No. 22-1005

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,

Petitioner,

v.

CHRISTOPHER WELTERS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Minnesota

BRIEF OF AMICI CURIAE ASSOCIATION OF MINNESOTA COUNTIES, MINNESOTA SHERIFFS' ASSOCIATION, AND MINNESOTA COUNTY ATTORNEYS ASSOCIATION IN SUPPORT OF PETITIONER

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INTERESTS OF THE AMICI CURIAE[1]

The Association of Minnesota Counties ("AMC") is a Minnesota-based, non-partisan, statewide organization comprised of officials from Minnesota's 87 counties. AMC strives to ensure that Minnesota counties provide efficient, effective, and high-quality governance. AMC provides educational programs, training, research, and communications to county officials in Minnesota. AMC promotes and advances the interests of Minnesota counties in obtaining appropriate responses to issues from state and federal executive and legislative branches to foster and encourage innovative and responsive county service delivery, policy decisions, and public resources utilization. AMC works closely with legislative, administrative, and judicial branches of government on issues involving adoption, enforcement, and modification of laws and policies that affect Minnesota's counties. AMC represents the position of Minnesota's counties before state and federal governmental agencies and the public.

The Minnesota County Attorneys Association ("MCAA") is an independent, voluntary organization of County Attorneys dedicated to improving the quality of justice in the State of Minnesota. The MCAA represents all 87 of Minnesota's County Attorneys. The MCAA is dedicated to improving the quality of justice in the State of Minnesota by, among

[1] Pursuant to Supreme Court Rule 37, all parties were timely notified of the filing of this brief. Counsel for *Amici* state that no counsel for a party authored this brief in whole or in part and represent that the Minnesota Counties Intergovernmental Trust (MCIT) is the only entity that has made a monetary contribution to the preparation or submission of this brief.

other things, "developing consensus on legal and public policy issues of statewide significance to County Attorneys." MCAA's members are experienced federal civil rights litigators who routinely represent local officials in state and federal court cases involving qualified immunity.

The Minnesota Sheriff's Association ("MSA") is the longest existing association in the State of Minnesota for law-enforcement professionals. The organization was founded over 125 years ago to advance the interests of the Office of the Sheriff and to promote public safety and professionalization of law enforcement. In Minnesota, the Office of the Sheriff predates Minnesota's statehood and has a long history of serving as the chief and primary law-enforcement officer at the county level. Sheriffs are the primary local agency responsible for the custody and transportation of prisoners. Sheriffs are mandated by statute and constitutional requirements to provide safe and secure jails, courts, and custody operations. The MSA is a 501(c)(3) nonprofit corporation whose voting membership is the 87 elected sheriffs of the counties of Minnesota. The MSA includes thousands of members of the staff of the Office of Sheriff throughout the State of Minnesota. A primary goal of the MSA is to continue to advance the professional practices, image, and reputation of law enforcement and, specifically, sheriff staff employees throughout the State.

AMC, MCAA, and MSA are submitting this amici curiae brief because the Minnesota Supreme Court's decision not only undermines binding United States Supreme Court precedent, but also endangers public safety, officer safety, and safety of prisoners by

questioning law enforcement officers' ability to take necessary actions to safeguard the public and themselves when transporting and accompanying inmates during medical appointments and procedures. Amici have an important perspective on these public policy concerns and why this Court should grant certiorari.

SUMMARY OF ARGUMENT

Amici are familiar with the Petition filed by Officers Cornelius L. Emily and Ernest Rhoney and do not seek to duplicate the Petition's arguments. Rather, Amici wish to emphasize the exceptional public importance of the questions presented by the Petition for public officials in the State of Minnesota.

Since Amici represent the interests of county government, county law enforcement and the attorneys who represent them, Amici provide this Court with a valuable perspective into the implications of the Minnesota Supreme Court's Opinion in *Welters v. Minnesota Department of Corrections*, A20-1481, 982 N.W.2d 457 (Minn. 2022). *Welters*, if permitted to stand, will undermine the availability of qualified immunity for a wide range of public officials in the State of Minnesota and exponentially increase the dangers posed to correctional officers, medical professionals, and the public during inmate transport and medical appointments. Given the significant ramifications of the Minnesota Supreme Court's Opinion, Amici respectfully submit this brief in support of Petitioners' Petition for Writ of Certiorari.

