No. _____

In The
Supreme Court of the United States

OFFICER CORNELIUS L. EMILY, in his individual and official capacities; and OFFICER ERNEST RHONEY, in his individual and official capacities,

Petitioners,

v.

CHRISTOPHER WELTERS,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Minnesota

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Minnesota Supreme Court depart from this Court's decisions in *City of Tahlequah v. Bond*, 142 S. Ct. 9 (2021) (*per curiam*), *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4 (2021) (*per curiam*), and many other qualified immunity cases by defining the relevant law at a high level of generality and holding that "less particularity is required to clearly establish what the constitution requires" when engaging in "routine conduct"?

PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the Court whose judgment is sought to be reviewed are:

- Corrections Officers Earnest Rhoney and Cornelius Emily, individuals, defendants, and appellants below, and petitioners here; and
- Christopher Welters, plaintiff and respondent below, and respondent here; and
- The Minnesota Department of Corrections, a Minnesota state agency, was a defendant in the district court and respondent at the Minnesota Court of Appeals, and was jointly represented by counsel for petitioners Rhoney and Emily. DOC Commissioner Tom Roy, and MCF-Stillwater Warden Eddie Miles, and Sergeant Michael Wildung were parties in the district court and were dismissed.

There are no publicly held corporations involved in this proceeding.

RELATED PROCEEDINGS

- *Welters v. Minnesota Department of Corrections*, Minnesota Court of Appeals (October 25, 2021) and Supreme Court (December 14, 2022), Appellate Case No. A20-1481.
- *Welters v. Minnesota Department of Corrections*, Minnesota District Court Case No. 82-CV-19-2268 (September 24, 2020).

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The district court's September 24, 2020 order granting summary judgment to petitioners is not reported, and is reproduced in the appendix to this petition ("App.") at pages 100-126. The Minnesota Court of Appeals affirmed in part and reversed in part on October 25, 2021. *Welters v. Minn. Dept. of Corr.*, 968 N.W.2d 569 (Minn. Ct. App. 2021). That opinion is reproduced in the appendix at pages 65-99. The Minnesota Supreme Court affirmed on December 14, 2022. *Welters v. Minn. Dept. of Corr.*, 982 N.W.2d 457 (Minn. 2022). That opinion is reproduced in the appendix at pages 1-64.

JURISDICTION

This Court has jurisdiction to review the Minnesota Supreme Court's decision on writ of certiorari under 28 U.S.C. § 1254(1). The petition is timely filed per the Court's March 9, 2023 order extending the time to file the petition by 30 days until April 13, 2023.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the U.S. Constitution provides:

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

42 U.S.C. § 1983 provides in relevant part:

> 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. . . .

INTRODUCTION

This case involves the application of qualified immunity to the conduct of two Minnesota corrections officers during the transport of Respondent Christopher Welters between two high-security prisons for a medical appointment. Welters alleged that one officer's failure to "double-lock" his handcuffs during the transport, and another officer's subsequent failure to loosen the handcuffs when he complained, constituted cruel and unusual punishment.

Without citing any case where officers were found to have violated the Eighth Amendment by using tight handcuffs or other restraints under similar circumstances, the Minnesota Supreme Court denied the officers qualified immunity. To support its conclusion that the law "clearly established" that Petitioners' alleged conduct was unconstitutional, and therefore not entitled to qualified immunity, the court cited a case involving a nonviolent offender being shackled while giving birth. Welters, however, was serving two life sentences for double homicide at a prison that houses some of the state's most violent offenders, his procedure was not hindered by the restraints, and the officers exercised the discretion afforded to them by DOC policy to determine the appropriate level of restraint for the situation.

This Court has repeatedly held that public officials are entitled to fair notice before they can be held liable under 42 U.S.C. § 1983, and that fair notice must be provided by closely analogous case law. Nonetheless, the Minnesota Supreme Court expressly ignored that admonition. It determined that the decisions made by the officers were "routine," and that there was "less nuance involved and thus less particularity is required to clearly establish what the constitution requires." App. 43. Because the Minnesota Supreme Court's decision contravenes the precedent of this Court and compromises the availability of qualified immunity for public officials in Minnesota and elsewhere, this Court

should grant certiorari and reverse the Minnesota Supreme Court's decision.

STATEMENT OF THE CASE

I. Safety In Minnesota State Correctional Facilities.

At the time of his injuries, Welters was serving two life sentences for double homicide at the Minnesota Correctional Facility at Stillwater (MCF-Stillwater). App. 51. MCF-Stillwater is one of 11 correctional facilities managed by the Minnesota Department of Corrections (DOC). Office of the Legislative Auditor, *Safety in State Correctional Facilities* at 4 (2020).[1] DOC assigns each prison a custody level ranging from one to five, with five being the highest level. MCF-Stillwater is one of three Level 4 facilities, the second-highest security level. *Id*. at 4. Most of the offenders at MCF-Stillwater, including Welters, are serving sentences for violent crimes, and as such, are closely supervised at all times. *Id*.; *See also* Minnesota Department of Corrections, *MCF-Stillwater Inmate Profile* (April 7, 2023).[2]

Violence is an unfortunate reality in high-security prisons. Inmate assaults on other inmates "leading to serious injuries are more common at higher security level prisons." Office of the Legislative Auditor, *supra*,

[1] https://perma.cc/8K6A-8698. (Last visited April 13, 2023).

