qualified immunity. The district court rejected that defense, so Lewis appealed.

Fortunately for Wade, the Eleventh Circuit had already held that correctional officers violate the Constitution by "ignoring [a] bleeding cut" that is "one and a half inches long," "require[s] . . . stitches," and leaves "blood on the floor." *Aldridge v. Montgomery*, 753 F.2d 970, 972–73 (11th Cir. 1985) (per curiam). Unfortunately for Wade, the Eleventh Circuit had also held that "qualified immunity will be denied only if the preexisting . . . case law . . . 'make[s] it *obvious*

that the defendant's acts violated the plaintiff's rights in the specific set of circumstances at issue.'" *Gates v. Khokhar*, 884 F.3d 1290, 1297 (11th Cir. 2018) (emphasis added) (quoting *Youmans v. Gagnon*, 626 F.3d 557, 563 (11th Cir. 2010)), *abrogated on other grounds by Washington v. Durand*, --- F.4th ---, No. 20-12148, 2022 WL 355437, at *6–8 (11th Cir. Feb. 7, 2022). The latter principle won the day, and Wade's Eleventh Circuit panel reversed based on "minor variations between" this case and *Aldridge*. Pet. App. 24a (quoting *Youmans*, 626 F.3d at 563). Among the variations noted by the panel was the fact that *Aldridge* involved a "puddle of blood," while Wade merely alleged he was "leaking . . . blood all over" in a "path." *Id.* at 19a–20a.

Wade respectfully petitions for a writ of certiorari to review the Court of Appeals' judgment in this case. The Eleventh Circuit's approach to "clearly established law" conflicts with this Court's repeated admonitions that overcoming qualified immunity requires only "fair warning," not "rigid overreliance on factual similarity." *Hope v. Pelzer*, 536 U.S. 730, 742–43 (2002). It also conflicts with the approach adopted by nine other circuits. And this case presents an ideal vehicle to resolve those conflicts.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals is reported at 13 F.4th 1217 and is reproduced at Pet. App. 1a–28a. The unpublished order of the district court denying summary judgment is reproduced at Pet. App. 29a–35a. The unpublished report and recommendation of the magistrate judge is reproduced at Pet. App. 36a–56a.

JURISDICTION

The Eleventh Circuit entered its judgment on September 17, 2021. Pet. App. 1a. Justice Thomas first extended the time to file this petition to January 18, 2022, and then again to February 14, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. CONST. amend. VIII.

STATEMENT OF THE CASE[1]

A. Captain Lewis Denies Wade Medical Treatment For A Laceration That Was "Bleeding All Over The Place" And Left "A Path of Blood" On The Floor.

Charles Wade spent time as a federal prisoner at the United States Penitentiary in Atlanta, Georgia. Pet. App. 3a. While he was there, he suffered a 1.34-inch laceration to his right hand that partially severed a tendon and went all the way down to the bone. *Id.* at 3a–4a, 6a–7a. A nearby officer noticed Wade's hand

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[1] The facts presented in this Statement are drawn primarily from the decision below and the district court's summary judgment order. Because the Court of Appeals resolved this case at summary judgment, the facts and inferences are viewed in the light most favorable to Wade. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (per curiam).

was bleeding, and Acting Captain Gordon Lewis arrived on the scene shortly thereafter. *Id.* at 4a. Instead of arranging for medical treatment, however, Lewis handcuffed Wade and escorted him to the Special Housing Unit ("SHU") on suspicion that Wade had fought with another inmate. *Ibid.*

Wade was "leaking blood all over" and left "a path of blood" on the ground as Lewis took him to the SHU. *Id.* at 4a–5a. But when Wade asked whether Lewis would "take [him] to medical," Lewis responded, "don't ask me how to be a captain and [I] won't tell [you] how to be an inmate." *Id.* at 5a. Wade followed up by saying, "okay . . . you know, I'm bleeding all over . . . the place." *Ibid.* Yet Lewis remained unmoved. The captain placed Wade in an SHU holding cell, left him in handcuffs, and departed. *Ibid.* Wade bled continuously during the entirety of the parties' ten-minute interaction. *Id.* at 2a.

Wade renewed his request for medical treatment while in the holding cell but was told by SHU officers that he needed to wait. *Id.* at 5a–6a. He continued to "bleed[] all that time." *Id.* at 6a. Finally, over seven hours later, a nurse ushered Wade to an examination room where she cleaned the wound and bandaged it. *Id.* at 6a & n.4. Wade noticed swelling in his hand the next morning and again requested medical attention to no avail. *Id.* at 6a. He eventually got the attention of an officer passing by the following day, and a nurse determined his "deep laceration" was serious enough to transport him to Atlanta Medical Center. *Id.* at 6a–7a. An x-ray revealed that Wade "had broken a bone in his hand," and the treating physician observed that the open wound combined with the delay in treatment increased the risk of infection to Wade's hand. *Id.* at

7a. The doctor performed surgery, and Wade returned to the penitentiary where he received medication for pain. *Id.* at 7a–8a.

B. Wade Sues Lewis For An Eighth Amendment Violation, And The District Court Denies Qualified Immunity.

Proceeding *pro se*, and invoking federal-question jurisdiction, Wade timely sued Lewis in federal court for deliberate indifference to serious medical needs in violation of the Eighth Amendment.[2] Pet. App. 8a; *see Estelle v. Gamble*, 429 U.S. 97 (1976). The district court appointed counsel on Wade's behalf, and Lewis moved for summary judgment on grounds of qualified immunity. Pet. App. 8a. A magistrate judge recommended denying summary judgment because (1) the facts viewed in the light most favorable to Wade permitted a jury to conclude that Lewis had deliberately ignored a serious medical need, *id.* at 49a–54a, and (2) the Eleventh Circuit's decision in *Aldridge* clearly established that "the precise actions about which Plaintiff complains could constitute deliberate indifference," *id.* at 55a. The district court adopted the magistrate judge's report and recommendation and denied qualified immunity. *Id.* at 34a.

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[2] Wade also filed claims against other prison officials and the United States, which the district court later dismissed.

C. The Eleventh Circuit Reverses The District Court's Denial Of Qualified Immunity Based On Four Narrow Distinctions.

Lewis filed an interlocutory appeal from the district court's ruling. Pet. App. 10a. As required by this Court's decision in *Johnson v. Jones*, 515 U.S. 304 (1995), Lewis "d[id] not challenge the district court's determination that genuine disputes of material fact precluded summary judgment," arguing instead that "the district court erred when it determined that it was clearly established that his actions violated Wade's constitutional rights." Pet. App. 12a.

The Eleventh Circuit agreed and reversed the district court's denial of qualified immunity. *Id.* at 25a. Rejecting the argument that *Aldridge* provided Lewis fair warning that his deliberate indifference was unconstitutional, a two-judge majority read *Aldridge* as "holding that a defendant is not entitled to a qualified immunity defense when he . . . ignores a serious cut on an individual's head, which continued to bleed for two-and-a-half hours and form a puddle on the floor about the size of two hands." *Id.* at 18a. The panel majority then proceeded to outline four facts that it thought distinguished Wade's suit from *Aldridge*, highlighting circuit precedent that held "[m]inor variations between cases may prove critical." *Id.* at 16a (quoting *Youmans*, 626 F.3d at 563).

First, the majority thought "the nature of the injuries [was] different" because *Aldridge* involved a 1.5-inch cut above the plaintiff's right eye while Wade had suffered a laceration "about the same size" to his hand. *Id.* at 17a–19a. Second, the majority found a "substantial difference between what the defendants

observed about the plaintiff's wound in each case" because the *Aldridge* defendants spent two hours with their victim while Lewis ignored continuous bleeding for ten minutes. *Id.* at 19a. Third, the majority ascertained a "critical" difference between the "quantity of blood" in both cases because *Aldridge* involved a "puddle of blood" while Wade only alleged that he was "leaking . . . blood all over" and left a "path of blood" as he walked. *Id.* at 19a–20a. Finally, the majority differentiated between the *Aldridge* defendants' decision to delay the plaintiff's treatment at "a hospital" and Lewis's decision to leave Wade bleeding in the SHU cell with his handcuffs still on. *Id.* at 20a–21a. Faulting the district court for "fail[ing] to undertake this careful analysis," the majority held that "*Aldridge* does not clearly establish that Captain Lewis violated Wade's constitutional right." *Id.* at 24a.

Judge Tjoflat wrote separately to express discomfort with the majority's four factual distinctions. *Id.* at 25a, 27a–28a. After recognizing "some similarities between *Aldridge* and this case," *id.* at 27a, Judge Tjoflat opined that qualified immunity was nevertheless appropriate because the record contained insufficient evidence about Wade's interactions with Lewis to conclude Lewis violated a clearly established right, *id.* at 28a.

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit Consistently Defies This Court's Qualified Immunity Precedents By Employing Artificial Distinctions To Grant Immunity.

This case is the latest in a series of Eleventh Circuit decisions shielding officials from liability based on an overbroad reading of qualified immunity

and a cramped reading of prior precedent. Although this Court recently emphasized that artificial factual distinctions cannot deprive officials of the "fair warning" necessary to "clearly establish" the law for qualified immunity purposes, *Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020) (per curiam) (quotation marks omitted), the decision below confirms that at least one circuit has yet to receive that message. The Eleventh Circuit's recalcitrance is particularly problematic given this Court's reversal of that circuit in *Hope v. Pelzer*, which definitively rejected many of the concepts the Eleventh Circuit continues to espouse. This Court should grant review here, just as it did in *Hope* and *Taylor*, to clarify the scope of the "clearly established" analysis and to realign the Eleventh Circuit with the qualified immunity principles the Court has articulated time and again.

1. More than two decades ago, the Eleventh Circuit confronted a lawsuit against prison officials who had tied the plaintiff to a hitching post for seven hours in summer heat with minimal access to water and no bathroom breaks. *Hope v. Pelzer*, 240 F.3d 975, 976–77 (11th Cir. 2001). The court easily concluded the officials violated the Eighth Amendment because the justice system "ha[d] consistently moved away from forms of punishment similar to hitching posts in prisons." *Id.* at 979. Nevertheless, the court did not hold the officials liable. It invoked qualified immunity instead, reasoning that "there was no clear, bright-line test" that clearly established the unconstitutionality of the officials' conduct at the time it occurred. *Id.* at 981. The Eleventh Circuit opined that "to be clearly established," federal law "must be preexisting, obvious and mandatory." *Ibid.* (quotation marks omitted). The court then concluded that two

"analogous" circuit cases did not meet this exacting standard because those cases were not "materially similar" to the facts at hand. *Ibid.*

This Court reversed. After agreeing that the plaintiff's allegations established an Eighth Amendment violation, *Hope*, 536 U.S. at 736–38, the Court proceeded to correct the Eleventh Circuit's misunderstanding of the concept of "clearly established law." It started from the premise that "qualified immunity operates 'to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful.'" *Id.* at 739 (quoting *Saucier v. Katz*, 533 U.S. 194, 206 (2001)). Rather than the "preexisting, obvious and mandatory" notice standard adopted by the Eleventh Circuit, the *Hope* Court held that notice need only be "fair." *Id.* at 739–40, 740 n.10 (quoting *United States v. Lanier*, 520 U.S. 259, 270–71 (1997)). And rather than the "materially similar" standard also adopted by the Eleventh Circuit, the *Hope* Court explained that fair notice can exist "despite notable factual distinctions between the precedents relied on and the case[] then before the [c]ourt." *Id.* at 740 (quotation marks omitted). So long as "prior decisions g[i]ve reasonable warning that the conduct then at issue violated constitutional rights," *Hope* held that qualified immunity does not apply. *Ibid.* (quotation marks omitted). This remains true "even in novel factual circumstances," and "even though the very action in question has [not] previously been held unlawful." *Id.* at 741 (alteration in original) (quotation marks omitted).

Turning to the facts before it, the *Hope* Court asked the question the Eleventh Circuit "ought to have asked"—namely, "whether the state of the law in

1995 gave respondents fair warning that their alleged treatment of Hope was unconstitutional." *Ibid.* The Court answered yes. It specifically noted the binding decision in *Gates v. Collier*, which held that "handcuffing inmates to the fence and to cells for long periods of time" violated the Eighth Amendment. *Id.* at 742 (quoting 501 F.2d 1291, 1306 (5th Cir. 1974)).[3] Although the Eleventh Circuit had dismissed *Gates* as not "materially similar" to a case involving a hitching post, *Hope*, 240 F.3d at 981, this Court rejected that tenuous distinction as a "danger[ous]" exercise in "rigid, overreliance on factual similarity," *Hope*, 536 U.S. at 742 (noting "[n]o reasonable officer could have concluded that the constitutional holding of *Gates* turned on the fact that inmates were handcuffed to fences or the bars of cells, rather than a specially designed metal bar designated for shackling" (quotation marks omitted)). This Court also pointed to the "clear applicability" of *Ort v. White*, a factually distinguishable case that nevertheless observed that "physical abuse directed at a prisoner after he terminates his resistance to authority would constitute an actionable eighth amendment violation." *Id.* at 743 (alterations omitted) (quoting 813 F.2d 318, 324 (11th Cir. 1987)). Because *Gates* and *Ort* "put a reasonable officer on notice that the use of the hitching post under the circumstances . . . was unlawful," the "fair and clear warning that these cases provided was sufficient to preclude the defense of

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[3] The Eleventh Circuit has "adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981." *United States v. Schultz*, 565 F.3d 1353, 1359 n.3 (11th Cir. 2009) (citing *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc)).

qualified immunity." *Id.* at 745–46 (quotation marks omitted).