Despite a myriad of recent United States Supreme Court decisions emphasizing the crucial role of qualified immunity, contrary to those decisions, the Minnesota Supreme Court defined "clearly established law" at a high level of generality. In fact, in direct contravention of this Court's clear mandates, the Minnesota Supreme Court held that when correctional officers are engaged in "routine conduct that does not require quick decision-making," clearly established law can be defined with "less particularity." App. 42-43. In doing so, the court minimized the potential danger to correctional officers, medical professionals, and the public. Further, in defining "clearly established law," the Minnesota Supreme Court failed to: (1) identify U.S. Supreme Court precedent that sets forth its articulated "less particularized" rule for "routine conduct"; (2) focus on the specific facts of this case; and (3) recognize that Officers Emily and Rhoney's conduct under these specific circumstances had not previously been adjudicated as unconstitutional. In doing so, the Minnesota Supreme Court improperly denied qualified immunity.

The decision below effectively eliminates a widely-practiced safety technique by the use of restraints during medical transport and appointments. Put simply, denying officers the ability to place inmates in restraints for medical transport and appointments will put lives in danger. Further, the rule articulated by the Minnesota Supreme Court provides governmental actors in Minnesota with no direction as to what constitutes "routine conduct" and impermissibly introduces a timing element into the availability of qualified immunity. This Court's review is required in order to provide clear direction

as to applicability of qualified immunity in such circumstances.

ARGUMENT

I. The Minnesota Supreme Court's Incorrect Characterization of the Use of Restraints in Medical Transports and Appointments as "Routine Conduct" Puts Officers, Medical Professionals, and the Public at Risk of Physical Harm.

This Court has recognized that "'[r]unning 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 acknowledged that transporting and accompanying inmates to medical appointments presents an officer and public safety risk due to the risk of escape. *See, e.g., United States v. Cluck*, 542 F.2d 728 (8th Cir. 1976) (escape from a medical facility); *United States v. Evans*, 159 F.3d 908 (4th Cir. 1998) (same); *Frazier v. United States*, 339 F.2d 745 (D.C. Cir. 1964) (same). Likewise, the risk of assault on officers, hospital security, and medical personnel exists when an inmate is transported and attends medical appointments. *See, e.g., Mova v. Zook*, 821 F.3d 517, 521-22 (4th Cir. 2016) (discussing assault on deputy, murder of hospital security and officer during prisoner escape from hospital); *United States v. Schaffer*, 664 F.2d 824, 825 (11th Cir. 1981) (addressing attempted

escape after striking security officer in face with a metal object during the reshackling of an inmate in a hospital).

Due to these real, documented risks to officer and public safety, many correctional institutions have adopted policies permitting the use of restraints during medical transports and appointments. *See, e.g., Moody v. Proctor*, 986 F.2d 239, 241-42 (8th Cir. 1993) (policy requiring use of black box during medical transports and appointments "is penologically justified 'by the greater risk of escape … and the reduced number of guards'" needed for transport) (quoting *Fulford v. King*, 692 F.2d 11, 14 (5th Cir. 1982)); *Thielman v. Leean*, 282 F.3d 478, 480, 484 (7th Cir. 2002) (use of black box during medical transport).

The Minnesota Supreme Court summarily rejected officer safety concerns, impermissibly substituting its judgment for the "expertise of corrections officials," *Kingsley*, 576 U.S. at 399, when it characterized prophylactic use of handcuffs during medical transports and procedures as "routine" and questioned this practice. App. 26, 41, 43. Further, the court's suggestion that correctional officers are "required" to "adjust handcuffs" if an inmate complains of "pain" during medical transport and procedures ignores legitimate penological considerations behind the use of restraints, which are designed to protect officers, medical professionals, and the public. *Compare* App. 41 *with Schaffer*, 664 F.2d at 825 (discussing injuries sustained during an escape attempt at a hospital during the reshackling process); *Weiland v. Loomis*, 938 F.3d 917, 918 (7th Cir. 2019) (inmate who had his restraints temporarily

removed, grabbed an officer's gun, escaped, and "terroriz[ed] the Hospital's staff, patients, and visitors.").