[2] https://perma.cc/LPT3-9DUY. (Last visited April 12, 2023). This report is updated daily and publicly available online.

at 20. Welters himself has been assaulted by other inmates on several occasions and testified that "getting attacked is nothing new to me." Doc. 43 at 36, 48, 52-53.[3]

In addition, from 2016 through 2019, there were 489 prisoner assaults on staff at DOC facilities, half of which occurred at MCF-Stillwater (where Welters lived) and MCF-Oak Park Heights (where his medical procedure occurred). *Id*. at 22. In fiscal year 2018, the year in which this incident occurred, the DOC recorded more inmate assaults against staff than any of the previous five years. Minnesota Department of Corrections, *Performance Report* 39 (2018).[4] Just a year after this incident, for the first time in state history, a corrections officer died after being attacked by an inmate while working in the industrial shop at MCF-Stillwater. Office of the Legislative Auditor, *supra*, at 54. Additionally, at the time of this incident, the DOC was experiencing chronic staffing shortages, which are exacerbated by medical transports because of the level of staffing such transports require. Office of the Legislative Auditor, *supra*, at 36.

MCF-Oak Park Heights houses an outpatient medical clinic where inmates from throughout the state can receive medical procedures not available at

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[3] Non-appendix references to the record below correspond to the document numbers in the Appeals Record Documents Index for *Welters v. Minnesota Department of Corrections, et al.*, Minnesota Appellate Case No. A20-1481.

[4] This report is publicly available at https://perma.cc/367Z-W6HH. (Last visited April 12, 2023).

their own facilities. App. 5. The transportation and restraint of inmates, for purposes of medical procedures performed at other locations, are governed by DOC policy. App. 6-7. Specifically, DOC policies provide that full restraints must be used during the physical transportation of inmates to and from the medical facility. App. 6, 104. Full restraints include handcuffs, a waist chain, a black box,[5] and leg irons. App. 6.

Once at the medical facility, the use of restraints becomes a discretionary safety decision for corrections officers. App. 105. DOC policy states that "restraint levels may be modified at the discretion" of the officer in charge. App. 104-105. DOC policy provides that offenders remain in restraints during the medical procedure unless medical staff request otherwise. App. 105. In that situation, "officers must remove only those restraints that would interfere with the examination and/or treatment." App. 105. Even then, officers "are authorized to leave the offender in full restraints if, in their best judgment, control of the offender would be jeopardized even with additional security staff." App. 105.

II. Factual Background.

Welters was scheduled for an upper endoscopy at the outpatient clinic at MCF-Oak Park Heights on July

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[5] A " 'black box' is a restraint device that is applied over the chain and lock area of conventional handcuffs to form a rigid link between the two wristlets." *Reynolds v. Dormire*, 636 F.3d 976, 980 n. 3 (8th Cir. 2011) (internal quotations and citation omitted).

31, 2017. App. 5-6. Shortly after noon on that day, Welters was escorted to the security center at MCF-Stillwater to prepare for his medical transport. App. 6-7, 102. There, Welters was placed in full restraints by Petitioner Officer Ernest Rhoney. App. 6-7. Officer Rhoney asked Welters to demonstrate Welters could touch his own nose to make sure the restraints allowed for adequate movement. Doc. 43 at 11. Welters testified that the handcuffs felt "tighter than usual" but said he did not mention to the Officer Rhoney or anyone else at the time because he "didn't think it was important." App. 6.

After the restraints were in place, Welters and another inmate were escorted from the prison's security center to a transport vehicle by Officer Rhoney and a sergeant. App. 7, 102. Petitioner Officer Cornelius L. Emily, who also participated in this medical transport, was not present when the restraints were applied and was waiting by the transport vehicle. App. 7; Doc. 43 at 10. Upon arriving at the vehicle, Welters contends that he told Officer Rhoney that his handcuffs were tight but that Officer Rhoney responded "Oh, it's only a 15-minute drive, it'll be all right." App. 7. Welters did not tell any of the three officers that he was in pain. App. 102-103; Doc. 43 at 11-12.

Welters and the other inmate were helped into the transport vehicle and secured with seatbelts. Doc. 43 at 10. According to Welters, during the process of getting into the vehicle, Officer Rhoney accidentally

clicked Welters' right handcuff, making it tighter.[6] App. 7. Welters asked Officer Rhoney to fix the handcuffs, and Officer Rhoney responded that it was only a 15-minute drive. App. 7. Welters did not tell Rhoney that the handcuffs were hurting him. Doc. 43 at 11-12.

Upon their arrival at the Oak Park Heights prison, Welters and the other inmate were escorted into a large holding cell near the medical facility. App. 7-8. Officer Rhoney and the other officer then left MCF-Oak Park Heights to return to MCF-Stillwater, leaving Officer Emily at the prison. App. 7, 103. While waiting, both Welters and the other inmate asked Officer Emily why they were still in restraints. App. 8, 103. Officer Emily decided to keep Welters and the other inmate in restraints for safety reasons because he was by himself and responsible for two inmates. App. 8, 103. Welters claims he also told Officer Emily his hands were numb.[7] App. 8. Officer Emily responded by saying he needed "to go find his partners" and leaving the holding cell. App. 8. This brief exchange is the only conversation that Welters had with Officer Emily. Doc. 43 at 15.

Within 30 minutes of arriving to the holding cell, Welters was called into his medical procedure by an

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[6] According to Welters, this was possible because the handcuffs were not "double-locked." App. 110-112.

