No. 21-1522

IN THE

Supreme Court of the United States

WAYNE TORCIVIA,

Petitioner,

v.

SUFFOLK COUNTY, NEW YORK, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Respondent, Mary Catherine Smith, was properly found to be entitled to dismissal of the Claims against her by application of the Qualified Immunity Doctrine?

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INTRODUCTION

Contrary to contentions of the Petitioner, the Second Circuit Decision as pertains to the State employees and Mary Catherine Smith, and the consideration of the Qualified Immunity Doctrine was appropriately and equitably applied to the complicated fact pattern presented to the Court in the instant litigation. Notwithstanding the plaintiff's contentions to the contrary, the Qualified Immunity Doctrine serves an important and necessary function to protect the government's ability to perform its traditional functions and to allow those people and actors who carry out those functions to do so in a fashion to "avoid unwarranted timidity and to also *ensure* candidates are not deterred from public service due to the fear of subsequent litigation and legal scrutiny." See *Filarsky v. Delia*, 566 U.S. 377 (2012).

While Petitioners suggest otherwise, the doctrine has and should appropriately remain in place in scenarios involving non-police actors as in the instant fact pattern. The healthcare providers are making "split second" decisions with grave and sometimes irreversible consequences and are tasked with making "difficult and delicate judgments officers must often face" [*Foley v. Connelie*, 435 U.S. 291, 299 (1978)], in their analysis and assessment of whether an individual is a danger to themselves or to others. The facts of this case clearly justify the need for discretionary governmental actor behaviors, without recrimination.

To suggest that the Qualified Immunity Doctrine does not apply to the healthcare providers under the current fact pattern ignores the essential and necessary functions

of the healthcare provider to whom immunity has been granted.

STATEMENT

A. Legal Background

Petitioner Issue 1 "*Exceptions to the Warrant Requirement.*"

1. Respondent, Mary Catherine Smith takes no position as to the Petitioner's arguments and contentions as to Petitioner's first designated legal argument pertaining to warrant requirements under the circumstances of this case. We respectfully defer all such statements, responses and arguments to the County of Suffolk.

2. *Qualified Immunity.* The doctrine of qualified immunity has been widely recognized by this Honorable Court as well as the other courts of the land and arises out of and is delineated by the text of 42 U.S.C. §1983 which permits relief against government officials only if, on objective reading of the law (1) the official violated a statutory or constitutional right, and (2) the right was "clearly established" at the time of the challenged conduct. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011). Petitioner counsel appropriately indicates that the two-prong inquiry can be effectuated in any order and that the Courts have recognized that the granting of qualified immunity can occur without the Court even deciding if a constitutional right of an individual was violated. *Pearson v. Callahan*, 555 U.S. 223 (2009). The recognition of the qualified immunity doctrine has offered protection to governmental officials from liability under § 1983 for the past fifty years

and continues to remain the law of the land to this date. *Pierson v. Ray*, 386 U.S. 547 (1967).

The importance of the qualified immunity doctrine has been well recognized by this and other Courts in that the Courts have found that such immunity "protects government's ability to perform its traditional functions" [*Wyatt v. Cole*, 504 U.S. 158, 167 (1992)] and it does so by helping to avoid "unwarranted timidity" in the performance of public duties and by ensuring that talented candidates are not deterred from public service and preventing the harmful distractions from carrying out the work of government that can often accompany damaging suits. *Richardson v. McKnight*, 521 U.S. 399, 409-411 (1997).

Neither the facts of this case nor plaintiff's contention that the current application of the doctrine require further review and analysis by this Honorable Court.

B. Factual Presentation

To the extent relevant, Petitioner, Wayne Torcivia is a 57 year old man with no record of violence and no history of suicide attempts, depression, or mental health treatment. C.A. ECF 54 at E10-E12; II C.A.App. A431.[1] Early in the morning hours of April 6, 2014, his teenaged daughter called social services complaining that her father was yelling at her and acting weird. II C.A.App. A373-A375, A380l; V C.A.App. A1254-A1255.

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1. Citations to the record below are listed as [vol] C.A.App. [page]. Citations to the Second Circuit's docket are listed as C.A. ECF [document number] at [page].

As a result of the Petitioner's daughter's call to social services, the Suffolk County Police Department responded to Petitioner's house. The details of the interactions between Petitioner and the police officers on the scene shall be addressed in detail in the responses of the state defendants and the County of Suffolk.

Due to the actions of the Petitioner, the County police officers made a determination to transfer the plaintiff to Stony Brook Hospital's Comprehensive Psychiatric Evaluation Program (CPEP) for an emergency mental health evaluation. Pet. App. 7A, 9A. After transport of the Petitioner to the CPEP the county police officers learned, via a computer check, that the Petitioner held a New York State Pistol License. II C. A. App. A390-A391. This check was based upon a department policy requiring the seizure of all guns from a home when police respond to a domestic "incident" and a resident is transported to a comprehensive psychiatric emergency program. Pet. App. 19A, 57A.