2. *Hope* was not a one-off. To the contrary, this Court has reiterated on multiple occasions that the "salient question" in applying the clearly established prong of qualified immunity is "'whether the state of the law' at the time of an incident provided 'fair warning' to the defendants 'that their alleged conduct was unconstitutional.'" *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (per curiam) (alterations omitted) (quoting *Hope*, 536 U.S. at 739); *see also*, *e.g.*, *Camreta v. Greene*, 563 U.S. 692, 705 (2011) (explaining that qualified immunity applies only when "prior case law has not clearly settled the right" by "giv[ing] officials fair notice of it"); *Groh v. Ramirez*, 540 U.S. 551, 563–65 (2004) (denying qualified immunity where "it would be clear to a reasonable officer that [defendant's] conduct was unlawful in the situation he confronted").

This Court has also reiterated *Hope*'s teaching that strained distinctions between cases do not deprive officials of "fair notice" sufficient to insulate them from liability. Thus in *Taylor* the Court summarily reversed a Fifth Circuit qualified immunity grant that attempted to distinguish between "prisoners . . . be[ing] housed in cells teeming with human waste for only six days," 141 S. Ct. at 53 (quotation marks omitted), and "prisoners . . . be[ing] housed in cells teeming with human waste for months on end," *Taylor v. Stevens*, 946 F.3d 211, 222 (5th Cir. 2019). Similarly tortured distinctions prompted vacatur in *McCoy v. Alamu*, 141 S. Ct. 1364 (2021) (mem.), where the Fifth Circuit had granted qualified immunity to a prison guard who pepper sprayed an inmate in the face "for

no reason" despite circuit precedent holding that correctional officers could not punch, tase, or hit prisoners with batons without cause, 950 F.3d at 234–36 (Costa, J., dissenting); *cf. City of Tahlequah v. Bond*, 142 S. Ct. 9, 12 (2021) (invoking qualified immunity where plaintiff relied on circuit precedent "dramatically different from the facts here").

3. Despite the reversal the Eleventh Circuit endured in *Hope* and the recent warnings of *Taylor* and *McCoy*, the decision below employs the same kind of salami-slicing distinctions that led this Court to grant review in those cases. The central question is whether *Aldridge v. Montgomery*—which held a prisoner could establish deliberate indifference to serious medical needs in violation of the Eighth and Fourteenth Amendments[4] where officers "ignor[ed] [a] bleeding cut" above the eye that produced a "pool of blood on the floor approximately the size of two hands," 753 F.2d at 971–73—clearly established that Captain Lewis violated the Eighth Amendment by refusing to "take [Wade] to medical" despite Wade's protests that he was "bleeding all over . . . the place" from a cut on the hand, "leaking blood all over," and

[4] While *Aldridge* involved injuries suffered by a pretrial detainee, 753 F.2d at 972, there is no question that its holding identified an Eighth Amendment violation. *See id.* at 972–73 (applying *Estelle*'s Eighth Amendment framework); *Hamm v. DeKalb County*, 774 F.2d 1567, 1574 (11th Cir. 1985) (holding that "in regard to providing pretrial detainees with such basic necessities as . . . medical care[,] the minimum standard allowed by the due process clause is the same as that allowed by the eighth amendment for convicted persons"); *McElligott v. Foley*, 182 F.3d 1248, 1257 (11th Cir. 1999) (treating *Aldridge*'s pretrial detainee deliberate indifference analysis as an Eighth Amendment holding); Pet. App. 17a–21a (same).

leaving "a path of blood following us," Pet. App. 4a–5a. Had the Eleventh Circuit faithfully applied *Hope*'s "fair warning" standard, it would have held yes. After all, a 1.34-inch laceration producing "blood all over" and a "path of blood" during the entirety of Lewis and Wade's ten-minute interaction is equally (if not more) "serious" compared to a 1.5-inch cut producing a "pool of blood" that slowly accumulated over the course of two and half hours. *Estelle*, 429 U.S. at 104–05. *Compare* Pet. App. 4a–6a, *with Aldridge*, 753 F.2d at 971–72. And a prison guard who denies a prisoner's request to "take [him] to medical" by responding "don't ask me how to be a captain and [I] won't tell [you] how to be an inmate" and then leaving him handcuffed in a cell acts with equal (if not more) "deliberate indifference" compared to jail officers who "ignor[ed] a bleeding cut . . . because they were waiting for a detective to tell them what to do." *Estelle*, 429 U.S. at 104–05. *Compare* Pet. App. 4a–5a, *with Aldridge*, 753 F.2d at 972. "No reasonable officer could have concluded [otherwise]." *Hope*, 536 U.S. at 742 (quotation marks omitted).

Yet the panel below did conclude otherwise, and it held an "objectively reasonable officer" would have done the same. Pet. App. 3a. As the panel saw it, *Aldridge* merely stood for the proposition that "a defendant is not entitled to a qualified immunity defense when he . . . ignores a serious cut on an individual's head, which continued to bleed for two-and-a-half hours and form a puddle on the floor about the size of two hands." *Id.* at 18a. This case was different, it said, because (1) Wade suffered a cut "about the same size" to his hand instead of above his eye; (2) Wade's steady ten-minute bleed did not give Lewis "the benefit of extended observation" that the

Aldridge defendants had to confirm the injury was serious; (3) Wade never alleged that the "leaking . . . path of blood" he described as "all over" the place had "soaked his clothing or pooled on the floor of the SHU cell"; and (4) Lewis wrapped up his deliberate indifference by leaving Wade handcuffed in a cell near other officers[5] instead of delaying treatment "at a different location—a hospital." *Id.* at 18a–21a. These hairsplitting distinctions were enough to prompt Judge Tjoflat to write separately. *Id.* at 25a–28a. And they perfectly illustrate the "rigid, overreliance on factual similarity" that *Hope* squarely rejected.[6] 536 U.S. at 742.

4. The Eleventh Circuit's misguided practice of confining constitutional holdings to their precise facts extends well beyond this case and *Hope*. Circuit

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[5] These officers also failed to provide Wade any treatment. *See* Pet. App. 5a–6a, 6a n.4 (noting SHU officers denied Wade's renewed request "to go to the medical unit" and that Wade did not receive medical attention until he flagged down a nurse over seven hours later).

[6] Indeed, the Eleventh Circuit's narrow treatment of *Aldridge* has worsened since *Hope*, not improved. *Compare, e.g.*, *Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 1989) (citing *Aldridge* for the proposition that "[f]ailure to respond to a known medical problem can . . . constitute deliberate indifference"), *and McElligott*, 182 F.3d at 1257 (describing *Aldridge* as "reversing [a] directed verdict to officers who failed to provide [medical treatment] for pain caused by [a] bleeding cut"), *with Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1318 (11th Cir. 2010) (per curiam) (limiting *Aldridge* to a deliberate indifference holding "where [an] inmate had [a] bleeding cut [near] his eye with treatment delayed for two and a half hours"), *and* Pet. App. 18a (limiting *Aldridge* even further to a case involving a head cut that "continued to bleed for two-and-a-half hours and form a puddle on the floor about the size of two hands").

decisions abound upholding the "significant hurdle posed by [the] qualified immunity defense" based on nothing more than "[m]inor variations between cases." *Jacoby v. Baldwin County*, 835 F.3d 1338, 1343 (11th Cir. 2016); *Youmans*, 626 F.3d at 563; *see, e.g.*, *Corbitt v. Vickers*, 929 F.3d 1304, 1308, 1318 (11th Cir. 2019) (reversing denial of qualified immunity to police officer who intentionally "discharged his firearm at the family pet" without "necessity or any immediate threat or cause" and consequently shot a nearby child who was "lying on the ground obeying [the officer's] orders," because "[n]o case . . . holds that a temporarily seized person . . . suffers a violation of his Fourth Amendment rights when an officer shoots at a dog . . . and accidentally hits the person"), *cert. denied*, 141 S. Ct. 110 (2020); *Khokhar*, 884 F.3d at 1297 (defying *Hope*'s fair warning requirement by holding that "qualified immunity will be denied only if the preexisting law by case law or otherwise 'make[s] it *obvious* that the defendant's acts violated the plaintiff's rights in the specific set of circumstances at issue'" (emphasis added) (quoting *Youmans*, 626 F.3d at 563)); *Jones v. Fransen*, 857 F.3d 843, 851–52 (11th Cir. 2017) (same).[7] These repeated misapplications of the qualified immunity doctrine warrant this Court's review.

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[7] The *Jones* court borrowed its qualified immunity test from *Priester v. City of Riviera Beach*—a pre-*Hope* decision that imposed the "bright line" requirement *Hope* squarely rejected. 208 F.3d 919, 926 (11th Cir. 2000).

II. The Eleventh Circuit's Continued Reliance On Artificial Distinctions Deepens A Preexisting Circuit Split.

The Eleventh Circuit's regressive approach to qualified immunity deepens a preexisting circuit split. Rather than heeding this Court's repeated directive not to over-rely on "rigid . . . factual similarity," *Hope*, 536 U.S. at 742, and rather than joining the vast majority of other circuits that have gotten *Hope*'s message, the Eleventh Circuit is instead taking its cues from the recalcitrant Fifth Circuit.

1. As explained above, this Court has recently vacated two Fifth Circuit qualified immunity grants and rejected that court's myopic analysis of clearly established law in the process. *See Taylor*, 141 S. Ct. at 53 (denying qualified immunity to an officer that held a prisoner in a cell "teeming with human waste" despite the Fifth Circuit's observation that the prisoner endured that treatment "for only six days"); *see also McCoy*, 141 S. Ct. 1364. Yet, the Fifth and the Eleventh Circuits persist.

Mere months after this Court's second rebuke, the Fifth Circuit again applied its "incredibly narrow approach." *Cope v. Cogdill*, 3 F.4th 198, 218 (5th Cir. 2021) (Dennis, J., dissenting), *pet. for cert. docketed*, No. 21-783 (Nov. 24, 2021). In *Cope*, an officer watched a prisoner he knew was suicidal wrap a phone cord around his neck and strangle himself. *Id.* at 203 (majority opinion). The officer called for backup but neither entered the cell nor called 911. *Ibid.* Despite "now mak[ing] clear" that the officer's failure to call for medical assistance "constitutes unconstitutional conduct," the court nonetheless held that the law was not clearly established at the time. *Id.* at 209. The

difference between existing precedent and the *Cope* case? The officer "did *something*." *Ibid.* (emphasis in original).

Ignoring this Court's recent "warning . . . to tread more carefully," *Ramirez v. Guadarrama*, 2 F.4th 506, 522 (5th Cir. 2021) (Willett, J., dissenting from denial of rehearing en banc), the Fifth Circuit continues to embrace "an excessively narrow definition of the clearly established rights" prong of qualified immunity, *Cope*, 3 F.4th at 216 (Dennis, J., dissenting). And as Wade's case illustrates, the Eleventh Circuit has chosen to follow purblind where the Fifth Circuit has erroneously led.

2. In contrast, nine other circuits have faithfully followed this Court's precedent, refusing to hold that a case involving precisely the same facts is required for the law to be clearly established. *See, e.g.*, *Davis v. Clifford*, 825 F.3d 1131, 1136 (10th Cir. 2016) ("[Q]ualified immunity analysis involves more than a scavenger hunt for prior cases with precisely the same facts." (quotation marks omitted)). Several of these circuits have applied this approach to deny qualified immunity on facts that resemble the facts here.

The Ninth Circuit, in a similar medical deliberate indifference case, held that a prison nurse was "not entitled to qualified immunity simply because the very action in question ha[d] not previously been held unlawful." *Sandoval v. County of San Diego*, 985 F.3d 657, 680 (9th Cir. 2021) (quoting *Hope*, 536 U.S. at 739), *cert. denied*, 142 S. Ct. 711 (2021). A new inmate who was "sweating, tired, and disoriented" was given two "10-second blood sugar test[s]" and left "unattended for six hours" twenty feet from the nursing station. *Id.* at 679. He later died of his illness.

Unlike the Eleventh Circuit here, the Ninth Circuit refused to arbitrarily narrow its prior precedents or contrive factual distinctions, explaining that the proper "focus is on the standards governing the defendant's conduct, not legal arcana." *Id.* at 674. Having previously held that denying medical treatment for hours in a non-emergency situation was a constitutional violation, the court held that "every reasonable nurse" in that situation would have known that the defendant's actions were "constitutionally inadequate." *Id.* at 680; *see also Perez v. Cox*, 788 F. App'x 438, 444 (9th Cir. 2019) (denying qualified immunity to an officer who found an inmate in a pool of blood and merely talked to another officer while awaiting medical assistance "notwithstanding the absence of direct precedent" (quoting *Deorle v. Rutherford*, 272 F.3d 1272, 1285–86 (9th Cir. 2001))).