[7] Officer Emily disputes that Welters expressed discomfort or asked that the restraints be removed. App. 10. In reviewing this case in a summary judgment posture, however, the Court reviews the evidence in the light most favorable to Welters and resolves reasonable factual inferences in his favor.

unknown DOC employee. App. 8, 103. Welters asked that employee to remove his restraints. App. 8, 103. Officer Emily was not present at this time. App. 103. The medical professional did not ask that the restraints be removed. App. 106, 112. Welters testified that his hands were numb at this time but that he was not in pain. Doc. 43 at 14.

Welters was thereafter placed under anesthesia for the medical procedure with his restraints still in place. App. 8-9, 103. When Welters awoke a short time later, he was still in full restraints and his hands were numb. App. 9, 103.

Officer Emily then came into the medical room, along with an officer named Officer Van Vooren, to help Welters get ready for his transport back to MCF-Stillwater. App. 103-104. Welters said that his restraints had been left on during his procedure, said his hands were numb, and asked that the restraints be removed. App. 103-104. Officer Van Vooren declined Welters request, explaining that they needed to return to Stillwater. Doc. 43 at 15. Shortly thereafter, Welters was transported back to MCF-Stillwater by Officer Van Vooren and Officer Rhoney, with Officer Emily staying behind at MCF-Oak Park Heights. App. 103-104. Welters did not speak to Officer Rhoney during the return transport. Doc. 43 at 15, 17, 172-173.

Upon return to MCF-Stillwater, Welters was escorted to the Security Center by Officer Van Vooren, where the restraints were removed. App. 10. Welters claims that his hands and wrists were numb and were

a "light bluish" color by the time he got back to Stillwater. App. 10. Welters was then escorted to the medical area at MCF-Stillwater, where he was examined and released to his living unit. App. 10.

Following this incident, Welters filed a kite[8] with MCF-Stillwater alleging that his hands and wrists were injured by the conduct the officers. App. 11. Captain Byron Matthews investigated the allegations and then responded to Welters. App. 12. Captain Matthews determined that many of Welters' allegations were exaggerated or unfounded. App. 105-106. He also opined that the restraints should have been removed upon placement in the medical facility holding cell and that he had reminded the officers to remove offender restraints during medical procedures unless the officers have a safety concern. App. 12, 105-106.

III. Procedural Background.

Welters sued Petitioners, several other DOC officials, and the DOC, alleging violations of the First and Eighth Amendments as well as a state law negligence claim. App. 108-109. The district court granted summary judgment for the officers on all of Welters' claims, including his Eighth Amendment claim. App. 100-126. As to the Eighth Amendment claim, the district court reasoned that Welters "was restrained, and continued

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[8] A kite is a written form used by DOC inmates to communicate with DOC staff. *See* Department of Corrections, Policy Number 303.101, *Kites/Communication* (2020), https://perma.cc/ZP9C-7D67.

to be restrained, in accordance with DOC policy, in order to maintain safety," and "neither officer was made aware that Plaintiff was experiencing harm as opposed to mere discomfort." App. 113.

The Minnesota Court of Appeals reversed as to Welters' Eighth Amendment claim. App. 65-99. Deciding "an issue of first impression before a Minnesota appellate court," the court evaluated Welters' claim using the "deliberate indifference" standard instead of the "malicious and sadistic" standard used by the trial court. App. 85-87. The Court of Appeals held that Welters' Eighth Amendment rights were clearly established by *Hope v. Pelzer*, in which this Court determined that corrections officers violated an inmates clearly established Eighth Amendment rights by chaining him to a hitching post for seven hours in the sun while denying him access to water and a restroom. App. 83-85. The Court also "adopted" the reasoning used by the Eighth Circuit Court of Appeals in *Nelson v. Correctional Medical Services*, in which that court determined that a corrections officer had violated an inmates rights by shackling her to the bed in the final stages of labor. App. 87-88.

The Minnesota Supreme Court affirmed, agreeing with the Court of Appeals that the deliberate indifference standard applied. App. 21-26. As to qualified immunity, the Minnesota Supreme Court held that reasonable officers would have known the conduct alleged by Welters violated the Eighth Amendment, and therefore qualified immunity was not available. App. 39-44. According to the court, the "basic directive" of

Hope is that corrections officers may not cause harm without a penological purpose, and that directive "was sufficient" to satisfy qualified immunity's fair notice requirement. App. 42. The court also joined the Court of Appeals in looking to case law in which officers restrained inmates in the final stages of labor as clearly establishing the unlawfulness of restraining inmates while under anesthesia, as well as an unpublished Seventh Circuit decision. App. 46-47.

The court determined that the officers' conduct did not "require quick decision-making" so there was "less nuance" involved in the qualified immunity analysis. App. 43. Noting that they were "not convinced" by Officer Emily's stated concern for his own safety, the court determined that there was "no competing government interest" justifying the officers' decisions. App. 26, 43. Therefore, the court established a new rule in such cases that "less particularity is required [between existing case law and the situation confronted by the officers] to clearly establish what the constitution requires." App. 43. The court held that "concern about holding an officer to a constitutional standard at too high a level of generality is reduced" in the absence of any "competing government interest," such as the need to respond to a security threat. App. 43.

Chief Justice Gildea dissented on the basis that the Court should have applied the "malicious and sadistic" Eighth Amendment standard articulated by this Court in *Whitley v. Albers* and *Hudson v. McMillian*, chiding the majority for its characterization of the

transport as "routine" and disregard of the officers' safety concerns. App. 51-64.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari because the Minnesota Supreme Court's analysis eviscerates the fair notice requirement that this Court has described as the focus of qualified immunity. Instead, the decision below conflicts with this Court's mandate to identify closely analogous law in qualified immunity cases. In short, the court disregarded this Court's consistent admonition not to define the constitutional right at "a high level of generality," a command this Court repeated just two terms ago in *City of Tahlequah* and *Rivas-Villegas*. This Court frequently grants review and reverses in these circumstances.

