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,

Petitioners,

v.

CHRISTOPHER WELTERS,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Minnesota Supreme Court appropriately applied clearly established law from this Court and the Eighth Circuit to deny qualified immunity to prison officers who knowingly and without penological purpose refused to loosen Respondent's overtightened handcuffs or engage the double locking safety mechanism to prevent further dangerous overtightening for over three-and-a-half hours—despite his pleas, in violation of Minnesota Department of Corrections' policies, and while he was fully unconscious under general anesthesia—resulting in permanent injuries and ongoing pain.

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INTRODUCTION

Prison officers Ernest Rhoney and Cornelius Emily ("Petitioners") knew that Respondent Christopher Welters's handcuffs were overtightened and unsafely applied in violation of Minnesota Department of Corrections policy. Pet. App. 41. But *for hours* they refused Respondent's pleas to properly adjust and double lock them. *Id.* Petitioners had no reason to overtighten his handcuffs in the first place—to say nothing of leaving him in that state for three-and-a-half hours—because there was no danger. Pet. App. 20 n.6. There was no threat to order or security. *Id.* There was "not a whiff of any disturbance." *Id.* And yet, Petitioners inexplicably refused to loosen or engage the safety mechanism on Respondent's handcuffs for over 210 minutes, including while Respondent was fully unconscious under general anesthesia. Pet. App. 9.

Acting with deliberate indifference—a conclusion that Petitioners do not dispute in their Petition—the officers allowed Respondent's handcuffs to "gouge" his wrists relentlessly for hours. Pet. App. 10. He lost feeling in his hands, and they turned "light bluish." Pet. App. 10-11. After the numbness wore off, his hands "became alive with pain"—pain that lasted an entire year, required surgery on both wrists, and resulted in permanent injuries that Respondent still suffers from today. Pet. App. 10-12, 71.

In correctly concluding that Petitioners are not entitled to qualified immunity for their refusal to loosen and double lock Respondent's handcuffs, the Minnesota Supreme Court sensibly conducted the clearly-established inquiry and faithfully applied Supreme Court and federal appellate precedent.

Contrary to Petitioners' characterization of the decision, the Minnesota Supreme Court did not define the constitutional right here at a high level of generality; nor did it create a rule allowing clearly established law to be determined with less particularity in certain types of cases. Rather, consistent with Petitioners' view of the applicable test, the court held that "factually analogous case law clearly establishes" the constitutional violation at issue here. Pet. App. 45. The language Petitioners highlight in their question presented and throughout the Petition is mere dicta. *See* Pet. App. 42-44.

This Court should deny certiorari.

STATEMENT OF THE CASE

I. Factual Background

On July 31, 2017, Petitioners were tasked with transporting Respondent from the Minnesota Correctional Facility–Stillwater, where he was incarcerated, to the Minnesota Correctional Facility–Oak Park Heights for a routine endoscopy under general anesthesia. Pet. App. 5-6.

Minnesota Department of Corrections ("DOC") policy requires all prisoners, regardless of their security classification, to be transported in full restraints. Pet. App. 6. So, Petitioners placed Respondent in restraints—but not because he posed any particular danger. Petitioners themselves testified that "they did not have any specific safety or security concerns about [Respondent]," and, indeed, conceded that he had a spotless record. *Id.* The full restraints included "handcuffs, a waist chain, a black box (applied over the chain and lock area of handcuffs to form a rigid link between the two wristlets), and leg irons." *Id.* "DOC

Policy also requires handcuffs and leg irons to be 'double locked'—a safety measure that prevents the cuffs from continuing to tighten." Pet. App. 6. But Petitioners failed to double lock Respondent's cuffs, and as a result they became overtightened. Pet. App. 7.

"[R]ight away" Respondent "noticed that the handcuffs were 'tighter than usual.'" Pet. App. 6. As soon as Respondent began feeling symptoms, and before getting into the transport vehicle, he informed Petitioner Rhoney that his cuffs were "pretty tight." Pet. App. 7. But Petitioner Rhoney refused to take any remedial action, and casually remarked, "Oh, it's only a 15-minute drive, it'll be all right." *Id.*