Most counties in the State of Minnesota operate a county jail. Each of the counties operating a jail must transport inmates for medical care, some traveling hours to transport inmates to an appropriate medical facility. Further, medical transports conducted by counties may be accomplished by a single deputy, who is responsible for—not only the safe transport and guarding the inmate during the procedure—but public safety during medical transports and procedures as well. Unlike the medical procedure in *Welters* that was completed at Minnesota Correctional Facility-Oak Park Heights (MCF-OPH), counties regularly transport inmates to medical facilities that are utilized by members of the general public.

Due to public and officer safety considerations, including minimizing the risk of escape, counties often require inmates to be transported in restraints, including handcuffs, belly-chains, and/or shackles. Further, county law enforcement personnel are routinely required to accompany inmates during medical treatment to ensure the safety of medical personnel and members of the public. One avenue available to law enforcement personnel to protect public safety is the continued use of restraints.

The Minnesota Supreme Court's Opinion calls into question this practice, downplaying the legitimate penological considerations associated with using restraints during medical transports and procedures. *See* App. 26, 41-43. The court's analysis

substitutes its judgment in place of correctional officials' discretion in deciding to restrain an inmate for medical transport and procedures to protect the public, officer, and inmate safety and guard against escape. Further, there is a real and substantial risk that the Minnesota Supreme Court's sweeping language will be improperly used to undermine officers' discretion in restraining inmates (including the method of restraints) during transport to hospitals/clinics as well as during medical procedures. Such Monday-morning quarterbacking is contrary to this Court's longstanding precedent and the purpose of qualified immunity. *See Whitley v. Albers*, 475 U.S. 312, 320 (1986) (discussing "appropriate hesitancy to critique in hindsight" prison officials' decisions).

The practical ramifications of the Minnesota Supreme Court's decision are staggering. By calling into question the use of restraints during medical transports and procedures, the court left officers with almost no options to protect their and the public's safety. This increases the risk of escape and injury. The Minnesota Supreme Court's opinion ignores these potentially life-threatening realities facing correctional officers when transporting and accompanying inmates to medical appointments.

II. The Minnesota Supreme Court's Decision Ignores This Court's Requirement That Clearly Established Law Must Not Be Defined at a High Level of Generality.

This Court has "repeatedly told courts not to define clearly established law at too high of a level of generality." *City of Tahlequah v. Bond*, 142 S. Ct. 9,

11 (2021); *White v. Pauly*, 580 U.S. 73, 79 (2017); *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). In fact, in this Court's recent terms, it has admonished lower courts for failing to "particularize" clearly established law "to the facts of the case." *White*, 580 U.S. at 79 (reversing denial of qualified immunity where lower court "misunderstood the 'clearly established' analysis" and "failed to identify a case where an officer acting under similarly circumstances … was held to have violated" a constitutional right); *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 9 (2021) (same); *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (same); *City of Tahlequah*, 142 S. Ct. at 11 (same).

Despite this Court's repeated "reiterat[ion]" of the "longstanding principle that 'clearly established law' should not be defined 'at a high level of generality,'" *White*, 580 U.S. at 79, the Minnesota Supreme Court not only defined clearly established law at a high level of generality, it specifically held that "***less particularity*** is required to provide fair warning of the unconstitutionality of the officer's actions" outside of the Fourth Amendment context because officials are not confronted with the need to make "quick" decisions. App. 42-43 (emphasis added).

The Minnesota Supreme Court's qualified immunity analysis impermissibly introduces a timing element that is utterly unsupported by this Court's case law. Since entering its Order in *Welters*, the Minnesota Supreme Court has applied its ***less particularity*** analysis to strip state officials of qualified immunity. *See McDeid v. Johnston*, 984 N.W.2d 864, 874, 879 (Minn. 2023). The continued extension of this erroneous element provides strong

proof as to why this Court needs to halt the spread of this mistaken standard.