The consequences of Minnesota's departure from this Court's cases are likely to be stark. Minnesota's new rule decreases the likelihood that lawsuits against public officials can be resolved at an early stage, subjecting officials to the burdens of discovery and trial that qualified immunity is supposed to protect them from. Minnesota's qualified immunity rule is also difficult for both public officials and courts to apply and increases the likelihood of inconsistent results between § 1983 actions filed in Minnesota state court and those filed in federal court. Therefore, the Court should grant certiorari and reverse the Minnesota Supreme Court's

refusal to apply qualified immunity in this case, as it has done in many other recent cases.

I. The Minnesota Supreme Court's Qualified Immunity Analysis Contravenes Court's Admonition Not To Define The Law At A High Level Of Generality.

This Court has long recognized that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Court asks whether (1) the plaintiff has shown the violation of a constitutional right, and (2) if so, whether the right at issue was "clearly established" at the time of the incident, such that a reasonable official would have fair notice their conduct was unlawful. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Courts reviewing a qualified immunity defense may exercise their "sound discretion" as to which of the two prongs of the analysis to address first. *Id*. at 236.

This Court has repeatedly said the focus of qualified immunity "is on whether the officer had fair notice that her conduct was unlawful." *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (*per curiam*)); *see also*, *e.g.*, *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7-8 (2021). Fair notice means that the court should not "define

clearly established law at too high a level of generality." *City of Tahlequah, Okla. v. Bond*, S. Ct. 9, 11 (2021). Defining the applicable right at a high level of generality would "convert the rule of qualified immunity that our cases plainly establish into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Anderson v. Creighton*, 483 U.S. 635, 639 (1987).

Although an official "can still be on notice that their conduct violates established law even in novel factual circumstances," the constitutional rule should apply with "obvious clarity to the specific conduct in question." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). In other words, "existing law must have placed the constitutionality of the officer's conduct 'beyond debate.'" *D.C. v. Wesby*, 138 S. Ct. 577, 589 (2018) (quoting *Ashcroft v. al–Kidd*, 563 U.S. 731, 741 (2011)). Only in "extreme circumstances" can a constitutional right be clearly established in novel factual scenarios. *Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020) (holding that no reasonable officer could have believed that confining inmate to a cold cell with no toilet and feces on the floor was constitutional).

Such rules must be "dictated by controlling authority or a robust consensus of cases of persuasive authority." *Wesby*, 138 S. Ct. at 589-590 (internal quotation marks and citations omitted). This authority must also present "similar circumstances." *White v. Pauly*, 580 U.S. 73, 79 (2017). "This demanding standard protects all but the plainly incompetent or those who knowingly violate the law." *Wesby*, 138 S. Ct. at

589 (internal quotation marks and citation omitted); *cf. City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 616 (2015) (holding that expert opinion that officer's conduct was "imprudent, inappropriate, or even reckless" did not defeat qualified immunity when reasonable officer could have believed conduct was justified). To overcome qualified immunity, a plaintiff must show "that *every* reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (emphasis added) (internal quotations and brackets omitted).

The Minnesota Supreme Court violated these clear and oft-repeated commands, creating a new fair notice rule that depends on a court's perception about the time an official has to make a decision. This new rule is inconsistent with this Court's precedent and has serious implications for public officials in Minnesota. The Court should therefore grant certiorari and reverse.

A. There Is No Controlling Authority Finding An Eighth Amendment Violation On Facts Similar To Those Alleged Here.

"After incarceration, only the unnecessary and wanton infliction of pain constitutes cruel and unusual punishment forbidden by the Eighth Amendment." *Whitley v. Albers*, 475 U.S. 312, 319 (1986) (internal quotation and ellipsis omitted). This Court has recognized that "running a prison is an inordinately difficult

undertaking," and that "safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face." *Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015) (internal citations omitted).

Lower courts have recognized that restraints are sometimes necessary to maintain security in a prison setting even when those restraints result in discomfort or pain. Recognizing the deference generally owed officials in these circumstances, numerous courts have applied qualified immunity in cases challenging discretionary uses of restraints. *See*, *e.g.*, *Stark v. Lee Cnty.*, 993 F.3d 622, 625 (8th Cir. 2021) (granting qualified immunity when restrained inmate was injured while being transported from medical appointment); *Reynolds v. Dormire*, 636 F.3d 976, 979-980 (8th Cir. 2011) (holding that refusal to remove inmate's restraints during a day-long journey for a medical appointment did not sufficiently allege a viable Eighth Amendment claim); *Moody v. Proctor*, 986 F.2d 239, 241-242 (8th Cir. 1993) (*per curiam*) (determining that prison officials' continued use of restraints—including a black box—that the inmate stated injured him injury in the past, and that caused injury during the disputed incident, was neither malicious and sadistic nor deliberately indifferent action by prison officials); *see also Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 763-764 (7th Cir. 2021) (holding that decision to apply "black box" restraint during medical appointment did not violate Eighth Amendment even though it caused

"extreme pain"); *Taylor v. Rowland*, 996 F.2d 1227 (9th Cir. 1993) (unpublished) (holding corrections officer's refusal to loosen handcuffs while transporting inmate did not violate Eighth Amendment).