As Respondent got into the van, he felt his already-too-tight handcuffs "click tighten" even further because "they were not double-locked in violation of DOC policy." *Id.* Respondent told Petitioner Rhoney that his handcuffs were not double-locked and asked him again to "fix this before we leave." *Id.* Not only did Petitioner Rhoney refuse to loosen the handcuffs for a second time, or to double lock them, he "pushed on the cuff, [and] clicked it even tighter." *Id.*[1] Petitioner Rhoney acknowledged that Respondent "was right" that the handcuffs were not double-locked and that they were overtightened, but repeated his refrain that the drive was "only 15 minutes." *Id.* Petitioner Rhoney did not drive the van; during the entire ride, he sat beside Respondent with personal knowledge that the handcuffs were not double-locked as required by DOC

[1] Petitioners claim that Rhoney "accidentally" tightened the handcuffs. Pet. 7-8. Perhaps he could convince a jury of this, but at this stage in the case, inferences must be drawn in Respondent's favor.

policy and that they were unsafely digging into Respondent's wrists. Pet. App. 7. Petitioner Emily also rode in the vehicle in the front seat. *Id.*

Upon arrival at Oak Park Heights, neither Petitioner did anything to remedy Respondent's overtightened handcuffs. *Id.* Respondent was then locked in a medical holding cell still fully restrained. *Id.* In contrast, the incarcerated individuals in the other medical holding cells did not have any restraints on, which was consistent with DOC policy that only required restraints for transport and not upon placement in a medical holding cell. Pet. App. 7, 12, 95. For at least another thirty minutes, Respondent sat locked in the cell, in a waist chain, in leg irons, in a black box, and in overtightened handcuffs that continued to dig into his wrists. Pet. App. 8. As Respondent waited, "his hands were becoming increasingly cold and numb." *Id.* During the entirety of his incarceration and the "many, many, many times" he had been transported, this was the first time that Respondent's handcuffs had been put on too tight. Pet. App. 7-8. Respondent asked an Oak Park Heights officer about getting his restraints removed, and was told that a Stillwater officer would need to attend to that. Pet. App. 8.

About forty-five minutes later, Petitioner Emily approached the cell, and Respondent immediately "told him that his hands were numb" and begged Petitioner Emily to "loosen them, please loosen them." *Id.* Petitioner Emily refused to help; he just "closed the door of the holding cell and left." *Id.*

When an Oak Park Heights officer came to take Respondent back for his procedure, Respondent pleaded with the officer to loosen his restraints, but was again told that a Stillwater officer would need to

do that. Pet. App. 8. A nurse asked the Oak Park Heights officer why Respondent was "still in his restraints," and that officer once again repeated that the Stillwater officers had sole control over Respondent's restraints. *Id.* The nurse "expressed that it was not normal for inmates to remain in restraints during the procedure" and asked another officer "[w]hy are these offender's restraints still on? I said I wanted them removed." *Id.* Respondent could "barely sign" the pre-procedure paperwork because his hands were "so numb." *Id.*

In the room where the procedure occurred, prior to the administration of anesthesia, medical staff again asked the Oak Park Heights officer who was present why Respondent was still in restraints. The officer replied that they were still "looking for the Stillwater staff"—Petitioners, who had already refused multiple times to loosen Respondent's handcuffs. Pet. App. 9. Respondent was then placed on a gurney on his back, still in full restraints. *Id.* Medical professionals placed him under anesthesia and performed the endoscopy. *Id.*

Respondent awoke from his procedure still "in full restraints." *Id.* By then, he "could not feel his hands 'at all.'" *Id.* He asked the nurse if he had been in restraints the whole time, and she replied affirmatively, adding that she had "never seen" a "procedure done on an offender in full restraints in her 10 years of working at Oak Park Heights." *Id.* She suggested doing so was "dangerous." *Id.* When Petitioner Emily reappeared after the procedure, Respondent "again told Officer Emily that he could not feel his hands and that he needed to go to the bathroom." *Id.* But Petitioner Emily, knowing that Respondent was asking for

assistance, again refused to adjust the handcuffs. Pet. App. 9. As a result, though Respondent badly needed to urinate, he "just didn't use the bathroom" because he "could not feel his hands" and Petitioner Emily refused to loosen or remove the cuffs. *Id.* Respondent was returned to the medical holding cell, still in the overtightened handcuffs and waist chain and leg restraints, waiting for his ride back to Stillwater. Pet. App. 9-10. As he sat there with his handcuffs digging into his wrists, Respondent observed that another individual in his holding cell also awaiting transport "did not have any restraints on." Pet. App 10.