Similarly, the Seventh Circuit, in another medical deliberate indifference case, held that the "legal duty need not be litigated and then established disease by disease or injury by injury." *Estate of Clark v. Walker*, 865 F.3d 544, 553 (7th Cir. 2017). Where an inmate committed suicide—the risk of which the court explained was a "serious medical need"—and the attending officer did nothing, the court found a clearly established constitutional violation. *Ibid.* Again, unlike the Eleventh Circuit here, the Seventh Circuit refused the defendant's invitation to frame the constitutional right at issue at a "very high level of specificity" or litigate each factual distinction. *Id.* at 552–53. Rather, the court held that the "particular conduct" violated the clearly established law that a prisoner had a right to be free from "deliberate indifference to suicide." *Id.* at 551, 553 (quotation

marks omitted); *see also Phillips v. Cmty. Ins. Corp.*, 678 F.3d 513, 528 (7th Cir. 2012) ("There is no need that the very action in question have previously been held unlawful." (quotation marks omitted)).

Even beyond the context of deliberate medical indifference, the remaining circuits apply this Court's precedent consistently and faithfully.

The Tenth Circuit refused to grant an officer who "indiscriminately discharged pepper spray" into an inmate's cell qualified immunity merely because it "found no case discussing the use of pepper spray in a truly analogous situation." *DeSpain v. Uphoff*, 264 F.3d 965, 979–80 (10th Cir. 2001). It held instead that cases "addressing the use of chemical agents against a single individual are sufficiently analogous to a general discharge of pepper spray to constitute clearly established law." *Ibid.* The Second Circuit denied qualified immunity to officers who exposed an inmate to radon gas, finding that the "contours of the right" to be free from exposure to toxic substances were clearly established by similar cases involving "the right to be free from friable asbestos." *Vega v. Semple*, 963 F.3d 259, 276–77 (2d Cir. 2020) (quotation marks omitted). And the Eighth Circuit, relying on previous "overly-tight handcuff[]" precedent, denied an officer qualified immunity where he held a shirtless detainee down on hot asphalt because those cases "clearly establish[ed] that it is unreasonable to ignore a person's complaints of pain resulting from an officer's use of force." *Howard v. Kan. City Police Dep't*, 570 F.3d 984, 991–92 (8th Cir. 2009).

The First, Third, Fourth, and Sixth Circuits have reached similar conclusions. *See, e.g.*, *Suboh v. Dist. Attorney's Office of Suffolk Dist.*, 298 F.3d 81, 94 (1st

Cir. 2002) ("We have no doubt that there is a clearly established constitutional right at stake, although we have found no case exactly on all fours with the facts of this case. The difference in contexts in which the right is discussed in the case law does not mean such a right does not exist."); *Kane v. Barger*, 902 F.3d 185, 195 (3d Cir. 2018) ("[W]e do not require a case directly mirroring the facts at hand, so long as there are sufficiently analogous cases that should have placed a reasonable official on notice that his actions were unlawful." (quotation marks omitted)); *Dean ex rel. Harkness v. McKinney*, 976 F.3d 407, 419 (4th Cir. 2020) ("[W]hile the courts have yet to consider a case where an officer engaged in the same conduct as [this officer], he is not absolved of liability solely because the court has not adjudicated the exact circumstances of his case."), *cert. denied*, 141 S. Ct. 2800 (2021); *Hopper v. Plummer*, 887 F.3d 744, 754 (6th Cir. 2018) ("[W]e have cautioned against taking too cramped a view of our precedent . . . .").

Despite the correct approach adopted by these nine circuits, the Fifth and Eleventh Circuits' obstinacy ensures that the "day-to-day practice" of the "clearly established standard is neither clear nor established" across all circuits. *Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part, dissenting in part) (quotation marks omitted), *cert. denied*, 141 S. Ct. 110 (2020). This Court's review is warranted to set these errant circuits straight before their error spreads and otherwise clearly established constitutional violations, like the one Wade suffered, go without redress.

III. This Case Presents An Ideal Vehicle To Reaffirm The Court's "Clearly Established" Qualified Immunity Analysis.

This case presents an ideal opportunity to correct a wayward circuit that continues to misapply the "clearly established" inquiry. The record is simple, with no factual questions in dispute. The only question concerns the Eleventh Circuit's reliance on razor-thin factual distinctions to deny liability. And the decision below provides as clear an example as any of that court's troubling commitment to this approach.

Importantly, granting review here does not require this Court to rehash the contours of qualified immunity or re-litigate the doctrine's merits. Rather, granting certiorari will allow this Court once more to harmonize the Eleventh Circuit's jurisprudence with this Court's and other circuits' precedent. Just as importantly, review here would help ensure that the Constitution's fundamental guarantees are enforced against government officials who had fair warning of those commands but chose to disregard them.

CONCLUSION

For the foregoing reasons, the Court should grant the petition. Alternatively, if the Court determines that plenary review is not warranted, it should summarily reverse.

Respectfully submitted.

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED SEPTEMBER 17, 2021

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11962

D.C. Docket No. 1:16-cv-03691-AT

CHARLES WADE,

Plaintiff-Appellee,

versus

UNITED STATES OF AMERICA, et al.,

Defendants,

GORDON LEWIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

September 17, 2021, Decided;
September 17, 2021, Filed

Before BRANCH, GRANT, and TJOFLAT, Circuit Judges.

BRANCH, Circuit Judge:

While he was incarcerated in a federal prison, Charles Wade punched another inmate and seriously injured him. Either because of the punch, or while opening cans of vegetables moments later, Wade cut his hand, which caused bleeding. After the victim identified Wade as the assailant, a prison officer, Captain Gordon Lewis, escorted Wade for to a holding cell for further investigation. During that approximately ten-minute escort, Wade's hand continued to bleed, and he asked Lewis whether he would be taken to the medical unit. Although Captain Lewis declined to answer, he left Wade in the custody of other officers in a cell that was located three feet from the prison's medical examination room. Captain Lewis then departed the scene. Unfortunately for Wade, it was not until several hours later that a prison nurse provided initial medical care for his wound. Eventually, Wade was transferred to a hospital where he received treatment for a broken bone and partially-severed tendon.

Wade sued several prison officials, including Lewis, alleging that the delay in treatment amounted to deliberate indifference to a serious medical need. Captain Lewis asserted a qualified immunity defense, which the district court denied. Relevant here, on summary judgment, the district court denied qualified immunity to Captain Lewis because, in its view, our decision in *Aldridge v. Montgomery*, 753 F.2d 970 (11th Cir. 1985) (per curiam),

clearly established that Captain Lewis's failure to ensure that Wade received prompt medical treatment violated Wade's constitutional rights. Captain Lewis appeals, arguing that his case is materially distinguishable from *Aldridge*. Thus, he contends that the law was not clearly established, and the district court erred in denying him qualified immunity.

After careful consideration and with the benefit of oral argument, we agree with Captain Lewis and conclude that *Aldridge* did not place an objectively reasonable officer in Captain Lewis's position on notice that his conduct was unconstitutional. Accordingly, because Captain Lewis was entitled to qualified immunity, we reverse the district court's decision.

I. BACKGROUND

A. Factual Background

Wade was a federal inmate at the United States Penitentiary in Atlanta, Georgia ("USP-Atlanta"). On October 15, 2014, Wade was assigned to work in food service and was preparing for the lunchtime meal. At approximately 1:35 p.m., Wade got into an altercation with another inmate and punched that inmate in the face. Wade's punch knocked the other inmate unconscious, the inmate fell to the floor, and Wade walked away to open cans of vegetables. Wade claims to have cut his hand while opening one of the cans.[1] He went to the restroom to wash

1. Wade gave inconsistent explanations for how he cut his hand. In addition to claiming that he cut it on a can of vegetables, Wade

his hands and believed that he had stopped the bleeding. However, the wound continued to cause him pain.

Six minutes later, at approximately 1:41 p.m., Bureau of Prisons ("BOP") staff observed Wade's victim lying on the floor behind the food service area. A BOP officer triggered a radio body alarm, notifying all USP-Atlanta personnel of an emergency in the food service hall. A second BOP officer arrived and characterized the scene as "dangerous" because there were approximately 250 inmates in a "small space." This second officer also observed that the injured inmate's lip was bleeding profusely and "dripping blood all over the ground." The injured inmate indicated that he was assaulted by Wade.

An officer then approached Wade and saw that his right hand was wounded in a manner consistent with an injury from a recent fight and was bleeding. Gordon Lewis, then serving as Acting Captain, also reported to the food service area in response to the alarm. Captain Lewis handcuffed Wade and escorted him to the Special Housing Unit ("SHU").[2] As he was being escorted to the SHU, Wade asked Captain Lewis, "you're not going to

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later told a nurse that he cut his hand "on a box." How Wade cut his hand is not ultimately relevant, as it is undisputed that Wade cut his hand, and the cut caused him to bleed.

2. Inmates suspected of fighting are typically separated from the rest of the inmate population for their safety and for the safety of others. *See* BOP Program Statement 5270.10, https://www.bop.gov/policy/progstat/5270_010.pdf (July 29, 2011). Therefore, Wade was placed in the SHU pending the outcome of an investigation into whether he fought with the other inmate.

take me to medical?" and Captain Lewis responded, "don't ask me how to be a captain and [I] won't tell [you] how to be an inmate." Wade then told Captain Lewis, "okay . . . you know, I'm bleeding all over this, you know, the place." According to Wade, as he was being escorted to the SHU, he was "leaking blood all over," and there was "a path of blood following us."

The SHU and the main medical unit are in the same building. Medical staff determine how and when to treat inmates and, unless it is a medical emergency, there is no typical amount of time for medical staff to respond to an inmate's injury. Regardless of how an inmate receives an injury, "medical staff needs to be notified."

Wade was taken to the SHU where he could be medically assessed. When Wade arrived there at approximately 1:50 p.m., he was placed in a holding cell that had a wire mesh door. According to Wade, that was "the last time [he] saw [Captain Lewis]." Wade's holding cell was "no more than three feet from the medical exam room where medical staff rendered medical care to SHU inmates."

Once Wade was in the holding cell, a different SHU officer removed Wade's handcuffs.[3] Soon after he was placed in the holding cell, Wade asked SHU officers if he was going to go to the medical unit, but the officers

3. Wade claimed that he saw Captain Lewis "intimidating" other SHU officers by "giving orders" before leaving the SHU in order to prevent Wade from receiving medical attention, but he admitted that he did not hear any words uttered by Captain Lewis.

told him he needed to wait. Sometime between 2:01 and 2:04 p.m., three photographs were taken of Wade's right hand, two of which showed some blood, but that it was "tapering off."

Wade was "bleeding all that time" from when he was placed in the SHU until he got the attention of a USP-Atlanta medical employee, Nurse Ashley Inniss, several hours later.[4] According to Nurse Inniss's clinical notes, she took Wade to the medical exam room where she noted a 3.4 cm (or 1.34 inch) laceration on his right hand near the thumb, cleaned the wound with soap, water, and wound cleaner, applied a topical antibiotic, and covered it with steri-strips and gauze. The clinical notes also indicate that Nurse Inniss prescribed Motrin, instructed Wade about signs of infection, and told him to notify medical staff if any of those signs materialized. Thus, Nurse Inniss's clinical encounter notes document that an "MD [was] notified" and "Staff [were] notified to follow up with inmate."

The next morning, Wade noticed swelling in his hand and put in sick call requests to medical staff, but he did not receive treatment until a day later when he got the attention of an officer walking by. Nurse Stanley Coleman then examined Wade at 3:24 p.m. on October 17, 2014. Nurse Coleman changed the dressing on the

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4. In his deposition, Wade testified that he saw Nurse Inniss "like, two, three hours later." But Nurse Inniss testified that she completed a Clinical Encounter form immediately after examining Wade, and that form indicated that she examined him at 9:35 p.m. on October 15, 2014.

"deep laceration," noted swelling and a decreased range of motion in Wade's right hand, and documented that Wade reported his pain as a ten on the pain scale. Nurse Coleman then immediately ordered that Wade be transported to Atlanta Medical Center ("AMC").

At 6:40 p.m., Wade was transported to AMC's emergency room. There, Wade received an x-ray at 12:41 a.m., which revealed that he "had a broken bone in his hand" and that the fracture was "intra-articular," *i.e.*, "inside the metacarpal phalangeal joint between the hand and the finger, the little finger." The 3.4-cm laceration went all the way down to the broken bone, partially cutting the tendon. This wound was consistent with a "fight bite," which occurs when a wound becomes infected based on "difficult-to-control bacteria in the mouth." At 8:53 a.m. the next morning, Dr. Howard McMahan performed an irrigation and debridement of the wound, which involved washing the wound with saline solution, cutting the skin with a scalpel, removing any "devitalized tissue and any pus," scraping out any foreign material from the subcutaneous tissue, irrigating the wound thoroughly, assessing the tendon to make sure it is functional, looking at the bone to make sure it does not need "any kind of fixation," placing a drain, and then closing the wound.

According to Dr. McMahan, the open wound nature of the "fight bite" injury combined with the delay of getting treatment increased the risk of infection to Wade's hand. He added that the infection would have been less likely to occur if Wade avoided the fight, avoided hitting the other inmate in the mouth, or had the wound cleaned

shortly after his injury with antibiotics. After his surgery, Wade was returned to USP-Atlanta where he received medication for pain.