The county police officers reported that the plaintiff had acted suicidal in their presence. Pet. App. 104A.

Additionally, the county police officers reported that plaintiff had acted belligerently and threatenly to his 17 year old daughter. Pet. App. 104A.

Additionally, it was determined that the Petitioner had been intoxicated and was found to have an elevated blood alcohol level. Pet. App. 104A.

The respondent, social work intern Smith was interning in the CPEP program for approximately eight

months before the subject incident occurred. IV C.A. App. A883-884.

As an intern, Ms. Smith functioned under the supervision of CPEP social work of Kristen Steele, a fellow Respondent hereto. Ms. Steel was to provide Ms. Smith with supervisory guidance, was responsible for reviewing Ms. Smith's work, was responsible for the work that Ms. Smith performed and assigned the tasks to be performed by Ms. Smith during her internship. IV C.A. App. A884.

Notably, Ms. Smith would only interview patients that Ms. Steele assigned to her and had limited access to the patient's chart and would only be permitted to draft chart notes into the computer under the auspices and control of Ms. Steele. The draft did not become part of the chart until Ms. Steele reviewed and approved the entry made by Ms. Smith. Depending upon the content of Ms. Smith's draft entries, Ms. Steele would make further additions and/or subtractions to the entry for accuracy. IV C.A. App. A884, A886.

Respondent, Adeeb Yacoub, M.D. is an attending physician in the CPEP Program. He was the attending physician at the time of the Petitioner's discharge from CPEP. The ultimate decision to admit, discharge or give any other or further care and treatment to Mr. Torcivia was the ultimate decision of Dr. Yacoub as the attending physician at the time of Mr. Torcivia's evaluation. IV C.A. App. A892, 894.

As a social worker intern, Ms. Smith had no role or discretion with regard to the medical aspects or medical decisions related to patients in the CPEP. Ms. Smith did

not have the authority to discharge the Petitioner or any other patient. As a member of the CPEP team, if Dr. Yacoub decided to discharge a patient, the other staff members at the CPEP unit, including Ms. Smith were required to follow Dr. Yacoub's order. Ms. Smith only acted at the specific discretion of the state officials, like Dr. Yacoub and others. Pet. App. 106A. It is specifically undisputed that Dr. Yacoub made the final determination as to the Petitioner's medical discharge and that by the time Dr. Yacoub conducted his evaluation of the Petitioner, Petitioner's firearms had already been removed from his residency. Pet. App. 101a, III C.A. App. A520, A521.

After being cleared for discharge, and approximately an hour after his phone call to his wife, the Petitioner's wife picked him up and he left the CPEP and returned home. The record, as referenced by the Trial Court is not clear as exactly what time the Petitioner was medically cleared to be discharged. Pet. App. 58A, III C.A. App. A523, A524. Social worker intern Smith did not have any contact with the Suffolk County Police Department concerning the plaintiff nor did she speak to any members of the police department about the plaintiff and/or his guns. IV C.A. App. A898, A899.

C. Procedural History

Petitioner sued Suffolk County, New York and the individual defendants who allegedly participated in the confinement and seizure of his firearms under § 1983 for the violation of his First, Second, Fourth and Fourteenth Amendment to Rights, as well as for violation of New York State Law. I. C.A. App. A53-A56. Petitioner alleged that the county policy of the seizure of the firearms

in the circumstances of this case violated the Fourth Amendment. Id. at A56. Petitioner also raised a § 1983 claim against the State Hospital workers for their purported continued confinement of him after he had been cleared psychiatrically, claiming that they had violated the Fourth Amendment by "unreasonably prolonging his confinement at CPEP until he provided his gun safe combination to allow seizure of his firearms". Pet. App. 15A.

The County of Suffolk cross-moved for summary judgment and the District Court granted its motion in part and dismissed Petitioner's Fourth Amendment claims against the County. Pet. App. 109A-110A. The Court predicated its decision in part upon and under a "special needs exception" to the warrant requirement. Pet. App. 66A-76A.

As to Respondent Smith and the State employees at the CPEP facility, the District Court granted qualified immunity, finding that "no Second Circuit or Supreme Court precedent *** would have clearly established that, under the circumstances, the CPEP defendants' conduct violated the Constitution." Pet. App. 101A.

The Second Circuit affirmed the District Court's dismissal of Petitioner's Fourth Amendment claim against the County. Additionally, the Second Circuit agreed with the District Court's grant of Qualified Immunity as to Respondent Smith and the CPEP employees as the Court concluded that the plaintiff's purported extended or excessive confinement in the CPEP unit, as asserted, was not a clearly delineated or defined violation of right or statute. Pet. App. 46 A-47A.