By the time Respondent returned to Stillwater, his wrists had been constrained in overtightened handcuffs for three-and-a-half hours, and his hands were "light bluish." *Id.* After his handcuffs were removed, Respondent "showed an officer the gouges left in his wrists," and that officer told him he needed medical care. *Id.* The nurse in the medical unit "noted that his blood pressure was high and kept him there awhile to observe him because he was not feeling well." *Id.* "[T]he nurse explained that his elevated blood pressure was an indication that he was in pain and advised him to 'call a lawyer.'" *Id.*

Respondent's hands were "very numb" until the next morning, when they "became alive with pain." Pet. App. 11. A doctor diagnosed him with "probabl[e] nerve decompression" and prescribed steroids. *Id.* The steroids did not help the pain, so he was later put in wrist braces. *Id.* He sustained bruising on his wrists that lasted "at least a week." *Id.* And "the intense pain in his palms lasted approximately one year." Pet. App. 12, 71. Respondent lost function in his hands to the point that he "struggled to hold his toothbrush." Pet.

App. 12. He "suffered from worsening pain, was placed on medical leave from prison work, and eventually required carpal tunnel surgery in both wrists." *Id.* Despite the surgeries, Respondent's wrists still persistently "ache" and "don't work the same as they once did." Pet. App. 12.[2]

II. Procedural History

The day after Petitioners restrained Respondent in overtightened handcuffs for hours, Respondent submitted a grievance regarding the incident. Pet. App. 11. Respondent reported: "It was horrific, painful, and humiliating. It is a clear violation of policy and procedure. It violated my rights as a human being. It was cruel and unusual punishment for no reason at all. Deliberate indifference and a true violation of my constitutional rights." *Id.* Captain Byron Matthews interviewed the staff about the incident and concluded: "The staff . . . should have removed your restraints upon placement into the [Oak Park Heights] holding cell. All involved officers have been reminded to always remove offender restraints upon admittance unless there is a safety concern which would prevent the restraint removal." Pet. App. 12.

Respondent filed a § 1983 complaint in the Washington County district court, alleging that Petitioners acted with deliberate indifference towards his health, safety, and substantial risk of serious harm in violation of the Eighth Amendment. *Id.* He claimed that his handcuffs "were unnecessarily and improperly

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[2] Respondent's "expert report opined that the overtightened handcuffs caused [Respondent's] wrist injury and pointed to the 'well documented' risk of handcuffs during anesthesia." Pet. App. 30 n.10; *see also* Pet. App. 12 n.4.

applied too tightly, subjecting him to a substantial risk of serious injury, and that Officers Rhoney and Emily knew that." Pet. App. 22. Respondent sought money damages as compensation for his permanent injuries. Pet. App. 3.

Petitioners moved for summary judgment. They argued that Respondent had to establish that they acted with malicious or sadistic intent to make out his claim, and that he failed to do so. Pet. App. 13. They argued in the alternative that they were shielded from suit by qualified immunity. *Id.* The district court agreed with Petitioners that the malicious-or-sadistic standard applied, and granted them summary judgment because Respondent failed to meet that standard. *Id.* The district court did not reach the qualified-immunity question. *Id.*

The Minnesota Court of Appeals reversed. It held that the district court erred because the deliberate-indifference standard, not the malicious-and-sadistic standard, applied to Respondent's Eighth Amendment claim. *Id.* It concluded that a reasonable fact-finder could look at the record in this case and determine "that Officers Rhoney and Emily, like the officials in *Hope* [*v. Pelzer*, 536 U.S. 730 (2002)], were not facing an emergency situation but nevertheless" subjected Respondent to a substantial risk of physical harm. Pet. App. 14. Specifically, Petitioners' actions subjected Respondent "to unnecessary pain caused by the [shackles]," and to "a risk of particular discomfort and humiliation" as a result of the "restricted position of confinement." *Id.*

The Minnesota Court of Appeals observed that Petitioners presented "no evidence . . . indicating that restraining [Respondent] was justified by any legitimate

penological concern," or that Respondent "was dangerous to himself or others." Pet. App. 84. Indeed, "Officer Emily testified that he did not believe [Respondent] presented any particular or unique safety concern, yet he nonetheless kept [Respondent] in restraints." *Id.* The Minnesota Court of Appeals also concluded that clearly established law barred qualified immunity. Pet. App. 14.