B. Procedural History

Wade, proceeding *pro se*, filed a complaint against Captain Lewis under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).[5] Wade alleged that Captain Lewis was deliberately indifferent to his serious medical needs, in violation of the Eighth Amendment. The district court appointed counsel on Wade's behalf.

After discovery, Captain Lewis moved for summary judgment. First, Captain Lewis argued that he was not deliberately indifferent to Wade's serious medical needs because there was no evidence that he was aware of Wade's serious medical needs and disregarded the risk of serious harm to Wade. He further argued that he was not the cause of any delay or denial of treatment to Wade. Second, Captain Lewis argued that he was entitled to qualified immunity. He contended that he did not violate Wade's Eighth Amendment rights by taking Wade to the SHU instead of the medical unit. He also maintained that

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5. Wade also sued the United States, two health care professionals at USP-Atlanta, and the warden. His complaint also brought claims against all defendants under the Federal Tort Claims Act ("FTCA"). The district court dismissed those defendants and Wade's FTCA claims as barred by the Inmate Accident Compensation Act. The dismissal of those claims and defendants is not at issue in this appeal.

there was no clearly established law that would put him on notice "that placing an inmate in the SHU after a fight with another inmate rather than taking the inmate to the Medical Unit was a constitutional violation."

A magistrate judge issued a report and recommendation ("R&R"), recommending the denial of Captain Lewis's summary judgment motion. First, the magistrate judge determined that that there was a genuine dispute of material fact concerning the alleged constitutional violation: whether Captain Lewis was deliberately indifferent to Wade's serious medical needs. Because Wade shed an indeterminate amount of blood and suffered a broken bone and partially severed tendon, the magistrate judge reasoned that a jury could find that Wade's injury was so obvious that a lay person would recognize the need for medical attention. The magistrate judge also determined that there was a dispute of material fact concerning Captain Lewis's knowledge of the seriousness of the medical need because Captain Lewis may have seen the blood, and Wade brought his bleeding injury to Captain Lewis's attention. Further, the magistrate judge determined that there was a genuine issue of material fact concerning whether Captain Lewis caused the delay in treatment to Wade because a reasonable jury could infer that Captain Lewis failed to notify medical staff about Wade's injury. And second, the magistrate judge concluded that our decision in *Aldridge* clearly established that Captain Lewis's actions would violate Wade's constitutional rights. Accordingly, the magistrate judge recommended denying Captain Lewis's motion for summary judgment.

The district court adopted the magistrate judge's R&R over Captain Lewis's objections. Captain Lewis timely appealed.

II. STANDARD OF REVIEW

We review the district court's denial of qualified immunity on a motion for summary judgment *de novo*. *Lee v. Ferraro*, 284 F.3d 1188, 1190 (11th Cir. 2002). We review the evidence in the light most favorable to the nonmovant. *Smith v. Fla. Dep't of Corr.*, 713 F.3d 1059, 1063 (11th Cir. 2013). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Smith*, 713 F.3d at 1063.

III. DISCUSSION

This appeal presents two questions. First, whether Captain Lewis's qualified immunity appeal revolves solely around a factual dispute such that we do not have jurisdiction to consider it. Second, if we do have jurisdiction, whether it was clearly established that Captain Lewis's conduct violated Wade's constitutional rights. We address each issue in turn.

A. Jurisdiction

Wade argues that we lack jurisdiction over this appeal because Captain Lewis asks us to resolve only factual disputes concerning the denial of his motion for summary judgment for qualified immunity, which is not

an immediately appealable final decision. According to Wade, Captain Lewis presents only factual challenges to the nature of Wade's injury, the extent of his subjective knowledge of the severity of Wade's injury, and the district court's failure to analyze other factors that caused the delay in treatment. Captain Lewis responds that his appeal concerns an appealable issue of law about qualified immunity: whether the undisputed facts in the record showed a violation of clearly established law. Captain Lewis is correct and, therefore, we have jurisdiction to hear his appeal.

"In general, 'we are . . . barred from entertaining appeals of non-final orders.'" *Spencer v. Benison*, 5 F.4th 1222, 1229 (11th Cir. 2021) (quoting *Hall v. Flournoy*, 975 F.3d 1269, 1274 (11th Cir. 2020)); *see* 28 U.S.C. § 1291 ("The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . ."). "But under the 'collateral order doctrine,' we may review some determinations, including certain denials of qualified immunity even though the underlying case is still ongoing in the trial court." *Id.* (quotation omitted) (alteration adopted). In particular, we may consider purely legal questions that "concern[] only the application of established legal principles to a given set of facts." *Koch v. Rugg*, 221 F.3d 1283, 1296 (11th Cir. 2000) (quotation omitted); *see Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985) ("[A] district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment."); *see*

also Cottrell v. Caldwell, 85 F.3d 1480, 1485 (11th Cir. 1996) (holding that we have jurisdiction when "the denial is based even in part on a disputed issue of law"). However, we lack jurisdiction over appeals that involve "only . . . issues of evidentiary sufficiency." *Spencer*, 5 F.4th at 1229; *see also Cottrell*, 85 F.3d at 1485 ("[W]e lack interlocutory appellate jurisdiction . . . [when] the sole issues on appeal are issues of evidentiary sufficiency."). An issue of evidentiary sufficiency arises "when a defendant's only challenge to the denial of qualified immunity is that the record did not contain sufficient facts to conclude that the defendant violated the plaintiff's rights." *Hall*, 975 F.3d at 1275 (emphasis omitted).

Captain Lewis's appeal presents a pure question of law. He does not challenge the district court's determination that genuine disputes of material fact precluded summary judgment on the question of whether he was deliberately indifferent. Rather, Captain Lewis argues that the district court erred when it determined that it was clearly established that his actions violated Wade's constitutional rights. To that end, Captain Lewis relies on undisputed material facts in the record to show that his case is distinguishable from *Aldridge*—the only authority that the district court and Wade identify for the proposition that the law was clearly established. Captain Lewis argues that, even if the undisputed facts are construed in a light most favorable to Wade, those undisputed facts distinguish this case from *Aldridge* and, thus, the district court erred in denying him qualified immunity on the ground that Captain Lewis's conduct violated clearly established law. In other words, Captain Lewis's appeal "concerns only the

application of established legal principles to a given set of facts." *Koch*, 221 F.3d at 1296 (quotation omitted); *see also Plumhoff v. Rickard*, 572 U.S. 765, 773, 134 S. Ct. 2012, 188 L. Ed. 2d 1056 (2014) (explaining that defendants "raise[d] legal issues" when they "contend[ed] that their conduct did not violate the Fourth Amendment and, in any event, did not violate clearly established law"). Accordingly, we have jurisdiction over Captain Lewis's appeal.

B. Clearly Established Law

Next, we address the central question raised in this appeal, namely: whether our decision in *Aldridge* clearly established that Captain Lewis's conduct violated Wade's constitutional rights. Captain Lewis argues that key factual differences between this case and *Aldridge* demonstrate that the law was not clearly established and, thus, he is entitled to qualified immunity. Wade contends not only that this case is indistinguishable from *Aldridge*, but also that Captain Lewis's conduct was more egregious than that of the defendants in *Aldridge*. For the reasons that follow, we agree with Captain Lewis and, therefore, we reverse the district court's decision.

The Eighth Amendment forbids "cruel and unusual punishments." U.S. Const. amend. VIII. A prison official's "deliberate indifference to serious medical needs of prisoners" constitutes cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). To establish an Eighth Amendment claim for deliberate indifference to a serious medical need, a plaintiff must satisfy three elements. First, a plaintiff

must show that he had an objectively serious medical need. *Goebert v. Lee Cnty.*, 510 F.3d 1312, 1326 (11th Cir. 2007). Second, a plaintiff must show that a prison official acted with deliberate indifference to his serious medical need. *Id.* And third, a plaintiff must show that his injury was caused by a prison official's wrongful conduct. *Id.*

Under the doctrine of qualified immunity, "government officials performing discretionary functions[] generally are shielded from liability [or suit] for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); *Echols v. Lawton*, 913 F.3d 1313, 1319 (11th Cir. 2019) (same). The parties do not dispute that Captain Lewis was acting as a government official and carrying out a discretionary function.

"After a government official has demonstrated that the conduct at issue falls within the discretionary job responsibilities of the officer, a plaintiff must meet two requirements before qualified immunity may be rejected." *Hall*, 975 F.3d at 1275. First, a plaintiff must show "that the official violated [his] statutory or constitutional right." *Echols*, 913 F.3d at 1319 (quotation omitted); *Hall*, 975 F.3d at 1275 (same). Second, a plaintiff must show "that the right was 'clearly established' at the time of the challenged conduct." *Echols*, 913 F.3d at 1319 (quotation omitted); *Hall*, 975 F.3d at 1275 (same). Ordinarily, we decide "which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the

particular case at hand." *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009). Here, because the district court determined that genuine issues of material fact precluded summary judgment on the first prong of the qualified immunity analysis, we address only the question of whether a right was clearly established at the time of the challenged conduct.

Under the clearly established prong, the dispositive question is whether the law at the time of the challenged conduct gave the government official fair warning that his conduct was unconstitutional. *Hope v. Pelzer*, 536 U.S. 730, 741, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002); *Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019) ("For a right to be clearly established, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." (quotation omitted) (alteration adopted)). The "law is clearly established if the preexisting law dictates, that is, truly compels, the conclusion for all reasonable, similarly situated public officials that what Defendant was doing violated Plaintiffs' federal rights in the circumstances." *Evans v. Stephens*, 407 F.3d 1272, 1282 (11th Cir. 2005) (en banc) (quotation omitted) (alteration adopted); *District of Columbia v. Wesby*, 138 S. Ct. 577, 589, 199 L. Ed. 2d 453 (2018) ("'Clearly established' means that, at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." (quotation omitted)). Thus, we consider what an "objectively reasonable official must have known at the pertinent time and place" and ask "whether it would be clear to a reasonable officer that his conduct was unlawful

in the situation the defendant officer confronted." *Youmans v. Gagnon*, 626 F.3d 557, 563 (11th Cir. 2010) (per curiam) (quotation omitted) (alteration adopted).

A plaintiff can show that the contours of a right were clearly established in one of three ways. First, a plaintiff can point to a "materially similar case that has already been decided." *Echols*, 913 F.3d at 1324 (quotation omitted); *Goebert*, 510 F.3d at 1330 (same). The case need not be "directly on point," but the "existing precedent must have placed the constitutional question beyond debate." *Echols*, 913 F.3d at 1324 (quotation omitted) (alteration adopted). Additionally, because "judicial precedents are tied to particularized facts," *Corbitt*, 929 F.3d at 1312 (quotation omitted), "[m]inor variations between cases may prove critical," *Youmans*, 626 F.3d at 563. Second, a plaintiff can point to a "a broader, clearly established principle that should control the novel facts of the situation." *Echols*, 913 F.3d at 1324 (quotation omitted). But a broader principle "must establish with obvious clarity that in the light of pre-existing law the unlawfulness of the official's conduct is apparent." *Id.* (quotation omitted) (alteration adopted); *Goebert*, 510 F.3d at 1330 ("The more general the statement of law is that puts the official on notice, the more egregious the violation must be before we will find that the official is not entitled to qualified immunity."). And third, a plaintiff can show that "the conduct involved in the case may so obviously violate the Constitution that prior case law is unnecessary." *Echols*, 913 F.3d at 1324 (quotation omitted) (alteration adopted). "This narrow category encompasses those situations where the official's conduct lies so obviously at the very core of

what the relevant constitutional provision prohibits that the unlawfulness of the conduct was readily apparent to the official, notwithstanding the lack of case law." *Id.* at 1325 (quotation omitted).

Our analysis begins with *Aldridge*, which Wade asserts is a factually similar case that clearly establishes that Captain Lewis's conduct violated Wade's constitutional rights. In *Aldridge*, several defendant police officers "scuffle[d]" with the plaintiff during his arrest, resulting in a 1.5-inch cut above the plaintiff's right eye. 753 F.2d at 971. The plaintiff was then placed in a county jail cell where the jailer, whose responsibility it was "to advise the officer in charge when someone might need medical treatment," informed the detective in charge that the plaintiff required medical care. *Id.* at 971, 973. Nevertheless, the officers ignored the plaintiff for two-and-a-half hours, during which time "[t]he cut continued to bleed, forming a pool of blood on the floor approximately the size of two hands." *Id.* at 971. Later, the plaintiff was taken to the hospital where he received six stitches, and the doctors instructed the defendants to give the plaintiff icepacks and aspirin to treat the wound. *Id.* But the defendants never provided the icepacks or aspirin. *Id.*

The plaintiff sued the officers under 42 U.S.C. § 1983, alleging that they were deliberately indifferent to his serious medical needs, in violation of the Eighth Amendment. *Id.* at 971-72. The district court entered a directed verdict in favor of the defendants on the issue of deliberate indifference. *Id.* at 971. We reversed because "opposing contentions [on the issue of deliberate

indifference] could not be resolved by a directed verdict." *Id.* at 973.