A. The Minnesota Supreme Court Lacks the Authority to Alter This Court's Qualified Immunity Analytical Framework.

This Court has unambiguously explained that state courts, interpreting the United States Constitution, "are ***not*** free from the final authority of this Court." *Arizona v. Evans,* 514 U.S. 1, 8-9 (1995) (emphasis in original). This Court recognizes its "authority as final arbiter of the United States Constitution could be eroded by a lack of clarity in state-court decisions." *Id.* at 9 (citing *Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 557 (1940) (it is "important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action.")). In fact, this Court strives to "eliminat[e] … the obscurities and ambiguities from the opinions in such cases." *Id.*

As set forth in the Petition for Certiorari, the Minnesota Supreme Court failed to apply this Court's qualified immunity framework by admittedly defining clearly established law with "less particularity." The failure to apply this Court's clearly established law analysis "erodes" the clarity of this Court's qualified immunity jurisprudence, *id.*, and is anticipated to lead to anomalous outcomes for identical United States Constitutional claims when filed in Minnesota state courts instead of federal courts. This may lead to forum shopping and undermine the certainty afforded by federal court

decisions on issues of United States Constitutional interpretation, leading to widespread confusion regarding the status of clearly established law in Minnesota.

As discussed in greater detail below, the Minnesota Supreme Court's clearly established law analysis improperly interjects a timing element into qualified immunity. App. 43. Thus, parties pursuing United States Constitutional claims in Minnesota now must litigate whether the governmental conduct at issue "require[d] quick decision-making," necessitating clearly established law that is particularized to the facts of the case, or "routine conduct" where "less particularity" is required. *See* App. 42-43. The interjection of timing into this Court's qualified immunity jurisprudence to justify "less particularity" in defining "clearly established law" improperly undermines the doctrine of qualified immunity, which this Court has repeatedly characterized as "important to society as a whole." *White*, 580 U.S. at 79 (quoting *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 611 n.3 (2015)). Accordingly, this Court should grant certiorari and reverse the Minnesota Supreme Court's rule that "less particularity is required to clearly establish what the constitution requires" when engaging in "routine conduct."

B. The Minnesota Supreme Court's Clearly Established Law Analysis Is Contrary to this Court's Precedents.

The Minnesota Supreme Court's new fair notice rule that depends on the court's perception

about the time an official has to make a decision is clearly contrary to this Court's case law.

First, contrary to the Minnesota Supreme Court's assertion, the requirement that clearly established law be "particularized" so that "the contours of the right are clear to a reasonable official" is not limited to Fourth Amendment claims. *See, e.g., Reichle v. Howards*, 566 U.S. 658, 655 (2012) (First Amendment retaliation); *Ziglar v. Abbasi*, 582 U.S. 120, 154-55 (2017) (conspiracy); *see also Peoples v. Leon*, 63 F.4th 132 (2d Cir. 2023) (First and Fourteenth Amendment claims arising out of conditions of parole).

Second, this Court has applied qualified immunity where ample time was available for officials to make the relevant decision. *See Harlow v. Fitzgerald*, 457 U.S. 800, 802-04 (1982) (qualified immunity applied to public employment decision made over the course of several months); *Wilson v. Layne*, 526 U.S. 603, 614-15 (1999) (qualified immunity barred claims arising out of decision to bring media observers to execution of a search warrant in a home); *Lane v. Franks*, 573 U.S. 228, 243-44 (2014) (applying qualified immunity to decision to lay off employee two months after employee testified before a grand jury); *Ziglar v. Abbasi*, 582 U.S. 120, 155 (2017) (qualified immunity barred claims arising out of policies permitting prolonged detention of immigrants).

Similarly, qualified immunity decisions of United States Circuit Courts of Appeal belie the Minnesota Supreme Court's fair notice rule as qualified immunity is routinely applied to decisions

that do not involve "quick decision-making." In fact, the particularity requirements this Court reiterated in *White v. Pauly* have been consistently applied by United States Circuit Courts of Appeal without regard to the time available to make the allegedly unconstitutional decision. *See, e.g., Hamner v. Burls*, 937 F.3d 1171, 1179 (8th Cir. 2019) (conditions of confinement claim arising out of decision to place mentally ill prisoner in administrative segregation for 203 days without procedural avenue to challenge classification); *Radwan v. Manuel*, 55 F.4th 101, 129 (2d Cir. 2022) (decision to terminate athletic scholarship); *Weimer v. County of Fayette*, 972 F.3d 177, 190-92 (3d Cir. 2020) (prosecutor's failure to intervene in unconstitutional investigation that occurred over the course of years); *Cunningham v. Castloo*, 983 F.3d 185, 193-94 (5th Cir. 2020) (failure to provide name-clearing hearing before terminating public employee); *Jackson v. City of Cleveland*, 64 F.4th 736 (6th Cir. 2023) (redaction of exculpatory material from investigative file in response to public-records request); *Siddique v. Laliberte*, 972 F.3d 898, 903-04 (7th Cir. 2020) (rejection of plaintiff's application to a public board); *Riley's Am. Heritage Farms v. Elsasser*, 29 F.4th 484, 505-06 (9th Cir. 2022) (termination of business relationship following shareholder's controversial tweets); *Leiser v. Moore*, 903 F.3d 1137, 1140, 1144 (10th Cir. 2018) (disclosure of inmate's medical information). In each of these decisions, the court considered whether the official had a reasonable basis to believe the official's conduct violated clearly established law rather than the time available to make the allegedly unconstitutional decision.