The Minnesota Supreme Court affirmed. It first held that the deliberate-indifference standard applied to Respondent's claim, not the malicious-and-sadistic standard. Pet. App. 15-27. The court acknowledged that "[w]hen corrections officers are reacting to urgent circumstances that force them to maintain order and institutional security," then "greater deference is afforded" to an officer's actions. Pet. App. 18. However, it noted that,"[i]n this case, there is not a whiff of any disturbance." Pet. App. 20 n.6. Because "there [was] no argument that either officer had to *overtighten* the handcuffs or *refuse to double-lock* them in an effort to respond to a threat or to restore or maintain order and discipline," nor anything in the record suggesting "either officer lacked the time or opportunity to loosen [Respondent]'s handcuffs because they were faced with such a threat to order and discipline," the deliberate-indifference standard was appropriate. Pet. App. 21-22 (emphasis in original). Petitioners do not challenge this holding.

In reaching that decision, the Minnesota Supreme Court rejected Petitioners' framing of the issue. Pet. App. 22. It clarified that Respondent "[was] not attacking" DOC's "general policy" of requiring restraints during transport. *Id.* Rather, Respondent's position was that his "handcuffs were unnecessarily and

improperly applied too tightly," which not only "subject[ed] him to a substantial risk of serious injury" that "Officers Rhoney and Emily knew" about, but actually inflicted permanent injury. Pet. App. 22.

The Minnesota Supreme Court turned next to the issue of qualified immunity. It first concluded that Petitioners violated Respondent's constitutional rights. This inquiry required analysis of both the objective and subjective components of Respondent's deliberate indifference claim. Because Petitioners "[did] not dispute that an objective substantial risk of harm from overly tight handcuffs existed for purposes of this appeal," the only issue relating to this first qualified immunity prong was whether "the two officers had subjective knowledge that the unsafely applied and overtightened handcuffs posed a substantial risk of harm to [Respondent]." Pet. App. 30. Considering the evidence presented in the light most favorable to Respondent, the court held that a reasonable jury "could readily conclude" that Petitioners "knew of a substantial risk of harm" to Respondent "and did nothing." Pet. App. 38-39. Petitioners do not challenge this holding.

Of course, as the Minnesota Supreme Court acknowledged, "Officers Rhoney and Emily may still put [Respondent] to his proof at trial," and, at that point, a reasonable jury "may not believe [Respondent]'s allegations" or "could also conclude that the corrections officers' conduct does not rise to the level of deliberate indifference but was merely negligent." Pet. App. 39; *see also* Pet. App. 5, 31 & n.11. However, at the summary judgment stage, "where all facts and inferences from those facts must be construed in [Respondent]'s favor," the Minnesota Supreme Court

could not "agree that the *only* conclusion a reasonable jury could reach is that [Respondent] is lying or that Officers Rhoney and Emily's conduct was merely negligent." Pet. App. 39.

As to the second prong of the qualified-immunity analysis, which asks whether the law was clearly established, the Minnesota Supreme Court began by stating that it "must precisely define the right." Pet. App. 40. The question, therefore, was not whether the "general conditions" that Respondent experienced violated the Eighth Amendment. Pet. App. 41. "Rather," the court explained, the question is:

> whether it was clearly established that the use of *unsafely applied* and unnecessarily *overtightened* restraints during those conditions of confinement—when Officers Rhoney and Emily were informed that the handcuffs were unsafely applied and overtightened such that the inmate's hands were numb and resulted in serious injuries—violated the Eighth Amendment.

Pet. App. 41 (emphasis in original).

With the right particularly defined, the Minnesota Supreme Court concluded that "a reasonable corrections officer would have understood" that the Eighth Amendment prohibited Petitioners' conduct. *Id.* The court observed that the law had "been clear for many years" before the incident in question that "the Constitution prohibits conduct by prison officials that carries a substantial risk of harm or injury when that conduct is not necessary to fulfill a penological purpose." Pet. App. 41-42. Petitioners' "obligation to adjust the handcuffs to prevent injury follow[ed]

immediately from the constitutional prohibition against . . . routine conduct that causes penologically unnecessary harm under circumstances where the officer is aware of a substantial risk that such harm will result." Pet. App. 42.

The court mused that where, like here, there was no "competing government interest" supporting "an officer's decision to take an unconstitutional action," the clearly-established inquiry may demand "less particularity . . . to provide fair warning of the unconstitutionality of the officer's actions," because the "concern about holding an officer to a constitutional standard at too high a level of generality is reduced." Pet. App. 42-43 & n.16. This, the court observed, "is consistent with the basic premise of section 1983 and the qualified immunity doctrine"—that is, "the need to *balance* the important interest in vindicating the fundamental constitutional rights of American citizens" with "the important competing interest[ ] of ensuring that public officials are not unduly deterred from discharging their duties." Pet. App. 44 (emphasis in original). Here, asking that corrections officers refrain from engaging in unconstitutional action—that is, "avoid knowingly inflicting unnecessary pain" when applying restraints—"will minimally impinge on the officers' ability to discharge their duties." *Id.*

Ultimately, though, the court noted that there was "no need" in this case to determine the level of particularity required to identify clearly established law with respect to this type of constitutional violation. *Id.* "That is because here, factually analogous case law clearly establishes that officers violate the Eighth Amendment when they act with deliberate

indifference to the risk of injury from," specifically, "mechanical restraints, including handcuffs." Pet. App. 44-45.