In subsequent years, we have read *Aldridge* as holding that a defendant is not entitled to a qualified immunity defense when he: (1) ignores a serious cut on an individual's head, which continued to bleed for two-and-a-half hours and form a puddle on the floor about the size of two hands, or (2) ignores a doctor's instructions for treating an injury. *See Youmans*, 626 F.3d at 565 (noting that in *Aldridge* "we denied qualified immunity to a defendant who delayed treatment of a serious bleeding cut for approximately two and a half hours"); *Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1318 (11th Cir. 2010) (describing *Aldridge* as "finding deliberate indifference whe[n an] inmate had [a] bleeding cut [above] his eye with treatment delayed for two and a half hours"); *McElligott v. Foley*, 182 F.3d 1248, 1257 (11th Cir. 1999) (noting that *Aldridge* "revers[ed] [a] directed verdict to officers who failed to provide ice pack and aspirin for pain caused by [a] bleeding cut"); *Brown v. Hughes*, 894 F.2d 1533, 1538 (11th Cir. 1990) (explaining that *Aldridge* held that a "two and a half hour delay in treatment for a bleeding cut [above] the eye [was] actionable"). Accordingly, we must determine whether Captain Lewis's conduct is "materially similar" to the conduct of the defendants in *Aldridge*. *See Echols*, 913 F.3d at 1324 (quotation omitted).

Several critical facts materially distinguish this case from *Aldridge*. First, the nature of the injuries is different. In *Aldridge*, the plaintiff suffered an injury to his head—one of the most sensitive areas of the human

body—whereas here, Wade suffered an injury to his hand. Considering that both cuts were about the same size, the injury to a bodily extremity, such as Wade's hand, is less serious than the injury in *Aldridge*.

Second, there is a substantial difference between what the defendants observed about the plaintiff's wound in each case. In *Aldridge*, the defendants observed that the plaintiff continued to bleed for two-and-a-half hours while in their custody. Thus, their awareness of the seriousness of the injury increased over time and was readily apparent. Here, all that can be said is that Captain Lewis was aware that Wade's hand was still bleeding during a brief 10-minute escort to the SHU, at which point he left Wade in the custody of other personnel.[6] That is to say, Captain Lewis did not have the benefit of extended observation like the defendants in *Aldridge*.

Third, the quantity of blood is different. Although Wade testified that he told Captain Lewis that he was

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6. Both the magistrate judge and the district court imputed to Captain Lewis knowledge of the broken bone and partially-severed tendon. That determination was error. Courts are to consider what an "objectively reasonable official must have known at the pertinent time and place." *Youmans*, 626 F.3d at 563; *id.* at 564 n.8 ("[T]he proper test is whether a lay person would easily recognize the need as serious. In addition, that a medical need might be recognizable by a trained medical professional, such as a nurse, is not enough. Instead, the need for immediate medical assistance must have been apparent to the untrained eye of a layperson."). An objectively reasonable officer who is not medically trained cannot diagnose such injuries while escorting a prisoner to a cell. Even Nurse Inniss, who was the first medical professional to examine Wade, did not recognize that Wade suffered from a broken bone and partially-severed tendon.

"leaking" an indeterminate amount of blood "all over" and leaving a "path of blood" as they walked, Wade has never alleged that the blood soaked his clothing or pooled on the floor of the SHU cell, as was the case in *Aldridge*. To the contrary, by Wade's own admission, the blood was "tapering off" almost immediately after he and Captain Lewis completed their 10-minute walk to the SHU. Perhaps most importantly, it is undisputed that Captain Lewis left the SHU shortly after Wade arrived there and, thus, Captain Lewis did not observe a puddle of blood—a puddle that Wade never alleges even existed.[7] "Critical to our decision in [*Aldridge*] was that the plaintiff's cut bled continuously [for over two hours], causing blood to pool on the plaintiff's clothing and the floor." *Youmans*, 626 F.3d at 565. Those facts are critical also to our decision today because they are noticeably absent here.

Fourth, and finally, Captain Lewis left Wade under the supervision of other personnel who were equipped to treat Wade. Shortly after Captain Lewis and Wade reached the cell, other USP-Atlanta officers arrived, removed Wade's handcuffs, and took custody of him. Wade's holding cell was no more than three feet from the medical exam room where medical staff rendered medical care to SHU inmates. These circumstances stand in stark contrast to those in *Aldridge*, when the defendants were informed that the plaintiff required medical attention at

7. Although our analysis is limited to what an objectively reasonable officer in Captain Lewis's position would have known, we note that Wade never alleged that, after he reached the SHU cell and the blood began to "taper[] off," he continued to bleed for hours or that his blood pooled in the cell.

a different location—a hospital—but ignored that need for two-and-a-half hours.[8]

Taking all these important factual distinctions together, we have no difficulty concluding that it would not have been clear to an objectively reasonable officer in Captain Lewis's situation that his conduct violated clearly established law. *See Youmans*, 626 F.3d at 563.

Our conclusion is strengthened by our decision in *Youmans*. In *Youmans*, the plaintiff was beaten in connection with his arrest for robbery, leaving "visible abrasions on his head, face, shoulder, elbow, and hand." 626 F.3d at 561. Plaintiff was then detained at a police station for four hours while officers interviewed and booked him. *Id.* During that time, the plaintiff complained

8. Captain Lewis correctly notes that the reason for a delay in medical treatment might be relevant in determining whether the law was clearly established. In the deliberate indifference inquiry, "[t]he tolerable length of delay in providing medical attention depends on the nature of the medical need and the reason for the delay." *Harris v. Coweta Cnty.*, 21 F.3d 388, 393-94 (11th Cir. 1994); *see also Youmans*, 626 F.3d at 564 (noting that "the reason for the delay must weigh in the [deliberate indifference] inquiry"). Thus, a defendant might be able to show that his case is materially distinguishable from a prior case that held that a delay in medical treatment was intolerable and amounted to a constitutional violation in a particular factual scenario. Here, Captain Lewis argues that the delay was justified by the fact that USP-Atlanta was on lockdown, officers had to secure 250 inmates, and prison officials had to tend to Wade's victim. But the record evidence does not establish whether these considerations played a role in the delay in treatment of between two-to-seven hours. Without knowing more, we decline to consider the reason for the delay in our analysis.

of pain, "appeared to be disoriented," told officers he had "'cracked something' in his hand," reported blurred vision, and "blood was visible." *Id.* The plaintiff was later taken to a hospital where he was diagnosed with "with injuries consistent with blunt trauma" and prescribed medications and scheduled for follow-up treatment. *Id.* at 562. The plaintiff later sued the officers for deliberate indifference. In reversing the district court's denial of qualified immunity and analyzing whether there was clearly established law, we distinguished *Aldridge*. We explained that in *Aldridge*, "we denied qualified immunity to a defendant who delayed treatment of a serious bleeding cut for approximately two and a half hours." *Id.* at 565. And we noted that "[c]ritical to our decision in that case was that the plaintiff's cut bled continuously during that time, causing blood to pool on the plaintiff's clothing and the floor." *Id.* We then explained that:

> [n]othing in the record in the present case shows that Plaintiff's cuts bled while in Defendant's custody . . . . Significant, sustained bleeding requiring later stitches is a far greater indicator of a need for urgent medical care than the mere presence of cuts and bruises as in the present case. This factual variance is the kind of variation between cases that makes a critical difference in determining whether the applicable law was already clearly established at the time the occurrence underlying this case arose. We cannot say that *Aldridge* would provide an objective police officer with adequate advance notice that the conduct at issue in this

> case would violate Plaintiff's constitutional rights.

Id. at 565-66 (internal citation omitted). Although Wade's cut was bleeding while he was in Captain Lewis's custody, nothing in the record supports the inference that, during Captain Lewis's brief interaction with Wade, Wade's cut bled so continuously or profusely that it rose to the level of the circumstances in *Aldridge*. Thus, the facts "[c]ritical to our decision" in *Aldridge* were absent in *Youmans* and are absent here.[9]

Wade argues that, even apart from *Aldridge*, the law was clearly established at a higher level of generality. Specifically, he submits that on the date of his injury, it was clearly established that "[u]nder the Eighth Amendment, prisoners have a right to receive medical treatment for their illnesses and injuries." *Taylor v. Hughes*, 920 F.3d 729, 732-33 (11th Cir. 2019) (citing *Estelle*, 429 U.S. at 104). By pointing to "a broader, clearly established principle that should control the novel facts of the situation," Wade has the burden of showing that the broad principle established "with obvious clarity that in the light of pre-existing law the unlawfulness of the official's conduct is

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9. Wade contends that this case is more "egregious" than *Aldridge* because he suffered a broken bone, partially torn tendon, bacterial infection, and required surgery. We reject this argument for two reasons. First, the relevant question is what was known by an objectively reasonable officer in Captain Lewis's situation, and there is no evidence that he was aware of the extent of Wade's injury. And second, as we have explained, Wade's injury was less severe than the injury in *Aldridge*.

apparent." *Echols*, 913 F.3d at 1324 (quotation omitted) (alteration adopted); *cf. Priester v. City of Riviera Beach*, 208 F.3d 919, 926 (11th Cir. 2000) ("[A] plaintiff must show that the official's conduct was so far beyond the hazy border between excessive and acceptable force that the official had to know he was violating the Constitution even without caselaw on point." (quotation omitted) (alteration adopted)). Wade cannot meet his burden here. Nothing about this case suggests that it is "obvious" that Captain Lewis violated Wade's "right to receive medical treatment for [his] . . . injur[y]," *Taylor*, 920 F.3d at 732-33, when he escorted Wade for 10 minutes to the SHU cell located three feet from a medical examination room and left him in the custody of other officers.

* * *

In determining whether the law was clearly established for purposes of qualified immunity, we have explained that "judicial precedents are tied to particularized facts," *Corbitt*, 929 F.3d at 1312 (quotation omitted), and "[m]inor variations between cases may prove critical," *Youmans*, 626 F.3d at 563. Thus, district courts are obliged to analyze carefully whether "preexisting law dictates, that is, truly compels, the conclusion for all reasonable, similarly situated public officials that what Defendant was doing violated Plaintiffs' federal rights in the circumstances." *Evans*, 407 F.3d at 1282 (quotation omitted) (alteration adopted). Here, the district court failed to undertake this careful analysis, and *Aldridge* does not clearly establish that Captain Lewis violated Wade's constitutional right. Accordingly, Captain Lewis is entitled to qualified immunity.

IV. Conclusion

For these reasons, we reverse the district court's order denying Captain Lewis's motion for summary judgment on the ground that he is entitled to qualified immunity.

REVERSED.

TJOFLAT, Circuit Judge, concurring:

I agree with the court that defendant Lewis is entitled to qualified immunity, but I write separately to highlight why we have jurisdiction over this appeal and to suggest that the qualified immunity analysis is simpler than the court suggests.

When a district court denies qualified immunity on a summary judgment motion, this Court has jurisdiction over that appeal "to the extent that it turns on an issue of law" because it "is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291." *Hunter v. City of Leeds*, 941 F.3d 1265, 1271 n.2 (11th Cir. 2019) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S. Ct. 2806, 2817, 86 L. Ed. 2d 411 (1985)). In reviewing such an appeal of qualified immunity, we "review the denial of summary judgment based on qualified immunity *de novo*, viewing the facts in the light most favorable to the nonmovant." *Id.* at 1274 n.8 (citing *Salvato v. Miley*, 790 F.3d 1286, 1292 (11th Cir. 2015)).

In this case, Wade is the nonmoving party, so we are required to draw all factual inferences in his favor.

We do that to create a "purely legal question." *Mitchell*, 472 U.S. at 530, 105 S. Ct. at 2817. The record contains the following relevant facts: 1) Wade broke a bone in his hand and had an accompanying laceration spanning 1.34 inches; 2) Lewis escorted Wade on a ten-minute walk to the Special Housing Unit ("SHU"), and Wade's hand bled on the entire walk; 3) When Wade asked Lewis if they were going to go to the medical unit on this walk, Lewis said something to the effect of, "Don't tell me how to be a captain, and I won't tell you how to be an inmate;" 4) Once in the SHU, Lewis handed Wade over to an officer who removed Wade's handcuffs; and 5) Lewis left the scene. Although Wade tries to create a factual dispute here in order to defeat our jurisdiction, none exists, because Lewis does not dispute these facts. And it is worth noting that a factual dispute will *never* exist in this context, where an officer appeals a denial of qualified immunity based on the clearly established prong and not on the sufficiency of the evidence. This is the case because we, as the reviewing court, will always take the facts in the light most favorable to the nonmoving party when analyzing the clearly established prong, regardless of how an officer tries to color them.[1]

Wade tries to create factual disputes in this case by saying that Lewis "downplays the severity" of Wade's injury, Lewis "challenges the extent of his subjective

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1. At this stage of litigation, we are not concerned with what Wade might ultimately be able to prove at trial. *Hunter*, 941 F.3d at 1277 n.15. The question is whether, if we view all the facts in Wade's favor, they demonstrate that Lewis violated a clearly established right. *See id.*

knowledge," and Lewis "questions the reason why he refused to provide access to the requested medical attention." Wade characterizes these supposed factual disputes as "challenges to the district court's factual determinations." Wade's characterization of Lewis's arguments is wrong. In order to perform an analysis of the clearly established prong of qualified immunity, Lewis had to evaluate the facts of the case, and nothing Lewis said contradicted the District Court's factual findings. Moreover, even if Lewis had tried to downplay or contradict the facts as established by the District Court, we would still take the version of facts most favorable to Wade and thereby create a pure question of law. All that is left to decide based on these facts, then, is whether Lewis is entitled to qualified immunity.