Passive restraint cases in which qualified immunity is denied have tended to involve lengthy periods of restraint in which the inmate complained of severe pain throughout the incident. *See*, *e.g.*, *Young v. Martin*, 801 F.3d 172, 182 (3d Cir. 2015) (denying summary judgment when fourteen hour confinement in restraint chair violated prison policy and was not justified by security concern, and prisoner "cried out in pain" upon application of restraints); *Barker v. Goodrich*, 649 F.3d 428, 434-437 (6th Cir. 2011) (holding that officers' conduct was clearly established as unconstitutional when they handcuffed non-resistant inmate behind his back and placed him in detention cell for 12 hours without access to food, water, or restroom); *Ajala v. Tom*, 658 F. App'x 805, 806-807 (7th Cir. 2016) (unpublished) (noting that inmate complained of painful handcuffing immediately prior to starting four hour transport and throughout the transport, and noting the defendants had not alleged any "penological justification" for their actions). These cases are different than this one, in which Welters alleges he complained of numbness in his hands once.[9]

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[9] Welters' expert report that "nerve compression injuries from overtightened handcuffs" are "well documented in the literature" does not illuminate the officers' awareness of the risk of harm, as there is no evidence in the record that the officers were aware of the literature on nerve compression injuries. App. 12.

B. The Minnesota Supreme Court Contravened This Court's Precedents By Defining The Applicable Law At Too High A Level Of Generality.

This Court has "repeatedly told courts not to define clearly established law at too high a level of generality." *City of Tahlequah*, 142 S. Ct. at 11 (reversing because court below did not identify "a single precedent finding a Fourth Amendment violation under similar circumstances"); *Rivas-Villegas*, 142 S. Ct. at 9 (reversing denial of qualified immunity because decision below failed to identify case law that was "sufficiently similar"). "It is not enough that a rule be suggested by then-existing precedent; the rule's contours must be so well defined that it is clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *City of Tahlequah*, 142 S. Ct. at 11 (internal quotations and citations omitted).

The Minnesota Supreme Court created a new and unwarranted exception to this rule when it held that "concern about holding an officer to a constitutional standard at too high a level of generality is reduced" when there is no "need to respond to a security threat" and when an "officer is engaging in routine conduct that does not require quick decision-making." App. 43.

See Doc. 43 at 135 (Officer Emily describing his educational background as "I'm a high school graduate, some college."), and 163 (Officer Rhoney describing his educational background as having a bachelor's degree in sociology). *Cf. City & Cnty. of San Francisco, Calif.*, 575 U.S. 600, 616 (2015) (expert report that officers' conduct was imprudent, inappropriate, or even reckless" was insufficient to defeat qualified immunity).

The court cited *Hope* as support for creating an exception in which "less particularity" is required to provide fair notice in such situations, but *Hope* stands for no such proposition. In *Hope*, this Court denied qualified immunity to corrections officials who chained a shirtless inmate to a hitching post with his arms above his shoulders for seven hours in the sun without water or restroom breaks. *Hope*, 536 U.S. at 734-735. The officers in *Hope* were punishing the inmate for insubordination and taunted him about his thirst. *Id*. The officials in *Hope* were on notice that their egregious conduct was unlawful because prior in-circuit case law had held that chaining an inmate to a fence for an extended period of time was unconstitutional, and there was no constitutional difference between a hitching post and a fence. *Id*. at 742-743. Moreover, the officers in *Hope* brazenly disregarded their own agency's policy and an advisory from the United States Department of Justice that explicitly told them their use of a hitching post for punishment was unlawfully cruel. *Id*. at 745. The Eighth Amendment's prohibition on cruel and unusual punishment therefore applied with "obvious clarity" to the situation in *Hope*. *Id.* at 741.

Here, by contrast, no such fair notice existed. Welters was initially restrained pursuant to DOC policy while on a 15-minute transfer between two high-security prisons. Based on his experience and judgment, and because he was alone with two people convicted of violent crimes, Officer Emily exercised his discretion to keep both inmates restrained at the prison medical unit. App. 103, 113, 120. There is no evidence that

Officer Emily was aware that another officer did not double-lock the handcuffs. Doc. 43 at 9-12 (Welters describing which officers were present while restraints were applied).

The "basic directive" of *Hope* does not satisfy the fair notice requirement that *Hope* itself reiterates and that this Court has repeatedly reaffirmed. App. 42. *Hope* offers no guidance for officers facing the circumstances that Officers Rhoney and Emily faced and does not "clearly establish" that these officers' decisions violated the Eighth Amendment. Rather than making decisions about the punishment of an inmate, Officers Rhoney and Emily made discretionary decisions pertaining to the safe transport of an inmate within the parameters of their agency's policy—precisely the type of official conduct that qualified immunity is intended to protect.

This Court's qualified immunity jurisprudence has never turned on a court's characterization of the officials' alleged conduct as "routine," or whether the situation requires "quick decision-making." App. 42-43. In fact, this Court has repeatedly applied qualified immunity for decisions that officials made over the course of days or months. *Harlow*, one of this Court's seminal qualified immunity decisions, involved the decision of senior White House officials to terminate a military officer's employment, a decision made over the course of several months. 457 U.S. at 802-804. More recently, the Court applied qualified immunity to decision-making and policies pertaining to prolonged immigrant detentions. *Ziglar v. Abbasi*, 582 U.S. 120, 155 (2017). *See*

also Wilson v. Layne, 526 U.S. 603, 614-615 (1999) (applying qualified immunity to decision to bring media observers to execution of a search warrant in a home). This Court applied qualified immunity in these cases even though they did not involve "quick decision-making."