In holding the law to be clearly established, the Minnesota Supreme Court looked to opinions of this Court and the Eighth Circuit. Pet. App. 47-50. First, it concluded that this Court's decision in *Hope v. Pelzer*, 536 U.S. 730 (2002), clearly established the constitutional violation at issue here. Pet. App. 45-46. In *Hope*, this Court concluded that corrections officers acted unconstitutionally and with deliberate indifference when "'[d]espite the clear lack of an emergency situation,' they restrained an inmate in a matter 'that created a risk of particular discomfort and humiliation.'" Pet. App. 45 (quoting *Hope*, 536 U.S. at 737-38). So, the court explained, "*Hope* clearly established the legal and constitutional principle that deliberate indifference to the risk of harm from the use of restraints used outside of an emergency situation violates the Eighth Amendment." Pet. App. 45. And, "[i]ndeed, *Hope* has been cited repeatedly across circuits for the rule that the use of passive restraints in a way that causes unnecessary harm in the absence of penological purpose is unconstitutional." Pet. App. 46-47 (collecting and discussing cases).

Second, the Minnesota Supreme Court looked to the Eighth Circuit's opinion in *Nelson v. Correctional Medical Services*, 583 F.3d 522 (8th Cir. 2009) (en banc). Pet. App. 49-50. In *Nelson*, the court of appeals held that a corrections officer acted with deliberate indifference when he kept an incarcerated person restrained during a medical procedure (labor) "in the absence of any acute security concerns." *Id.* The court rejected Petitioners' attempt to cabin *Nelson* to its

facts, observing that the Eighth Circuit has cited *Nelson* repeatedly, and that it is therefore "not limited only to factual contexts that include labor and childbirth." Pet. App. 50.

Ultimately, the court concluded that Petitioners are not entitled to qualified immunity because Respondent sufficiently alleged violations of his clearly established rights. Pet. App. 51.

Chief Justice Gildea dissented on grounds not relevant here. Pet. App. 64. She would have applied the malicious-and-sadistic standard to Respondent's claims, rather than the deliberate-indifference standard, an issue which Petitioners do not raise before this Court. Pet. App. 52-53.

REASONS FOR DENYING THE PETITION

The Minnesota Supreme Court's opinion was correct and consistent with this Court's precedent. The court defined the constitutional right at the appropriate level of particularity, and then painstakingly analyzed factually-analogous case law from this Court, the Eighth Circuit, and other federal appellate courts to conclude that Respondent's Eighth Amendment right was clearly established.

In seeking summary reversal, Petitioners describe a case very different from that before this Court. This case is about officers who knowingly used "*unsafely applied*" and "*overtightened* restraints," bucked DOC policies, and—without any penological justification—subjected Respondent to permanent injuries. Pet. App. 41 (emphasis in original). It is not, as Petitioners would have it, a case that implicates prison safety and security; indeed, the Minnesota Supreme Court noted

that there was "not a whiff of any disturbance" or any security issue. Pet. App. 20 n.6.

As to Petitioners' question presented, while the Minnesota Supreme Court did ruminate on whether cases with this type of constitutional violation require less particularity to clearly establish the law, it ultimately decided that the question was irrelevant to this case. Pet. App. 44-45. The court expressly noted there was "no need" in this case to adapt the clearly-established test to allow for less particularity, because the specific law here so clearly prohibited Petitioners' conduct. Pet. App. 44. The court applied "factually analogous case law," involving corrections officers using handcuffs unnecessarily and unsafely, to conclude that reasonable officers would have known that they could not leave Respondent in overtightened and incorrectly-fastened handcuffs, contrary to DOC policy and for no penological reason. Pet. App. 45-51. The language Petitioners take issue with (*see* Pet. 3, 12, 20) is dicta, rendering this Court's review of their question presented premature and unnecessary.