In sum, the Minnesota Supreme Court's decision to interject the element of timing into the qualified immunity analysis is contrary to this Court's precedents.

C. The Officers' Use of Restraints Did Not Violate Clearly Established Law.

A clearly established right is one that is "sufficiently clear that ***every*** reasonable official would have understood that what he is doing violates that right." *al-Kidd*, 563 U.S. at 741 (emphasis added). "In other words, existing law must have placed the constitutionality of the officer's conduct 'beyond debate.'" *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). This Court repeatedly observed that "[t]his demanding standard protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Id.* (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

While Amici acknowledge there does not have to be a case directly on point to clearly establish a constitutional principle, "existing precedent must place the lawfulness of the particular [conduct] beyond debate." *Id.* at 590 (internal quotations omitted). Thus, the standard is not whether clearly established law ***supported*** an officer's conduct, rather it is whether an officer's conduct was ***prohibited*** by clearly established law.

1. *Hope v. Pelzer* Did Not Establish a "Less Particularity" Standard for "Routine Conduct".

The Minnesota Supreme Court misapplied this Court's precedent by reading a "less particularity" exception into *Hope v. Pelzer*, 536 U.S. 730 (2002) where none is found. In *Hope*, this Court addressed whether prison guards violated clearly established law when, following an inmate's altercation with a guard, they placed the inmate, Larry Hope, in leg irons and handcuffs, forced him to remove his shirt and handcuffed him to a hitching post in the hot sun for seven hours on a summer day. *See id.* at 734–35. During the seven hours that the inmate was attached to the hitching post, Hope was sunburned, was afforded no bathroom breaks, and was given water only once or twice. *Id.* at 734–35. A guard taunted Hope about his thirst and "'first gave water to some dogs, then brought the water cooler to [Hope], removed its lid, and kicked the cooler over, spilling the water onto the ground.'" *Id.* at 735.

This Court further observed:

> Despite the clear lack of an emergency situation, the respondents knowingly subjected him to a substantial risk of physical harm, to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7–hour period, to unnecessary exposure to the heat of the sun, to prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation.

Id. at 738.

This Court made clear that although prior cases need not be "materially similar" in order for the law to be clearly established, "the salient question" a court should ask "is whether the state of the law [when the conduct at issue occurred] gave [the officers] fair warning that … their alleged treatment [of plaintiff] was unconstitutional." *Id.* at 739, 741. Simply stated, the question of whether the law is clearly established is tethered to the issue of notice. *See id.* at 740–41. In *Hope*, several facts supported this Court's conclusion that the prison guards violated Hope's clearly established rights and that "[a] reasonable officer would have known that using a hitching post as Hope alleged was unlawful." *Id.* at 731.

First, this Court noted the "obvious cruelty inherent in this practice should have provided … some notice that their alleged conduct violated Hope's constitutional protection against cruel and unusual punishment." *Id.* at 745. Indeed, citing its prior admonishment against the unnecessary and wanton infliction of pain in *Whitley v. Albers*, the Court stated that the violation was arguably "so obvious that our own Eighth Amendment cases gave respondents fair warning that their conduct violated the Constitution." *Id.* at 741.