Similarly, lower courts routinely apply qualified immunity to decisions that do not involve quick-decision-making, including miscalculation of a prison term, *Dahl v. Weber*, 580 F.3d 730, 735 (8th Cir. 2009); revocation of permits and licenses, *Dollar Loan Ctr. of S. Dakota, LLC v. Afdahl*, 933 F.3d 1019, 1026 (8th Cir. 2019) (lending license); *Zahra v. Town of Southold*, 48 F.3d 674, 686 (2d Cir. 1995) (building permit); and decisions related to public employment. *Williams v. Consol. City of Jacksonville*, 341 F.3d 1261, 1272 (11th Cir. 2003). *See also Lowe v. Raemisch*, 864 F.3d 1205, 1211 (10th Cir. 2017) (rejecting "sliding-scale approach" to qualified immunity). In these cases, the courts' inquiries were, as they should be, on whether the official had reason to believe the conduct was unlawful.

The need for factually similar case law is even more important in this context, as the applicable Eighth Amendment standard depends on "careful analysis of the factual context." *Jackson v. Gutzmer*, 866 F.3d 969, 977 n. 3 (8th Cir. 2017). The majority and dissenting opinion in disagreed on which substantive standard applied here. *See* App. 51-64. And in a related constitutional context this Court has recognized that "[p]recedent involving similar facts can help move a case beyond the otherwise 'hazy border between

excessive and acceptable force'" and thereby provide an officer with notice that a specific course of conduct is unlawful. *Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018).

Qualified immunity, after all, was intended to protect public employees from "hindsight-based reasoning" so that they could "unflinching[ly] discharge [. . .] their duties." *Mitchell v. Forsyth*, 472 U.S. 511, 535 (1985); *Harlow*, 457 U.S. at 814. Characterizing those duties as "routine" does nothing to illuminate considerations underlying the judgment calls that public officials are required to make every day. Moreover, the Minnesota Supreme Court's strident conclusion that there was "no competing governmental interest" justifying the officers' actions violates this Court's "admonition that judges should be cautious about second-guessing [an official's] assessment, made on the scene, of the danger presented by a particular situation." *Ryburn v. Huff*, 565 U.S. 469, 477 (2012). The Minnesota Supreme Court's analysis is wholly inconsistent with this Court's qualified immunity jurisprudence, justifying this Court's intervention.

C. Petitioners Are Entitled To Qualified Immunity Under This Court's Precedents.

Applying this Court's precedents to the decisions made by each of the Petitioners compels a conclusion that existing case law did not provide fair notice that their decisions violated the Eighth Amendment. *See*

City of Escondido v. Emmons, 139 S. Ct. 500, 502-503 (2019) (*per curiam*) (separately evaluating the decisions made by each officer).

Officer Rhoney placed Welters in restraints at the time of transport pursuant to policy, and Welters admits that he did not tell Officer Rhoney that the cuffs were painful or that his hands were numb. Doc. 43 at 11-12. Indeed, Welters testified he does not "believe [Rhoney] was intending to hurt me." Doc. 43 at 60. Any failure to double-lock the handcuffs was a mistake that was at most negligent. *Cf. Getz v. Swoap*, 833 F.3d 646, 653 (6th Cir. 2016) (applying qualified immunity to a police officer's failure to double lock handcuffs and check for tightness).

Assessing the circumstances before him, Officer Emily decided not to remove the restraints at the medical facility. DOC Policy provides that "restraint levels may be modified at the discretion of the [Central Medical Transportation Unit] lieutenant/[Officer In Charge]." App. 104-105. Officer Emily explained that he was working by himself with two inmates from a high-security prison that predominantly houses violent offenders and accounts for a significant number of assaults on both staff and other prisoners. App. 103, 113, 120. *See* Office of the Legislative Auditor, *supra*, at 22-24 (2020). When Welters complained about numbness in his hands and asked that the restraints be removed, Officer Emily said he needed to "go find [his] partners" and later testified that he did not feel safe with inmates when he was working by himself. App. 103, 113, 120. To even loosen the restraints, Officer

Emily would have had to remove the black box restraint and unlock the handcuffs, putting himself at risk of being overpowered by two inmates in the holding cell.

Welters himself acknowledges the violence that is endemic to prisons. Doc. 43 at 48. And he admitted there was no visible discoloration or marks on his hands until at least the time that he woke up from his procedure, long after his only conversation with Officer Emily. Doc. 43 at 8, 14-17. Welters has not identified any evidence that Officers Emily or Rhoney observed any discoloration in his hands, as would be required to show any subjective awareness of a dangerous condition. *Farmer v. Brennan*, 511 U.S. 825, 837-838 (1994).

There is no controlling legal authority finding an Eighth Amendment violation on facts similar to those alleged here. Nor is there a "robust consensus" of case law from other jurisdictions that the alleged conduct was unlawful. Instead, the majority of relevant cases dismiss similar claims. *See*, *e.g.*, cases cited *supra* at 19-20.