At any rate, even if there were any error here, this case does not warrant summary reversal. This case does not implicate prison security concerns. Nor does it involve second-guessing police officers in the field, in fast-moving situations involving the use of force. What is more, the Petition stems from a decision of one *state* high court on a federal law issue. It is not at all clear how frequently Minnesota state courts find themselves applying the federal doctrine of qualified immunity—especially given that defendants have the option to remove to federal court. This Court has never, to Respondent's knowledge, summarily

reversed a state high court on a qualified immunity issue, and there is no good reason to start here.

The Court should deny certiorari.

I. The Decision Below is Correct and Consistent with This Court's Precedent.

A. The Minnesota Supreme Court Defined the Right at the Appropriate Level of Particularity.

The touchstone of qualified immunity is to ensure that officers receive "fair warning" that their actions are unconstitutional. Pet. App. 40. In conducting the qualified immunity inquiry here, the Minnesota Supreme Court engaged in a thorough and careful analysis of clearly established law in which it "precisely define[d] the right" and then identified "factually analogous case law." Pet. App. 40, 45. Petitioners' contrary claim that the Minnesota Supreme Court denied them qualified immunity by creating a new rule about the level of particularity required to clearly establish the law in certain types of cases is simply not true.

To start, when the Minnesota Supreme Court turned to the clearly-established analysis, it observed that it "must *precisely* define the right"—and it did just that. Pet. App. 40 (emphasis added). The question was not whether the "general conditions" of transportation with restraints, the use of restraints in a medical holding cell, or the use of restraints during a medical procedure were clearly established; but rather, "whether it was clearly established that the use of *unsafely applied* and unnecessarily *overtightened* restraints during those conditions of confinement" posed a constitutional problem. Pet. App. 41 (emphasis in

original). This is a very specific articulation of the right at issue.

Petitioners' argument to the contrary is premised on cherry picking individual lines of the court's opinion and then ignoring the court's actual analysis. It is true that the Minnesota Supreme Court described this Court's emphasis on particularity as "especially important" in Fourth Amendment excessive force police shooting cases. Pet. App. 42-44; *see also Mullenix v. Luna*, 577 U.S. 7, 13, 18 (2015) (noting the "'hazy border between excessive and acceptable force'" in a case involving "a reportedly intoxicated fugitive" who "twice . . . had threatened to shoot police officers"); *Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018) (applying qualified immunity to officers making a "split-second judgment[ ]" in a "tense, uncertain, and rapidly evolving" situation); *Brosseau v. Haugen*, 543 U.S. 194, 198-99 (2004) (requiring "particularized" law in a case involving shooting a fleeing suspect to protect other officers). In contrast to Fourth Amendment cases, the Minnesota Supreme Court observed that here, there was no "competing government interest" that would support "an officer's decision to take an unconstitutional action." Pet. App. 42. But everything Petitioners rely on in making their argument comes from a theoretical discussion largely relegated to a footnote—mere dicta.

Ultimately, the court noted that "there [was] no need for [the court] in this case" to require any less-particularized version of clearly established law. Pet. App. 44. "That is because here, factually analogous case law clearly establishes that officers violate the Eighth Amendment when they act with deliberate indifference to the risk of injury from," specifically,

"mechanical restraints, including handcuffs." Pet. App. 44-45.[3] This, again, is a highly-specific articulation of the right. Petitioners' "new rule" handwringing is nothing more than a red herring.

B. The Minnesota Supreme Court Properly Applied Relevant Precedent.

The Minnesota Supreme Court correctly concluded that factually-analogous, clearly-established case law would place a reasonable officer on notice that Petitioners' conduct was unlawful. Pet. App. 44-45, 48-49. As the Minnesota Supreme Court explained, it has been clear for "many years" that "the Constitution prohibits conduct by prison officials that carries a substantial risk of causing a prisoner harm or injury when that conduct is not necessary to fulfill a penological purpose." Pet. App. 41-42.

To be clear, there was *no* penological purpose here. To start, as the Minnesota Supreme Court emphasized, Respondent is *not* challenging the use of handcuffs during transport. Pet. App. 22. He challenges whether he had to be transported—and remain—in

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[3] Because the Minnesota Supreme Court didn't *actually apply* anything but the "ordinary" version of the clearly-established inquiry, Petitioners' invocation of *City of Tahlequah* and *Rivas-Villegas* fails twice over. First, like *Mullenix*, *Kisela*, and *Brosseau*, those cases involved Fourth Amendment excessive-force claims arising from officer confrontations with armed or dangerous individuals, situations in which this Court has been extra attentive to the need for more specific fact-matching. *City of Tahlequah Oklahoma v. Bond*, 142 S. Ct. 9, 10-11 (2021); *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 6-7 (2021). But second, and more fundamentally, the Minnesota Supreme Court here applied "factually analogous case law [that] clearly establishe[d]" the right in question. Pet. App. 45.

overly-tight handcuffs for hours, including while under general anesthesia.