Turning to the qualified immunity analysis, the court distinguishes *Aldridge* on four grounds to hold that the right was not clearly established here. I agree that Lewis is entitled to qualified immunity, but I write separately to highlight the fact that Lewis's role in this incident as reflected in the record is what best differentiates this case from that of the liable officers in *Aldridge*.

Facially, there are some similarities between *Aldridge* and this case. The plaintiffs in both cases sustained bleeding injuries and went without medical assistance for hours in officers' custody. *See Aldridge v. Montgomery*, 753 F.2d 970, 971 (11th Cir. 1985) (per curiam). The court differentiates this case from *Aldridge* on four grounds: 1) The plaintiff in *Aldridge* had a head injury while Wade suffered a hand injury; 2) the defendants in *Aldridge*

observed the plaintiff bleeding for two hours while Lewis's walk with Wade only lasted ten minutes; 3) the plaintiff in *Aldridge* bled more than Wade; and 4) the defendants in *Aldridge* neglected to take the plaintiff to the hospital for over two hours while Lewis left Wade under the supervision of other officers who could treat Wade.

While I appreciate the court's thorough analysis of *Aldridge*, this case can be distilled to one simple point. The key difference between these cases in my estimation is not necessarily where the injury was or how much the inmate bled over the course of the day, but instead *who* is being sued and under what theory of law. Wade is not suing the officers who kept him in custody for hours without medical treatment, like the plaintiff in *Aldridge*. He is suing Lewis, who escorted him from the dining hall area to the SHU, located right next to the medical unit, where Lewis then handed Wade over to other officers. Narrowing our focus from the time Lewis entered the scene to the time he left Wade in other officers' custody, the time period for which there is an utter lack of evidence in the record, we have no facts from which to draw inferences in Wade's favor. There is no evidence in the record that Lewis did anything more than escort Wade to the SHU. The dialogue between the two on the walk as reflected in the record certainly does not indicate that Lewis violated a clearly established right. And Wade has pointed to no other case to establish that Lewis is not entitled to qualified immunity. Lewis is entitled to qualified immunity, not because this case is so much different from *Aldridge* on the facts, but because there are no facts in the record suggesting that this particular defendant is liable.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION, FILED MARCH 23, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO.
1:16-CV-3691-AT

CHARLES WADE,

Plaintiff,

v.

GORDON LEWIS,

Defendant.

ORDER

I. Background

Plaintiff Charles Wade, currently in federal prison in Waymart, Pennsylvania, filed this action under the Federal Tort Claims Act (FTCA) and 28 U.S.C. § 1331/*Bivens*[1] claiming that, when he was an inmate at the United States Penitentiary in Atlanta, Georgia, Defendant Gordon Lewis, a captain at the penitentiary, failed to

1. *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

provide him access to medical treatment for his injured hand. This Court dismissed Plaintiff's FTCA claim but permitted the *Bivens* claim to proceed, [Docs. 4, 6], and later appointed counsel for Plaintiff, [Doc. 16]. After the parties engaged in discovery, Defendant filed a motion for summary judgment. [Doc. 46]. In the now-pending Report and Recommendation (R&R), [Doc. 62], the Magistrate Judge recommends that Defendant's motion be denied. Defendant has filed his objections, [Doc. 64], to the R&R.

A district judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings and recommendations. *United States v. Raddatz*, 447 U.S. 667, 680 (1980). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the Report and Recommendation that is the subject of a proper objection on a *de novo* basis and any non-objected portion under a "clearly erroneous" standard. "Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court." *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988).

Very briefly summarizing the facts, which are provided in much more detail in the R&R, [Doc. 62 at 2-9], Plaintiff injured his hand punching another inmate. As Defendant escorted Plaintiff to the special housing unit (SHU),[2] Plaintiff indicated to Defendant that his hand was injured, noted that he was bleeding profusely, and asked,

2. The special housing unit is the administrative segregation unit at the penitentiary where inmates can be placed in isolation for their protection or as punishment for infractions.

"You're not taking me to medical?" Defendant responded, "Don't ask me how to be a captain and [I] won't tell you how to be an inmate." After Defendant escorted Plaintiff to the SHU, Defendant left, and Plaintiff was in the control of the guards assigned to the SHU. It was not until some hours later that Plaintiff was able to flag down a nurse and receive treatment for his hand. Relevant to the discussion below, it is undisputed that Plaintiff's injury was serious and required medical attention. According to the record, he received a deep laceration, a broken bone, and a severed tendon, which required treatment at a hospital.

II. Discussion

Defendant does not challenge the Magistrate Judge's description of the legal standards applicable to this matter, and this Court adopts that discussion here. [Doc. 62 at 9-14]. In his summary judgment motion, Defendant contends that there is no genuine issue of fact that he was deliberately indifferent to Plaintiff's serious medical need and/or that he is entitled to qualified immunity. The Magistrate Judge concluded that, because Plaintiff testified that his hand bled profusely from the time of his injury until he finally received treatment, there is a genuine issue of fact with respect to whether it should have been plainly evident to Defendant that Plaintiff had a serious medical need requiring treatment. The Magistrate Judge further concluded that, because there was sufficient evidence for a jury to determine that Defendant was aware of Plaintiff's serious medical need and because there is evidence that Defendant refused to take Plaintiff to receive medical care or otherwise alert SHU staff or

prison medical staff that Plaintiff needed treatment, there is sufficient evidence for a jury to determine that Defendant was deliberately indifferent to Plaintiff's serious medical need.

In response to Defendant's contention that he is entitled to qualified immunity, the Magistrate Judge concluded that the constitutional right at issue here was clearly established under Eleventh Circuit case law. The Magistrate Judge pointed out that in *Aldridge v. Montgomery*, 753 F.2d 970, 972-73 (11th Cir. 1985), a similar case in which the Eleventh Circuit determined that prison officials who placed the plaintiff, who had a gash on his head, in a holding cell without providing access to medical care, were not entitled to a directed verdict because reasonable persons could find that the defendants were deliberately indifferent. Accordingly, the Magistrate Judge determined, the law was clearly established that Defendant's purported actions constituted deliberate indifference.

In his objections, Defendant contends that the record does not contain sufficient evidence to demonstrate that Defendant had subjective knowledge of the seriousness of Plaintiff's injury. However, Plaintiff has presented evidence that he requested medical attention from Defendant and that he was bleeding profusely, leaving a trail of blood as he walked to the SHU. This Court agrees with the Magistrate Judge that this evidence was sufficient for a jury to conclude that Defendant had the requisite subjective knowledge of Plaintiff's injury. The

jury could find that the injury was impossible to miss and that Defendant had to have been aware of both the injury and its seriousness. The jury could also find that when Plaintiff asked Defendant if they were going to medical that Defendant should have looked at Plaintiff's injury to determine whether medical attention was necessary.

This Court also concludes that Defendant's arguments that the Magistrate Judge erred in concluding that he is not entitled to judgment for qualified immunity are unavailing. Plaintiff had a deep gash on his hand that was over one inch long. Presuming that the gash was a serious medical condition, as this Court must at this stage, on the October 15, 2014, date of the incident it was clearly established that "[u]nder the Eighth Amendment, prisoners have a right to receive medical treatment for their illnesses and injuries." *Taylor v. Hughes*, 920 F.3d 729, 732 (11th Cir. 2019) (denying qualified immunity to guards at a jail regarding an incident that occurred in 2013) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)).

In response to Defendant's contention that he was not solely responsible for insuring Plaintiff received medical treatment, presuming that Defendant was aware of Plaintiff's serious medical need, he had a duty to do something—summon medical personnel or alert other guards to Plaintiff's need for medical care—other than simply ignoring the injury. While Defendant contends that he "escorted Plaintiff to the SHU, where he could receive medical care," [Doc. 64 at 8], nothing in the record indicates that prisoners automatically receive medical care when they arrive at the SHU, and it was not until hours later

that Plaintiff received care. Moreover, this Court credits Plaintiff's argument that, because Defendant testified that he did not have any recollection of responding to the incident, "[t]here is no evidence in the record suggesting that Defendant decided to place Plaintiff into the SHU without medical treatment for a legitimate reason or otherwise expected Plaintiff to receive medical treatment at some point in the future." [Doc. 67 at 24].

Having reviewed the record in light of Defendant's objections, this Court concludes that the Magistrate Judge is correct. Accordingly, the R&R, [Doc. 62], is hereby **ADOPTED** as the order of this Court, and Defendant's motion for summary judgment, [Doc. 46], is **DENIED**.

This Clerk's Office is **DIRECTED to administratively close** this case pending the mediation of the matter over an extended period of time related to the public health emergency circumstances that are anticipated on to be place for the next months, at least. This case is **REFERRED** to the next available Magistrate Judge for mediation, to be completed by July 1, 2020 with this deadlines specified below, unless other extensions are granted by the Court.

(1) Counsel are directed to confer within 20 days to endeavor to settle this case without mediation and follow-up thereafter on that conversation, as appropriate.

(2) Within 45 days, Counsel shall confer by phone with the designated Magistrate Judge regarding the mediation and mediation process alternatives (including the use

of video conferencing via the Courthouse or a software platform). The public health emergency circumstances at that time shall be considered in framing plans.

(3) The mediation shall be held by July 1, 2020, absent an extension granted.

(4) Counsel shall file a report on results of the mediation within 10 days of completion of the mediation.

(5) If no agreement in principle has been reached by the deadline for submission of the mediation report, the parties are directed to submit a proposed consolidated pretrial order within thirty days of the conclusion of the mediation. The Court will reopen the case upon the filing of the proposed pretrial order. The Clerk of the Court is **DIRECTED** to re-submit this matter to the Court by August 15, 2020 unless a stipulation of dismissal has been filed or mediation proceedings are still pending as reflected in an extension and revised scheduled approved in an Order issued by this Court.

IT IS SO ORDERED, this 23rd day of March, 2020.

/s/ Amy Totenberg
AMY TOTENBERG
UNITED STATES DISTRICT JUDGE

APPENDIX C — MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION, FILED AUGUST 28, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHARLES WADE,
Fed. Reg. No. 08504-007,

Plaintiff,

v.

GORDON LEWIS,

Defendant.

BIVENS
28 U.S.C. § 1331

CIVIL ACTION NO.
1:16-CV-3691-AT-JKL

MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION

While incarcerated at the United States Penitentiary in Atlanta, Georgia ("USP-Atlanta"), Plaintiff punched another inmate in the face knocking the inmate out with injuries so severe he was sent to an outside hospital. In doing so, Plaintiff sustained a "fight bite" on his right hand – which consisted of a deep laceration, a broken bone, and a severed tendon –

and ultimately led to treatment at an outside hospital – and to which he claims Defendant Captain Gordon Lewis, who responded to the fight, was deliberately indifferent.

Plaintiff filed a *pro se* complaint pursuant to *Bivens* and the Federal Tort Claims Act ("FTCA") [Doc. 1],[1] the Court allowed the Bivens claim to proceed [Docs. 4, 6] and later appointed counsel for Plaintiff [Doc. 16]. The matter is now before the Court on Defendant's motion for summary judgment [Doc. 46]; Plaintiff's response thereto [Doc. 54]; and Defendant's reply [Doc. 58]. For the reasons that follow, it is **RECOMMENDED** that Defendant's motion be **DENIED**.

I. Facts[2]

On October 15, 2014, Plaintiff was a federal inmate housed at USP-Atlanta. (DSMF ¶1). On that day, Plaintiff

1. In *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), the Supreme Court held that a violation of a person's constitutional rights by a federal officer may give rise to a damages action in federal court brought pursuant to 28 U.S.C. §1331. Although the Supreme Court recently limited *Bivens* actions to three contexts, *Ziglar v. Abbasi*, ___ U.S. ____, 137 S. Ct. 1843, 1854-55 (2017), Plaintiff's claim that Defendant was deliberately indifferent to his medical needs falls within one of those contexts. *See id.*; *see also Carlson v. Green*, 446 U.S. 14 (1980).

2. In preparing the factual recitation below, the Court has considered Defendant's Statement of Material Facts ("DSMF"), Plaintiff's Statement of Additional Material Facts ("PSAMF"), the responses thereto ("R-DSMF" and "R-PSAMF"), and the depositions and affidavits in the record. The facts are undisputed unless otherwise indicated, and the disputed facts are viewed in the light most favorable to Plaintiff. *See infra* Section II.

was assigned to work in Food Service and was prepping for the lunchtime meal. (DSMF ¶2). At around 1:35 p.m., Plaintiff punched another inmate in the face because the inmate would not give Plaintiff a bag of chips. (DSMF ¶3; Pl. Dep. [Doc. 51] at 142). Plaintiff's punch knocked the other inmate out, the inmate fell to the floor, and Plaintiff walked away and began to open a can of vegetables. (DSMF ¶¶4-5). Plaintiff apparently also went to the restroom to wash his hands, and at that point he thought that his hand had stopped bleeding, but it was very painful. (PSAMF ¶9; Pl. Dep. at 165).