Second, this Court reasoned that binding Circuit precedent should have provided guards with notice that their conduct was unconstitutional. *Id.* at 742–43. In reaching that conclusion, this Court

highlighted *Gates v. Collier*, a binding Fifth Circuit[2] decision which "found several forms of corporal ***punishment*** impermissible, including handcuffing inmates to fences or cells for long periods" as well as "forcing inmates to stand, sit or lie on crates, stumps, or otherwise maintain awkward positions for prolonged periods." *Hope*, 536 U.S. at 731, 742 (emphasis added) (citing *Gates v. Collier*, 501 F.2d 1291, 1306 (5th Cir. 1974)). Important to the question of notice, the unconstitutionality of the conduct proscribed by *Gates*—and the fact that it was clearly established for the purposes of the conduct at issue in *Hope*—did not turn on trivial factual differences in past cases, such as where the inmates were handcuffed. To the contrary, "'[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 bar designated for shackling.'" *Hope*, 536 U.S. at 742 (quoting the U.S. government's brief as amicus curiae). Rather, in light of *Gates*, the unconstitutionality of the guards' conduct in punishing Hope by handcuffing him to a hitching post for a prolonged period of time "should have been apparent." *Id.* at 743.

Third, this Court found *Ort v. White* instructive on the issue of notice because it warned that "'physical abuse directed at [a] prisoner *after* he terminate[s] his resistance to authority would constitute an actionable eighth amendment violation.'" *Id.* (alterations in original) (quoting *Ort v. White*, 813 F.2d 318, 324 (11th Cir. 1987)). On the

[2] As the Supreme Court noted in *Hope*, "[c]ases decided by the Court of Appeals for the Fifth Circuit before 1981 are binding precedent in the Eleventh Circuit today." *Hope*, 536 U.S. at 742.

question of notice, this Court acknowledged that although the facts of *Ort* were "not identical" to those at issue in *Hope*, the premise nevertheless "has clear applicability in this case" because Hope was not restrained until *after* he was willing to continue work. *Hope*, 536 U.S. at 743. Consequently, *Ort* "gave fair warning to respondents that their conduct crossed the line of what is constitutionally permissible." *Id.*

A regulation promulgated by the Alabama Department of Corrections was also "[r]elevant to the question whether *Ort* provided fair warning to respondents that their conduct violated the Constitution." *Id.* at 743–44. The regulation in question authorized guards to use a hitching post "when an inmate refuses to work or is otherwise disruptive to a work squad" and required that an inmate must be allowed to rejoin work as soon as he tells an officer "that he is ready to go to work." *Id.* at 744 (internal quotations omitted). This Court observed the latter requirement was "frequently ignored by corrections officers." *Id.* Moreover, this Court concluded that a course of conduct, suggesting one of the requirements was a sham or that guards "could ignore it with impunity," offers "strong support for the conclusion that they were fully aware of the wrongful character of their conduct." *Id.* This Court also noted that guards did not follow the regulation's requirement that an activity log be completed for every inmate subjected to the hitching post that detailed responses to offers of water and bathroom breaks at fifteen-minute intervals, and that such offers were not made. *Id.*

Finally, in support of its conclusion that the guards violated clearly established law and that "a reasonable person would have known" of that violation, this Court also highlighted a study by the U.S. Department of Justice of the State of Alabama's use of hitching posts. *Id.* (internal quotations omitted). The DOJ's report concluded that Alabama's systematic use of hitching posts was improper corporal punishment and advised the state department of corrections to end its use to meet constitutional requirements. *Id.* at 745. The Court concluded, "reasonable officials in the [Alabama Department of Corrections] should have realized that the use of the hitching post under the circumstances alleged by Hope violated the Eighth Amendment prohibition against cruel and unusual punishment." *Id.*

As the Court's reasoning in *Hope* makes clear, the binding circuit precedent of *Gates* and *Ort*, as well as the Alabama DOC regulation and the DOJ report provided guards with ample notice that the conduct at issue violated the Eighth Amendment. To borrow a phrase from this Court's more recent opinions, existing precedent placed the constitutional violation "beyond debate." *See e.g.*, *White*, 580 U.S. at 79. Although this Court stated "that officials can still be on notice that their conduct violates established law even in novel factual circumstances," and that cases need not involve precisely on-point facts for the law to be clearly established, fair warning that the conduct is unconstitutional *is*, however, required. *Hope*, 536 U.S. at 741. Notably absent from this Court's analysis of the status of the law was any indication that "less particularity" is permitted in establishing fair warning because the allegedly unconstitutional conduct was "routine."