Petitioners now argue that security concerns prevented Petitioner Emily from even loosening the handcuffs. Pet. 24-25. But record evidence supports just the opposite conclusion: there were no threats to officer safety or security that would have justified overtightened handcuffs. *See e.g.*, Pet. App. 21 ("There is no suggestion in the record that Officers Rhoney and Emily's conduct was taken in response to a threat."); Pet. App. 22 ("[T]here is no argument that either officer had to *overtighten* the handcuffs or *refuse to double-lock* them in an effort to respond to a threat or to restore or maintain order and discipline."). And Petitioner Emily himself even testified that he had no specific security concerns about Respondent. Pet. App. 6. So, Petitioners' exegesis on the importance of prison security, *see* Pet. 4-6, is irrelevant.

Petitioners' argument that the law is not clearly established hinges on analyzing disputed facts in their favor—a practice not permitted at this stage. Viewing the facts in the light most favorable to Respondent, a reasonable officer in Petitioners' positions would have had "fair notice" that they were violating Respondent's clearly established rights.

That is evident because, as the Minnesota Supreme Court correctly held, the Eighth Circuit's en banc decision in *Nelson v. Correctional Medical Services* clearly established the law in these circumstances. *See* 583 F.3d 522 (8th Cir. 2009). In *Nelson*, the Eighth Circuit concluded that a corrections officer acted with deliberate indifference when she kept an incarcerated individual restrained during labor in the

absence of any acute security concerns. *Id.* at 535. *Nelson* concluded that clearly established law put the officer on notice that it was unconstitutional to restrain a prisoner "'despite the clear lack of an emergency situation' in a manner 'that created a risk of particular discomfort and humiliation.'" 583 F.3d at 532 (quoting *Hope*, 536 U.S. at 737-38). The Minnesota Supreme Court concluded that "*Nelson* squarely controls this case because it clearly established that corrections officers violate the Eighth Amendment when they act with deliberate indifference to the substantial risk of severe injury from restraints during medical procedures." Pet. App. 49.

Petitioners concede that the Eighth Circuit is a source of clearly established law in the Minnesota courts. Pet. App. 47; *see also* Pet. App. 50 n.19.[4] But they claim *Nelson* is "distinguishable on its face" for three reasons: (1) because the prisoner-plaintiff was in labor, (2) because the corrections officer there ignored department policy; and (3) because the restraints in *Nelson* were applied over medical personnel's objections. Pet. 26. But *none* of these facts

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[4] Rightly so, as the Minnesota Supreme Court itself has explained that "[t]he relevant question for the qualified immunity analysis is whether case law *binding on the public official* has clearly established the right that official is alleged to have violated, not whether it is binding on the court determining whether the public official is entitled to official immunity. More particularly, both Minnesota and federal courts establish the constitutional obligations of Minnesota government officials." *McDeid v. Johnston*, 984 N.W.2d 864, 873 n.4 (Minn. 2023) (emphasis in original) (noting the relevance of decisions from "[t]he Minnesota Supreme Court, the Eighth Circuit, and the United States Supreme Court" to a determination of whether a constitutional right is clearly established).

distinguishes *Nelson* for purposes of the qualified immunity analysis.

First, there is no reason to distinguish *Nelson* based on the specific medical procedure at issue—there, labor; here, endoscopy under general anesthesia. That is just not how qualified immunity works. *See Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (question is whether the contours of the law are "sufficiently clear that a reasonable official would understand that what he is doing violates that right"); *Hope*, 536 U.S. at 741 ("[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances."). In fact, the Eighth Circuit itself recognizes that *Nelson* applies in various contexts, and "is not limited only to factual contexts that include labor and childbirth." Pet. App. 50. *See, e.g., Morris v. Zefferi*, 601 F.3d 805, 808-12 (8th Cir. 2010) (affirming the denial of qualified immunity for an Eighth Amendment claim arising from transporting a detainee in full restraints in a dog kennel in a K-9 transportation vehicle, and stating that the "decision in this case is controlled by the reasoning of *Nelson*"); *McCaster v. Clausen*, 684 F. 3d 740, 746 (8th Cir. 2012) (citing *Nelson* in case involving tuberculosis treatment in determining that "it is well established" that deliberate indifference to an inmate's serious medical needs violates the Eighth Amendment). In any event, even if the Court were to compare the medical conditions of the cases, from a penological perspective there is even less of a justification to hold someone under general anesthesia—i.e., totally knocked out—in restraints than someone who is awake and in control of their body.