Six minutes later at approximately 1:41 p.m., Bureau of Prisons ("BOP") staff observed Plaintiff's victim, still lying on the floor behind the service area. (DSMF ¶6). BOP Officer Bray then triggered a radio body alarm, which notified all USP-Atlanta personnel that there was an emergency situation and signaled them to report to Food Service. (DSMF ¶7; PSAMF ¶7). When Lieutenant Wilson arrived at Food Service he felt the situation was dangerous since there were approximately 250 inmates in a small space. (DSMF ¶¶8-9). Lieutenant Wilson observed that the injured inmate's lip was bleeding profusely and "dripping blood all over the ground." (DSMF ¶11.) The inmate told Wilson that he had been assaulted by a "tall, black guy," and pointed in Plaintiff's direction at the rear of Food Service. (DSMF ¶12).

Wilson approached Plaintiff and saw that Plaintiff's right hand was bleeding, which was consistent with a fight and supported the other inmate's statement that Plaintiff had assaulted him.[3] (DSMF ¶¶13-14; PSAMF ¶¶1-2).

3. Plaintiff has offered sifting explanations as to how he sustained his injury. During his deposition he testified that his

Defendant was serving as Acting BOP Captain and also reported to Food Service in response to the body alarm. (DSMF ¶15). Plaintiff testified that upon Defendant's arrival, Defendant identified Plaintiff as "the one" and Plaintiff was then handcuffed and escorted to the Special Housing Unit ("SHU"). (DSMF ¶¶16-17; Pl. Dep. at 162).[4]

Inmates suspected of fighting are typically separated from the rest of the inmate population for their safety and for the safety of others, and Plaintiff was placed in the SHU pending the outcome of an investigation into whether Plaintiff fought with the other inmate. (DSMF ¶¶25-26). Plaintiff testified that as he was escorted to the SHU he asked Defendant, "you're not going to take me to medical?" and that Defendant responded, "don't ask me how to be a captain and [I] won't tell [you] how to be an

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injury occurred when he cut his hand on a can (Pl. Dep. at 102, 144, 148), and he told that same story to Advanced Registered Nurse Practitioner ("ARNP") Stanley Coleman. (Innis Dep. Ex. 18 [Doc. 48-7]). In contrast, according to a clinical assessment performed on the day of the incident, Plaintiff told treating nurse Ashley Inniss that he accidentally cut his hand "on a box." (*Id.* Ex. 8 [Doc. 48-3]). It is undisputed, however, that Plaintiff's wound was consistent with a "fight bite." (DSMF ¶48). Notably, Dr. Howard McMahan, who ultimately treated Plaintiff's injury at the hospital two days later, testified that it was not feasible that Plaintiff could have incurred such an injury from a can. (McMahan Dep. [Doc. 49] at 39-40). Regardless, how Plaintiff injured his hand is not a disputed material fact.

4. All of the events about which Plaintiff complains stem from the fact that Defendant escorted Plaintiff to the SHU; however, Defendant denies that he even did so. (Def. Dep. [Doc. 47-1] at 171).

inmate." (Pl. Dep. at 145, 166, 167; PSAMF ¶12). Plaintiff replied to Defendant, "okay . . . you know, I'm bleeding all over this, you know, the place." (PSAMF ¶14). Indeed, Plaintiff states that while Defendant escorted him to the SHU he was "leaking blood all over," there was "blood everywhere," and there was "a path of blood following us." (PSAMF ¶13).

The SHU and the main medical unit are housed in the same building at USP-Atlanta. (DSMF ¶21). Medical staff determines how and when to treat inmates, and unless it is a medical emergency there is no typical amount of time for medical staff to respond to an inmate's injury. (Def. Dep. [Doc. 47-1] at 83, 86, 118, 121, 176, 177; Innis Dep. [Doc. 48] at 43-44, 57). According to Lieutenant Wilson, regardless of how an inmate receives an injury "medical staff needs to be notified." (PSAMF ¶53).

Because Plaintiff's victim was brought to the main medical unit and because Plaintiff was accused of the assault, Plaintiff was taken to the SHU where he also could be medically assessed. (Wilson Dep. [Doc. 50] at 119; Def. Dep. at 95-96). When Plaintiff arrived at the SHU at approximately 1:50 p.m., Plaintiff was placed in a holding cell that had a wire mesh door. (DSMF ¶27; PSAMF ¶17). Plaintiff's holding cell was no more than three feet from the medical exam room where medical staff rendered medical care to SHU inmates. (DSMF ¶28).

Once Plaintiff was in the holding cell, a SHU officer removed Plaintiff's handcuffs. (DSMF ¶29). Plaintiff saw Defendant speak with SHU officers before leaving the

SHU, but Plaintiff could not hear what Defendant said to those officers. (DSMF ¶31; R-DSMF ¶31).[5] Soon after he was placed in the holding cell Plaintiff asked SHU officers if he was going to go to medical, but the officers told him he needed to wait. (PSAMF ¶51). Somewhere between 2:01 and 2:04 p.m., three photographs were taken of Plaintiff's right hand, two of which showed some blood. (DSMF ¶¶33-34; PSAMF ¶18).

In his statement of additional facts, Plaintiff states that he was "bleeding all that time" from when he was placed in the SHU to when Nurse Inniss examined him. (PSAMF ¶22). Plaintiff also testified that when the photographs were taken of his hand around 2:01 to 2:04

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5. Plaintiff disputes DSMF ¶31 because he claims that he "witnessed Defendant 'intimidating' these officers." (R-DSMF ¶31). These allegations, however, are pure speculation and conjecture. It also is a giant leap of logic to infer from this speculative belief, as Plaintiff appears to ask this Court to do, that Defendant instructed the SHU officers that Plaintiff should not receive medical treatment. These allegations, therefore, do not create a genuine issue of material fact. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) ("[U]nsupported speculation . . . does not meet a party's burden of producing some defense to a summary judgment motion. Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment.") (internal quotation marks and citations omitted) (emphasis and alterations in original); *Cuesta v. School Bd. of Miami-Dade Cty., Fla.*, 285 F.3d 962, 970 (11th Cir. 2002) ("A court need not permit a case to go to a jury, however, when the inferences that are drawn from the evidence, and upon which the non-movant relies, are implausible.").

– ten to fifteen minutes after he arrived in the SHU and less than an hour after punching the other inmate – the blood was tapering off. (Pl. Dep. at 176). When shown the photographs taken of Plaintiff's hand, Nurse Inniss testified that although it looked like Plaintiff's injury needed treatment, she would not designate it as a medical emergency. (Inniss Dep. [Doc. 48] at 37, 66). Notably, after also being shown the photographs, Lieutenant Wilson and Defendant both testified that if an inmate had that type of injury to his hand they would have called medical for the inmate. (Wilson Dep. at 26; Def. Dep. at 166-67). Defendant also testified that an officer would violate policy, and it would be "egregious," if an inmate was thrown in a holding cell, still bleeding, without being given immediate medical care. (Def. Dep. at 131).

Plaintiff testified that he was finally able to get the attention of Nurse Inniss two to three hours later. (Pl. Dep. at 170). Plaintiff, however, now claims it was seven hours later because Nurse Inniss's clinical encounter note indicates that she examined Plaintiff at 9:35 p.m. (*See* Doc. 54 at 12; *compare* Inniss Dep. at 14, *with id.* Ex. 8). Nurse Inniss did not recall details about her clinical encounter with Plaintiff, but her clinical note states that she brought Plaintiff to the medical exam room where she noted a 3.4 cm (or 1.34 inch) laceration on his right hand near the thumb, cleaned the wound with soap, water, and wound cleaner, applied a topical antibiotic, and covered it with steri-strips and gauze. (Innis Dep. Ex. 8; PSAMF ¶30). The clinical note also indicates that Nurse Inniss prescribed Motrin for Plaintiff, presumably for his pain, instructed Plaintiff about signs of infection, and told

Plaintiff to let medical staff know if any of those signs occurred. (Innis Dep. Ex. 8). Because the wound was open, there was an increased risk of infection. (PSAMF ¶4). Nurse Inniss's clinical encounter also notes that "MD notified" and "Staff notified to follow up with inmate." (Innis Dep. Ex. 8).

Plaintiff testified that beginning the next morning he put in sick call requests to medical staff, but nothing happened until the second day when he got the attention of an officer walking by, and then he saw ARNP Coleman at 3:24 p.m. (DSMF ¶¶42-43; PSAMF ¶¶36-37). ARNP Coleman changed the dressing on the "deep laceration," noted swelling and a decreased range of motion on Plaintiff's right hand, and documented that Plaintiff reported his pain at a ten on the pain scale. (DSMF ¶¶43-44; PSAMF ¶37). ARNP Coleman immediately issued an order that Plaintiff be transported to Atlanta Medical Center ("AMC"). (DSMF ¶45; PSAMF ¶38).

A little over three hours later at around 6:40 p.m., Plaintiff was transported to AMC where he was seen in the emergency room. (DSMF ¶46). Plaintiff received an x-ray at 12:41 a.m., which revealed that Plaintiff had a broken bone in his hand and that the fracture was "intra-articular," *i.e.,* "inside the metacarpal phalangeal joint between the hand and the finger, the little finger." (DSMF ¶47; R- DSMF ¶47). The 1.34 inch laceration went all the way down to the broken bone, partially cutting the tendon. (PSAMF ¶1). This wound was consistent with a "fight bite" which can become infected based on "difficult-to-control bacteria in the mouth." (DSMF ¶48). At 8:53 the next

morning Dr. Howard McMahan performed an irrigation and debridement of the wound, which involved washing the wound with saline solution, cutting the skin with a scalpel, removing any "devitalized tissue and any pus," scraping out any foreign material from the subcutaneous tissue, irrigating the wound thoroughly, assessing the tendon to make sure it is functional, looking at the bone to make sure it does not need "any kind of fixation," placing a drain, and then closing the wound. (DSMF ¶49; PSAMF ¶40).

Dr. McMahan testified that the "fight bite" type of injury and the delay of getting treatment increased the risk of infection Plaintiff's hand. (McMahan Dep. [Doc.49] at 17, 20). Dr. McMahan also testified that in order to have prevented the infection Plaintiff could have avoided the fight or hitting the other inmate in the mouth, and that cleaning the wound shortly after his injury together with antibiotics could have made infection less likely. (*Id.* at 23). After his surgery Plaintiff returned to USP-Atlanta where he received medication for pain. (DSMF ¶50; Doc. 54 at 16).

II. Discussion

A. Summary Judgment Standard

Summary judgment is authorized when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Burger King Corp. v. E-Z Eating*, 572 F.3d 1306, 1313 (11th Cir. 2009); Fed. R. Civ. P. 56(c). The party seeking summary judgment bears the burden of

demonstrating the absence of a genuine dispute as to any material fact. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 175 (1970); *Bingham, Ltd. v. United States*, 724 F.2d 921, 924 (11th Cir. 1984). Here, Defendant carries this burden by showing the court that there is "an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In making its determination, the court must view the evidence and all factual inferences in the light most favorable to the nonmoving party.

Once the moving party has adequately supported its motion, the nonmoving party must go beyond the pleadings and come forward with specific facts that demonstrate the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)); *Sandoval v. Florida Paradise Lawn Maintenance, Inc.*, 303 F. App'x 802, 804 (11th Cir. 2008); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). Unsupported factual allegations and/or speculation are legally insufficient to defeat a summary judgment motion. *Collins v. Ensley*, 498 F. App'x 908, 909 (11th Cir. 2012); *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005); *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005). *See also Celotex*, 477 U.S. at 324 ("Rule 56(e) . . . requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'"); *accord Owen v. Wille*, 117 F.3d 1235 (11th Cir. 1997). "The mere scintilla of evidence"

supporting the nonmovant's case is insufficient to defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

B. Analysis

1. Section 1983, Deliberate Indifference, And Qualified Immunity

Section 1983 of Title 42 provides, in relevant part, that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Thus, in order to establish a claim under Section 1983, Plaintiff must show a violation of a right secured by the Constitution of the United States and also show that the deprivation was committed by a person acting under color of state law. *Cummings v. DeKalb Cty.*, 24 F.3d 1349 (11th Cir. 1994); *see also Graham v. Connor*, 490 U.S. 386, 393-94 (1989) ("§ 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred") (internal quotes

omitted) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)).

To overcome a motion for summary judgment, a plaintiff must raise a genuine issue of material fact on the three components that make up a deliberate indifference claim: (1) the existence of an objectively serious medical need; (2) the defendant's deliberate indifference to that need; and (3) causation between that indifference and the plaintiff's injury. *Taylor v. Hughes*, 920 F.3d 729, 733 (11th Cir. 2019); *Hinson v. Bias*, 927 F.3d 1103, 1121 (11th Cir. 2019); *Mann v. Taser, Int'l, Inc.*, 588 F.3d 1291, 1306-07 (11th Cir. 2009). A serious medical need is "'one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.'" *Taylor*, 920 F.3d at 733 (citations omitted); *see also Hinson*, 927 F.3d at 1121-22; *Hill v. DeKalb Reg'l Youth Det. Ctr.*, 40 F.3d 1176, 1187 (11th Cir. 1994), *abrogated on other grounds by Hope v. Peltzer*, 536 U.S. 730 (2002). Deliberate indifference "requires subjective knowledge of a risk of serious harm due to the medical need and disregard of the risk amounting to more than mere negligence." *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003).