REASONS FOR DENYING THE PETITION

This respondent takes no position as to plaintiff's allegations, assertions and contentions as to the Fourth Amendment claims asserted against the County of Suffolk and its police officers. As to plaintiff's assertions that this case provides this Honorable Court with a needed opportunity to narrow the judge-made qualified immunity doctrine to allow claims for constitutional deprivations by non-police actors, this case provides neither the factual predicate nor circumstances or the compelling and appropriate rationale to justify a limitation or abrogation of the previously recognized privilege afforded government and quasi-government actors irrespective of their roles as police or non-police actors.

I-II. This respondent takes no position as to the first and second questions contained within the Petition for Writ of Certiorari.

Respondent Smith respectfully declines comment and submission as to plaintiff's arguments pertaining to the County of Suffolk and the functioning and operation of the police officers involved. We defer those arguments to the County attorneys.

III. The Doctrine of Qualified Immunity should remain extant and was properly applied to the non-police state actors in the instant fact pattern.

Application of the qualified immunity doctrine does not require address, limitation and/or restriction under the instant fact pattern, or as a general proposition as it serves an important and necessary governmental and societal value and necessity for the government to perform

its functions and therefore, in the end, protect the public at large. *Wyatt v. Cole*, 504 U.S. 158, 167-168 (1992).

Petitioner's contention that the qualified immunity doctrine be readdressed and restricted to only police state actors is necessary to protect the Petitioner herein and others similarly situated. This premise should be rejected.

The Court recognized, in *Wyatt*, that individuals working for the government in pursuit of governmental objectives are "principally concerned with enhancing the public good" [504 U.S. at 168]. The Court further recognized that whether such individuals have assurance that they will be able to seek protection if sued under § 1983 directly affects the government's ability to achieve its objectives through their public service. Put simply, the protections afforded qualified immunity inure to the benefit of the public and the government's ability to function effectively and in the public interest.

While Petitioner's counsel suggests the only valid recognition of qualified immunity should be in cases involving state police operations, the logic and rationale behind that suggestion is misapplied. In Petitioner's brief, page 31, the following is stated "because non-police state actors are typically not faced with the kind of life or death situations that require immediate action, shielding them from liability makes little sense." Unequivocally, healthcare providers, conducting psychiatric evaluations to ascertain, evaluate and determine the psychiatric fitness of a patient requires an assessment of life and death situations, with the incorrect or insufficient determination having potentially tragic life-altering consequences. To suggest that the State based mental health practitioners involved in this case be provided any less entitlement to

the privilege of qualified immunity ignores the intricacy, art and discretionary measures exercised by healthcare providers in general and psychiatric healthcare providers in the current fact pattern. To open these individuals up to potential liability in their governmental functions would have a chilling effect on them.

IV. This case does not revolve around, nor should the Court consider alteration of the Qualified Immunity Doctrine based upon the facts and circumstances presented.

A § 1983 claim provides a cause of action against any person who deprives an individual of federally guaranteed rights "under color" of state law. 42 U.S.C. § 1983. Anyone whose conduct is fairly "attributable to the state" can be sued as a state actor under § 1983. See *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). However, the government actors are afforded certain protections from liability, based upon the thought and reasoning that "the public good can best be secured by allowing officers charged with the duty of deciding upon the rights of others, to act upon their own free, unbiased convictions, uninfluenced by any apprehensions. *Filarsky v. Delia*, 566 U.S. 377, 383 (2012), citing *Wasson v. Mitchell*, 18 Iowa 153, 155-156 (1864). See also *W. Prosser, Law of Torts* § 25, P. 150 (1941).

While under other circumstances and subject to perhaps other facts, Petitioner's arguments may justify this Court considering whether the qualified immunity doctrine applies or should be abrogated, this is not the fact pattern to make that decision. Under the current fact pattern and based upon the intricacies of the interrelated issues between the police actions and the CPEP actors, the

doctrine of qualified immunity should not be discouraged and should not be considered for limitation by the Court in the instant matter.

This is true whether the person is a *de facto* employee of the government, *Filarsky v. Delia*, supra, or whether the individual is a police or non-police functionary.

For these reasons, the case does not provide the appropriate vehicle to decide the qualified immunity question which is proposed by Petitioner's counsel and should not serve as a vehicle to limit the qualified immunity rights of the state healthcare providers and Ms. Smith.

CONCLUSION

This Court should deny Petitioner's requested review of the second question presented seeking to narrow the scope of the qualified immunity doctrine in cases involving non-police state actors.

Respectfully submitted,

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