2. The Minnesota Supreme Court Wrongfully Defined Clearly Established Law at a High Level of Generality.

Without repeating the arguments and legal analysis of Petitioners, Amici also wish to stress the requirement that a case be identified "where an officer acting ***under similar circumstances*** … was held to have violated" the constitution and that a case presenting "a unique set of facts and circumstances … alone" should be "an important indication" that the conduct did not violate a clearly established right. *White*, 580 U.S. at 80 (emphasis added).

The Minnesota Supreme Court ignored this Court's precedents by relying upon cases arising out of vastly different facts. *See* App. 39-47 (discussing *Hope v. Pelzer*, 536 U.S. 730 (2002); *Nelson v. Corr. Med. Servs.*, 583 F.3d 522 (8th Cir. 2009). As outlined above, the prison guards' conduct in *Hope* was entirely devoid of penological justification. *Hope*, 536 U.S. at 738. To the contrary, this Court concluded that "[a]ny safety concerns had long since abated by the time petitioner was handcuffed to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to the prison." *Id.* at 737–738. Here, by contrast, the record indicates no punitive purpose whatsoever and instead indicates a purely penological purpose: to ensure officer safety.[3]

[3] The Minnesota Supreme Court summarily dismissed this stated safety concern as the procedure was performed at a medical facility housed in the prison. App. 26.

Further, the prison guards' conduct in *Hope* appeared wholly punitive in nature and designed to inflict pain and humiliation, replete with cruel acts such as forcing Hope to remove his shirt before cuffing him to the hitching post in the sun on a summer day, depriving him of the ability to use the restroom, and taunting Hope, who was thirsty, by kicking over the water cooler. 536 U.S. at 734–35. Here, there are no allegations or inferences whatsoever of wanton or purposeful infliction of pain or humiliation. Nor does the record indicate any intentionally cruel behavior, such as taunting. Indeed, Welters acknowledges that Officer Rhoney was not trying to hurt him. Doc. 43 at 60.

The Minnesota Supreme Court ignores the material differences between this case and *Hope*. It provides no analysis to support the analytical leap between chaining a prisoner to a hitching post in a position a guard knew subjected the prisoner to a "substantial risk of physical harm" for punitive purposes to transporting an inmate for a short medical procedure and allowing the procedure to be completed while the inmate was handcuffed. *Compare Hope*, 536 U.S. at 738 *with* App. 41-47. Such an analytical leap distorts the purpose of narrowly defining clearly established law so that the "legal principle … [is] clear enough that ***every reasonable official*** would interpret it to establish the particular rule that plaintiff seeks to apply." *Wesby*, 138 S.Ct. at 589-90 (emphasis added); *City of Tahlequah*, 142 S.Ct.at 11.

Hope fails to provide such guidance to officers. First, policies addressing medical transport and procedures are not punitive in nature; rather, they

address institutional and public safety concerns. Second, restraining an inmate for a full-day during the course of medical transport and treatment has been found constitutional *after Hope*. *Reynolds v. Dormire*, 636 F.3d 976, 978-80 (8th Cir. 2011) (holding "refus[ing] to remove his restraints during a day-long journey … for a medical appointment" did not violate the Eighth Amendment). Third, the use of restraints during medical transports and procedures does not involve the unnecessary exposure to elements, "taunting" or "humiliation" considered by the Court in *Hope*. Accordingly, the Minnesota Supreme Court's reliance upon *Hope* was misplaced and misconstrues the contours of clearly established law.

Similarly, the Minnesota Supreme Court's reliance on *Nelson v. Correctional Medical Services*, 583 F.3d 522 (8th Cir. 2009) is improper as use of shackles during the final stages of labor does not apply with "obvious clarity" to the use of restraints more generally. App. 49-50; *Nelson*, 583 F.3d at 525-30. While *Nelson's* teachings apply to childbirth and labor, it does not apply with "obvious clarity" to all medical transports and procedures as subsequent Eighth Circuit case law has endorsed the use of restraints in these circumstances.