As to the subjective component, the Eleventh Circuit "has consistently held that knowledge of the need for medical care and intentional refusal to provide that care constitute deliberate indifference." *Hill*, 40 F.3d at 1186 (11th Cir. 1994) (citations omitted). Summary judgment must be granted for the defendant unless the plaintiff presents evidence of the official's subjective knowledge,

and the record must contain evidence of such subjective awareness. *Campbell v. Sikes*, 169 F.3d 1353, 1364 (11th Cir. 1999). *See also Lancaster v. Monroe Cty., Ala.*, 116 F.3d 1419, 1425 (11th Cir. 1997) ("Whether each of the defendants had the requisite knowledge of the seriousness of [the plaintiff's] medical needs is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence.").

Qualified immunity shields "government officials '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.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); *see also Taylor*, 920 F.3d at 732. "There are two parts to the qualified-immunity analysis: (1) the relevant facts must set forth a violation of a constitutional right, and (2) the defendant must have violated a constitutional right that was clearly established at the time of defendant's conduct." *Taylor*, 920 F.3d at 732.

"When we consider whether the law clearly established the relevant conduct as a constitutional violation at the time that Defendant Officers engaged in the challenged acts, we look for 'fair warning' to officers that the conduct at issue violated a constitutional right." *Jones v. Fransen*, 857 F.3d 843, 851 (11th Cir. 2017) (citations omitted). Clearly established law, or "fair warning" comes from looking to the law as interpreted at the time "from the Supreme Court, the Eleventh Circuit, or the highest court of the state (Georgia, here) that 'make[s] it obvious to all

reasonable government actors, in the defendant's place, that what he is doing violates a federal law.'" *Id.* (quoting *Priester v. City of Riviera Beach*, 208 F.3d 919, 926 (11th Cir. 2000)). *See also Terrell v. Smith*, 668 F.3d 1244, 1256 (11th Cir. 2012). There are three methods to show that the government official had fair warning: (1) a materially similar case already has been decided; (2) a broader, clearly established principle exists that should control the novel facts of the situation; and/or (3) the conduct involved may so obviously violate the Constitution that prior case law is unnecessary. *Gaines v. Wardynski*, 871 F.3d 1203, 1208 (11th Cir. 2017); *Terrell*, 668 F.3d at 1256.

Defendant seeks summary judgment because he argues that Plaintiff has failed to raise a genuine issue of material fact that he was not deliberately indifferent to Plaintiff's serious medical needs, and/or that he is entitled to qualified immunity. The undersigned disagrees.

2. Genuine Issues Of Material Fact Exist As To Whether Defendant Was Deliberately Indifferent To Plaintiff's Serious Medical Needs.

Although Plaintiff started the chain of events in this case when he punched another inmate over a bag of potato chips, knocking that inmate out and causing other injuries,[6] the law of deliberate indifference and/or qualified

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6. This fight apparently was at least the third time Plaintiff punched and/or knocked out another inmate while incarcerated. (Pl. Dep. 47-50, 133-34).

immunity does not distinguish whether a plaintiff was an aggressor or a victim. And Plaintiff has raised genuine issues of material fact to preclude judgment for Defendant as a matter of law.

Defendant first argues that Plaintiff's injury was not severe; nor did it become a serious medical need until two days after he was in the SHU when the open wound on his hand developed an infection. (Doc. 46-1 at 14, n.7). It is undisputed, however, that Plaintiff broke a bone in his hand and received a 1.34 inch laceration that went all the way down to the broken bone, partially cutting the tendon.

Construing the facts most favorable to Plaintiff, while Defendant was escorting Plaintiff to the SHU Plaintiff was "bleeding all over this, you know, the place," "leaking blood all over," there was "blood everywhere," and there was "a path of blood following us." And although Plaintiff testified that the blood was tapering off when the photographs of Plaintiff's injury were taken, he also testified that he continued to bleed the entire time he was in the SHU before he finally caught Nurse Inniss's attention. It is not clear how much "tapering off" actually occurred after Plaintiff's hand was profusely bleeding – having incurred an open laceration down to a broken bone and a partially severed tendon – but the fact that it is not clear demonstrates that there is a disputed issue of material fact as to whether Plaintiff's bleeding was severe enough to be considered a serious medical need. Based on the amount of bleeding to which Plaintiff testified, the broken bone and the partially severed tendon, a reasonable jury could find that Plaintiff's medical condition was "so obvious that

even a lay person would easily recognize the necessity for a doctor's attention.'" *See Taylor*, 920 F.3d at 733; *Reid v. Streit*, 697 F. App'x 968, 972 (11th Cir. 2017) (noting that it was undisputed that the plaintiff's broken hand was a serious medical need); *Brown v. Hughes*, 894 F.2d 1533, 1538 (11th Cir. 1990) (noting that it was undisputed that a serious and painful broken foot constituted a serious medical need); *Aldridge v. Montgomery*, 753 F.2d 970, 972 (11th Cir. 1985) (finding serious medical need where inmate had a cut that was at least 1.5 inches long that later required six stitches, and there was blood on the floor and on the inmate's coat and shirt); *see also Hinson*, 927 F.3d at 1122 ("[W]e have concluded that a freely bleeding cut that created a pool of blood on the ground and required stitches presented a serious medical need. . . . We have also found broken bones to constitute a serious medical need. . . . And depending on the circumstances, severe pain that is not promptly or adequately treated can present a serious medical need.") (citing *Aldridge*, *Brown*, and *McElligott v. Foley*, 182 F.3d 1248, 1255-59 (11th Cir. 1999)). *Compare Fernandez v. Metro Dade Police Dep't*, 397 F. App'x 507, 512-13 (11th Cir. 2010) (distinguishing the facts from *Aldridge* and finding important to its decision that the plaintiff did not suffer from a serious medical need – *i.e.*, that the plaintiff never alleged that he continued to bleed more than five minutes and the medical evidence indicated that the bleeding had stopped after that time).

Defendant also argues that there is no evidence that Defendant saw the blood, was aware of the source of the blood, or understood the nature of Plaintiff's injury. (Doc. 46-1 at 14). Defendant, however, did not have to know that

Plaintiff had a broken bone, that he had an open wound, or that he even had partially severed his tendon to be deliberately indifferent to Plaintiff's serious medical needs. *See Taylor*, 920 F.3d at 734 ("But a guard does not need to know a detainee's specific medical condition to be deliberately indifferent to his or her serious medical need. . . . Liability can attach even if a prison official knows only that, if no action is taken, the detainee faces a 'substantial risk of serious harm.'") (citations omitted). In light of Plaintiff's testimony about the amount of blood coming from his hand while Defendant was escorting him to the SHU, and the fact that Plaintiff pointed the blood out to Defendant when asking if he was going to the medical unit, a reasonable jury certainly could impute knowledge of the seriousness of Plaintiff's medical need to Defendant.

Finally, Defendant argues that Defendant could not have caused Plaintiff's injuries because: (1) there is no evidence that Defendant was personally involved in making decisions about when or how Plaintiff's hand would be treated; (2) there is no evidence that Defendant was responsible for supervising SHU officers or medical staff; and (3) Plaintiff received medical treatment that same day, albeit two or three hours later. (Doc. 46-1 at 16-17). Defendant further argues that at most Defendant acted negligently or made an error in judgment.

But Plaintiff testified that Defendant told him he wasn't taking Plaintiff to receive medical care. (Pl. Dep. at 145-47). Even if Plaintiff inferred this conclusion from Defendant's statement "don't ask me how to be a captain

and [I] won't tell [you] how to be an inmate," there is other evidence in the record in addition to that statement that could lead a reasonable jury to find that Defendant intentionally denied Plaintiff medical treatment. To that end, the amount of blood Plaintiff testified about, the fact that medical staff needs to be notified of an injury no matter how it occurred, a plausible inference from this record that Defendant did not, in fact, notify medical staff since Plaintiff had to track down a nurse himself somewhere between two and seven hours after Defendant left the SHU, all could lead a reasonable jury to find that Defendant's failure to get Plaintiff medical care constituted deliberate indifference. *See Colardo-Keen v. Rockdale Cty., Ga.*, ______ F. App'x , 2019 WL 2245922, at *9 (11th Cir. May 24, 2019) ("'When prison [officials] ignore without explanation a prisoner's serious medical condition that is known or obvious to them, the trier of fact may infer deliberate indifference.") (quoting *Brown*, 894 F.2d at 1538) (alteration omitted); *id.* at *10 ("Outright 'fail[ure] or refus[al] to obtain medical treatment for the inmate' rises to the level of deliberate indifference.") (quoting *Lancaster*, 116 F.3d at 1425); *Taylor*, 920 F.3d at 733 ("And [c]hoosing to deliberately disregard an inmate's complaints of pain 'without any investigation or inquiry' is being willfully blind to pain.") (citations omitted).

Even though, as Defendant argues, Defendant did not supervise SHU officers or medical staff, was not personally involved in how or when Plaintiff's hand should have been treated, or Plaintiff received medical care that same day, none of these facts lead to judgment as a matter of law for Defendant. Indeed, the dispositive issue

is whether Defendant denied or refused medical care in deliberate indifference to Plaintiff's serious medial needs by not ensuring that Plaintiff be medically assessed, or at the very least, by failing to notify medical staff about Plaintiff's injury. *See Brown*, 894 F.2d at 1538 (reversing the trial court's decision that defendants were entitled to summary judgment because the fact that the plaintiff received treatment the same day did not preclude a finding of deliberate indifference as it "overlooks the fact that none of the defendants were involved in sending Brown to the hospital."). *See also Aldridge*, 753 F.2d at 972-73 (11th Cir. 1985) (holding directed verdict in favor of jail officials improper where the plaintiff had a continuously bleeding 1.5 inch cut over his eye for two hours before receiving medical treatment). Plaintiff sufficiently has raised a genuine issue of material fact that Defendant refused or denied medical care to Plaintiff's serious medical needs, as a reasonable jury could find that these facts constituted deliberate indifference.

3. Defendant Is Not Entitled To Qualified Immunity.

Because there are genuine issues of material fact regarding whether Defendant violated Plaintiff's constitutional rights, in analyzing whether Defendant has qualified immunity this Court must turn to the second prong in the qualified immunity analysis. Plaintiff argues that the constitutional right at issue here was clearly established under Eleventh Circuit caselaw. The undersigned agrees.

Even if all Defendant knew about was that Plaintiff was bleeding profusely from the visually open wound, the Eleventh Circuit has held as far back as 1985 that the precise actions about which Plaintiff complains could constitute deliberate indifference. Indeed, in *Aldridge*, *supra*, the defendant prison officials placed the plaintiff in a holding cell with a 1.5 inch bleeding cut that continued to bleed for two hours and formed a pool of blood on the floor approximately the size of two hands before he received any medical assistance. *Aldridge*, 753 F.2d at 972-73. The Eleventh Circuit reversed the trial court's directed verdict in favor of the defendants, because reasonable persons could find defendants were deliberately indifferent to Plaintiff's serious medical needs. *Id.* at 971-72. The facts here appear materially similar to those in *Aldridge* – where Defendant placed Plaintiff in a holding cell with not only a slightly smaller laceration that continued to bleed, but also a broken bone and a severed tendon – for at least two hours, but possibly up to seven, before Plaintiff was able to flag down Nurse Inniss to receive medical attention. In 2014 the law therefore was clearly established that Defendant's actions constituted deliberate indifference. *See Youmans v. Gagnon*, 626 F.3d 557, 565 (11th Cir. 2010) ("Critical to our decision in in [*Aldridge*] was that the plaintiff's cut bled continuously during that time, causing blood to pool on the plaintiff's clothing and floor[.] . . .").[7]

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7. It also was clearly established in 2014 that failing to provide medical care to an inmate with broken bones and/or severe pain could constitute deliberate indifference. *See McElligott*, 182 F.3d at 1257 (reversing summary judgment for defendants where a reasonable jury could find that they were deliberately indifferent

III. Conclusion

Based on the foregoing reasons,

IT IS RECOMMENDED that Defendant's summary judgment motion [Doc. 46] be **DENIED**.

All pretrial matters have been concluded with the issuance of this Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1), this Court's L.R. 72.1, and Standing Order 08-01 (N.D. Ga. June 12, 2008). The Clerk, therefore, is **DIRECTED** to terminate the reference to the undersigned Magistrate Judge.

SO RECOMMENDED this 26th day of August, 2019.

/s/
JOHN K. LARKINS III
UNITED STATES
MAGISTRATE JUDGE

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to the plaintiff's severe pain because despite being aware of that severe pain the defendants did nothing to alleviate it); *Brown*, 894 F.2d at 1538 (finding defendant officer not entitled to summary judgment because there was a genuine issue of material fact as to whether the defendant was deliberately indifferent to the plaintiff's broken foot where the defendant testified that there did not appear to be anything wrong with the plaintiff's foot, but the plaintiff claimed he told the defendant he felt it was broken, it was visibly swollen and he was limping, and it was not until the defendant left for the day that the plaintiff was able to summon help).