Neither the Minnesota Supreme Court nor Welters identified a controlling case that would apply with "obvious clarity" to the situation confronted by Officer Emily when he chose not to remove the restraints while alone with two inmates. App. 103, 113, 120. Instead, the court analogized to the Eighth Circuit's decision in *Nelson v. Correctional Medical Services*, 583 F.3d 522 (8th Cir. 2009) and other cases involving restraints applied to inmates giving birth. App. at 46,

49-50. *Nelson* involved the shackling of a nonviolent offender's legs to a bed while in the final stages of labor, not the use of handcuffs during a medical transport and medical procedure. *Id*. at 526. The *Nelson* court emphasized that the shackles were continuously removed and reapplied, over the objection of medical personnel. *Id.* at 529-530. And the corrections officer in *Nelson* admitted that she ignored department policy and a specific directive from her supervisor not to apply the shackles. *Id*. at 525-527. *Nelson* is distinguishable on its face and would not apply with "obvious clarity" to an officer's decision to continue restraining two inmates from a violent prison while working alone.

The Minnesota Supreme Court did not cite any controlling case law applying either *Hope* or *Nelson* to facts similar to those here, such that a reasonable officer would be on notice that those cases would apply to the use of restraints for any medical transport and medical procedure. *City of Tahlequah*, 142 S. Ct. at 11. Even the out-of-jurisdiction case that the Minnesota Supreme Court cited in support of its denial of qualified immunity are readily distinguishable: the Seventh Circuit in *Ajala* denied qualified immunity where the inmate immediately and continuously complained that the handcuffs were painfully tight throughout a transport that officers knew from the beginning would be more than four hours. More recently, the same circuit held in a precedential decision that application of a "black box" restraint was not an Eighth Amendment violation even though it caused severe pain and the inmate had medical reasons for an exemption from the

restraint. *Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 763-765 (7th Cir. 2021) (holding that denial of an exemption from "black box" restraint did not violate the Eighth Amendment even though restraint caused severe pain). The other cases the Minnesota Supreme Court cited—*Young* and *Barker*, neither of which are controlling precedents in Minnesota—each involve lengthy applications of restraints or repeated refusals to loosen handcuffs after multiple complaints of pain.[10] Here, by contrast, Welters alleges that he had one conversation with each officer, telling Officer Rhoney that the cuffs were "pretty tight" ahead of their 15-minute drive and then later asking Officer Emily why he and the other inmate were still restrained while complaining of numbness. In any event, this is far from the "robust consensus of persuasive authority" that this Court has required to form the basis of fair notice. *Ashcroft*, 563 U.S. at 742 (quoting *Wilson v. Layne*, 526 U.S. 603, 617 (1999)). *See also Hope*, 536 U.S. at 737-738 (discussing controlling circuit court

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[10] The Minnesota Supreme Court also cited *Morris v. Zefferi*, in which the Eighth Circuit denied qualified immunity where a prisoner was transported inside of a "small, unsanitary dog cage" for 90 minutes for no reason. 601 F.3d 805, 812 (8th Cir. 2010). That case does little to inform the analysis here, where Petitioners made decisions on the appropriate level of restraint based on the situation confronting them. *Morris* cited *Nelson* for the unremarkable proposition that the law can be clearly established even in novel factual circumstances when the violation is obvious. *Id.* The court's citation to *Key v. McKinney*, 176 F.3d 1083 (8th Cir. 1999), is likewise inapposite because there is no indication that any officer in that case had safety concerns about modifying the restraints, as did Officer Emily in this case. (App. 49.)

precedent in existence prior to the officers' conduct in that case).

Evaluating the officers' conduct in this manner undermines the reasons qualified immunity exists: "Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law." *Stanton v. Sims*, 571 U.S. 3, 6 (2013) (internal quotations and citations omitted). Welters' allegations show, at most, errors in judgment by two corrections officers who were responsible for the safety of themselves and inmates at a prison with an unfortunate recent track record of violence. The cases relied upon by the Minnesota Supreme Court are "simply too factually distinct to speak clearly to the specific circumstances here." *Mullenix v. Luna*, 577 U.S. 7, 18 (2015). Because the Minnesota Supreme Court's failure to identify analogous case law contradicts this Court's explicit command, this Court should grant certiorari and reverse the Minnesota Supreme Court.

II. This Court Has Repeatedly Granted Certiorari And Reversed When Lower Courts Misstate The Qualified Immunity Standard.

This Court has repeatedly reversed lower court misapplication of qualified immunity. In qualified immunity and other contexts, this Court has not been hesitant to summarily reverse lower court decisions that are patently in conflict with its precedents. *E.g.*,

CNH Indus. N.V. v. Reese, 138 S. Ct. 761, 766-767 (2018) (*per curiam*) (granting certiorari and reversing because circuit court did not follow Supreme Court precedent); *Am. Tradition P'ship, Inc. v. Bullock*, 567 U.S. 516, 517 (2012) (reversing state supreme court for failure to apply Supreme Court precedent). Summary reversal is appropriate where, as here, the lower court opinion contains "fundamental errors that this Court has repeatedly admonished courts to avoid." *Sexton v. Beaudreaux*, 138 S. Ct. 2555, 2560 (2018).