Two years *after Nelson* was decided, the Eighth Circuit rejected an Eighth Amendment claim arising out of officers' "refus[al] to remove his restraints during a day-long journey … for a medical appointment." *Reynolds*, 636 F.3d at 978-80; *Beaulieu v. Ludeman*, 690 F.3d 1017, 1032-33 (8th Cir. 2012) (rejecting constitutional challenge related to transporting civilly committed persons in "full

restraints" including black box, wrist chain, and leg irons, "for the safety of the public and staff and to prevent escapes and attempted escapes."); *see also Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 764 (7th Cir. 2021) (discussing use of black box during a medical appointment and finding "[t]he amount of force used was minimal and the security concerns significant" and, therefore, the use of restraints did not violate the Eighth Amendment).

When *Nelson* is viewed in the context of multiple Eighth Circuit decisions addressing the propriety of using restraints during medical transports, the Minnesota Supreme Court's analysis becomes even more attenuated and falls far below this Court's requirement that clearly established law must place the constitutional question "beyond debate." *White*, 580 U.S. at 79; *Wesby*, 138 S.Ct. at 589; *see Reynolds*, 636 F.3d at 978-80; *Moody*, 986 F.2d at 241-42; *Beaulieu*, 690 F.3d at 1032-33. Significantly, had the Eighth Circuit believed *Nelson* had such a wide-reach, it undoubtedly would have found *Nelson* applied to the claims subsequently barred in *Reynolds* and *Beaulieu*, but it did not because the cases are not factually analogous. In light of *Reynolds, Moody,* and *Beaulieu*'s approval of the use of restraints during medical transports, the Minnesota Supreme Court's conclusion that *Nelson* somehow provided fair and clear warning to the correctional officers that their conduct was unconstitutional is unsupported.

In sum, the rationales underlying *Hope*, a decision about willful, punitive cruelty, and *Nelson*, a decision about the dangers of shackling women in labor, fail to translate to the case before this Court.

As this Court explained in *Mullenix v. Luna*, the dispositive question is "whether the violative nature of *particular* conduct is clearly established." 577 U.S. 7, 12 (2015) (internal quotations omitted). Given their facts and underlying rationale, neither *Hope,* nor *Nelson,* clearly established the violative nature of the particular conduct at issue here. Accordingly, a reasonable officer would not have known that the conduct at issue—shackling a prisoner during medical transport and a routine medical procedure—was unconstitutional.

III. The *Welters* Decision Undermines Governmental Operations by Providing Little or No Guidance Concerning the Application of Qualified Immunity in Minnesota.

If the Minnesota Supreme Court's broad interpretation of clearly established law is left intact, it will create unnecessary ambiguity regarding the application of qualified immunity in Minnesota courts. Such an overly broad interpretation of clearly established law will impact, not only medical transport and procedure cases, but all constitutional claims pending in Minnesota courts. This result undercuts the certainty provided to litigants by this Court's requirement that clearly established law must be "dictated by controlling authority or a robust consensus of cases or persuasive authority." *Wesby*, 138 S.Ct. at 589-90. Under this Court's framework, litigants are aware of contours of "clearly established law" by looking to existing precedent. By contrast, the Minnesota Supreme Court's endorsement of a strained and attenuated definition of "clearly established law," defined with "less particularity,"

deprives parties of this certainty. The increased uncertainty will have a chilling effect on county operations, causing county officials, who are carrying out "routine" duties, to be fearful to act, undercutting the purpose of qualified immunity. *Harlow*, 457 U.S. at 819.

Since counties are routinely required to defend against constitutional claims, clarity regarding the appropriate scope of "clearly established law" in Minnesota is necessary. Failure to clarify the application of this Court's precedents to "routine" conduct will have significant ramifications on county operations, including increasing the volume, expense, and duration of litigation and impacting the ability to recruit, hire, and retain public employees. Further, allowing the Minnesota Supreme Court's definition of "clearly established law" to stand impermissibly erodes this Court's precedents on issues of United States Constitutional law in Minnesota's state courts, potentially resulting in divergent outcomes depending on whether cases are filed in state or federal court. Accordingly, Amici respectfully request this Court grant certiorari and reverse the Minnesota Supreme Court to enforce this Court's precedent and ensure uniformity between state and federal courts.

CONCLUSION

For the foregoing reasons, Amici respectfully request that Officers Emily and Rhoney's Petition for Writ of Certiorari be granted and the Minnesota Supreme Court's decision be reversed.

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Respectfully submitted,

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