Lower courts' failure to apply qualified immunity has resulted in frequent reversals, often summarily. "Because of the importance of qualified immunity "to society as a whole [. . .] the Court often corrects lower courts when they wrongly subject individual officers to liability." *City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 611 n. 3 (2015) (internal quotations and citations omitted). This Court has granted qualified immunity in at least 20 cases since deciding *Pearson* in 2009, frequently reversing lower courts.[11] A

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[11] *City of Tahlequah, Oklahoma v. Bond*, 142 S. Ct. 9, 11 (2021); *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 9 (2021); *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500 (2019) (*per curiam*); *Kisela v. Hughes*, 138 S. Ct. 1148 (2018) (*per curiam*); *D.C. v. Wesby*, 138 S. Ct. 577 (2018); *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017); *White v. Pauly*, 580 U. S. 73 (2017) (*per curiam*); *Mullenix v. Luna*, 577 U.S. 7 (2015); *Taylor v. Barkes*, 135 S. Ct. 2042 (2015) (*per curiam*); *City & Cnty. of San Francisco. v. Sheehan*, 575 U.S. 600 (2015); *Plumhoff v. Rickard*, 572 U.S. 765 (2014); *Carroll v. Carman*, 574 U.S. 13 (2014) (*per curiam*); *Lane v. Franks*, 573 U.S. 228 (2014); *Wood v. Moss*, 572 U.S. 744 (2014); *Stanton v. Sims*, 571 U.S. 3, 6 (2013) (*per curiam*); *Reichle v. Howards*, 132 S. Ct. 2088 (2012); *Messerschmidt v. Millender*, 565 U.S. 535 (2012); *Ryburn v. Huff*, 565 U.S. 469 (2012) (*per curiam*);

common theme in many of these cases is the lower court's failure to identify "a single precedent finding a [constitutional] violation under similar circumstances." *City of Tahlequah*, 142 S. Ct. at 12. *See also*, *e.g.*, *Rivas-Villegas*, 142 S. Ct. at 8 (granting qualified immunity because lower court did not identify "any Supreme Court case that addresses facts like the ones at issue here."); *Wesby*, 138 S. Ct. at 591 (reversing court below for failure to identify case finding constitutional violation under similar circumstances). Many of these cases are summary reversals with no public dissents. *E.g.*, *City of Tahlequah*, 142 S. Ct. at 11; *Rivas-Villegas*, 142 S. Ct. at 9.

The Court should grant certiorari here because the Minnesota Supreme Court's "analysis, if followed elsewhere, would 'undermine the values qualified immunity seeks to promote.'" *Wesby*, 138 S. Ct. at 589 (citing *al-Kidd*, 563 U.S. at 735). Indeed, the Minnesota Supreme Court has already applied its new qualified immunity standard. *McDeid v. Johnston*, 984 N.W.2d 864, 872 (Minn. 2023).

The Minnesota Supreme Court's departure from this Court's fair notice rule has serious implications for public officials in Minnesota. Every day, government officials must exercise discretion to make decisions related to law enforcement, public health, and public employment. These decisions are consequential even when made in non-emergency circumstances, and the constitutional contours of such decisions may be

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Ashcroft v. al-Kidd, 563 U.S. 731 (2011); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364 (2009).

unclear even with the benefit of time for reflection. The Minnesota Supreme Court's relaxed fair notice standard puts officials at risk for liability for "bad guesses in gray areas." *Scott v. Baldwin*, 720 F.3d 1034, 1036 (8th Cir. 2013) (internal citations and quotations omitted).

Public officials in Minnesota are thus in the exact position the Court's qualified immunity jurisprudence was intended to avoid. *Pierson v. Ray*, 386 U.S. 547, 555 (1967) ("A policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does."). As the Court observed in *Harlow*, failure to apply qualified immunity inflicts "social costs," which "include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office," as well as "the danger that fear of being sued will 'dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties.'" 457 U.S. at 814.

Moreover, the Minnesota Supreme Court's relaxed fair notice rule will likely prove difficult for lower courts to apply. It is not clear how much time for reflection is permitted or how much "less particularity in governing law is required" because the court declined to "parse precisely where that line is to be drawn." App. 44-45. This makes it difficult for courts as well as public officials to know how their decisions are likely to be evaluated. This uncertainty is likely to lead to foster

additional litigation and lead to inconsistent results when that conduct is challenged in state court.

The potential for inconsistent results is even more likely between state and federal courts in Minnesota. State and federal courts have concurrent jurisdiction to adjudicate cases brought under 42 U.S.C. § 1983. *Williams v. Ragnone*, 147 F.3d 700, 702 (8th Cir. 1998). Minnesota Supreme Court precedent is binding on all lower state courts, even on issues of federal law. *Jendro v. Honeywell*, Inc., 392 N.W.2d 688, 691 n. 1 (Minn. Ct. App. 1986). Consistent with this Court's precedent, lower federal courts routinely apply the same qualified immunity analysis regardless of whether the official's decision was made in an emergency or not. *E.g*. *Scott*, 720 F.3d at 1037 (granting qualified immunity to prison official because "the law did not fairly warn him that the amount of time spent recalculating thousands of release dates, including the plaintiffs', recklessly disregarded their constitutional right to release."). Removal to federal court can be problematic for state defendants. State defendants are often sued in their individual and official capacities and removal risks waiving the Eleventh Amendment immunity that would apply to such official claims. *See Lapides v. Board of Regents of Univ. Sys. of Ga*., 535 U.S. 613, 624 (2002) (state defendants' decision to remove case to federal court waived sovereign immunity). Thus, officials sued under the same federal statute are likely to be treated differently depending on whether the claim is brought in state or federal court, with removal being an unappealing option for state defendants.

In sum, this Court's intervention is necessary to enforce its precedent and ensure uniformity between state and federal courts.

CONCLUSION

The Minnesota Supreme Court's decision is contrary to this Court's precedents and compromises the availability of qualified immunity for public officials sued in Minnesota state court under § 1983. The Court should grant this petition, summarily reverse the Minnesota Supreme Court's denial of qualified immunity, and remand with instructions to reinstate summary judgment for the officers.

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