Second, *Nelson* cannot be distinguished based on the fact that the defendant there ignored departmental policy—that is exactly what happened here. The Minnesota Supreme Court expressly noted that Petitioners here "did not comply with DOC policy forbidding the use of handcuffs for longer than necessary, in ways that cause 'undue discomfort' or pain, or in ways that restrict circulation." Pet. App. 48-49. It further noted that Petitioners "did not follow the policy directive that handcuffs be double locked to prevent precisely the injury that Welters suffered here" and that "they did not attend to Welters or provide any first aid during their use of mechanical restraints." Pet. App. 49. That the prison supervisor chastised Petitioners, as reflected in his grievance response, noting that they "have been reminded" to follow DOC regulations, further indicates Petitioners' knowledge of the policies and the prison's expectations that they be followed. Pet. App. 11-12. Accordingly, the Minnesota Supreme Court concluded that these DOC policies regarding the safe use of restraints supported the conclusion that Respondent's Eighth Amendment right was clearly established, consistent with this Court's precedent and that of the Eighth Circuit. *See Hope*, 536 U.S. at 741 (considering an Alabama Department of Corrections regulation); *Treats v. Morgan*, 308 F.3d 868, 875 (8th Cir. 2002) ("Prison regulations governing the conduct of correctional officers are also relevant in determining whether an inmate's right was clearly established.").

Finally, that the *Nelson* defendant acted over the objection of medical personnel is likewise no reason to distinguish that case—here, too, the nurse expressed a desire to have the restraints removed altogether (let

alone loosened), which was apparently repeatedly ignored. *See, e.g.*, Pet. App. 8 ("Why are these offender's restraints still on? I said I wanted them removed."). In short, *Nelson* was sufficient to clearly establish the law.

But the Minnesota Supreme Court did not just rely on *Nelson*; it correctly concluded that this Court's decision in *Hope* clearly established the law because it is also factually analogous to the present case. Pet. App. 45-47. In *Hope*, this Court held that corrections officers acted with deliberate indifference because (1) "[d]espite the clear lack of an emergency situation"; (2) they restrained an individual in a manner "that created a risk of particular discomfort and humiliation"; and (3) failed to follow DOC policies as to the allowable use of restraints. *Hope*, 536 U.S. at 737-38; *see also* Pet. App. 45. So too here, where the Minnesota Supreme Court held (1) there was "not a whiff" of a safety- or security-related reason for the overtightened handcuffs, Pet. App. 20 n.6; (2) "the overtightened and improperly applied handcuffs posed a substantial risk to [Respondent's] health and safety," Pet. App. 29-30; and (3) Petitioners' actions violated several DOC policies, Pet. App. 48-49. Notably, all three of these holdings relate to the merits of Respondent's constitutional claim, which Petitioners do not challenge here.

Petitioners' attempts to distinguish *Hope* are unavailing. First, they claim that *Hope* could not clearly establish the law because "the officers in *Hope* brazenly disregarded their own agency's policy," but, as just mentioned, Petitioners here did the same. Pet. 20; Pet. App. 48-49. Second, to the extent Petitioners suggest that *Hope* does not apply because the defendants'

conduct there was more egregious, that argument boils down to a version of qualified immunity where precise case-matching is required for a damages case to go forward—a notion that *Hope* itself rejects. 536 U.S. at 741 ("[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances.").

It is uncontroversial that *Hope* clearly establishes the law in this situation. "*Hope* has been cited repeatedly across circuits" to clearly establish that unsafely and improperly restraining someone in a manner that causes unnecessary harm and a substantial risk of physical injury absent a penological purpose is unconstitutional. Pet. App. 46. *See, e.g., Young v. Martin*, 801 F.3d 172, 177 (3d Cir. 2015); *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1248 (9th Cir. 2016); *Barker v. Goodrich*, 649 F.3d 428, 434-37 (6th Cir. 2011); *Stainback v. Dixon*, 569 F.3d 767, 772 (7th Cir. 2009) (recognizing that by 2002 it was well-established that "an officer may not knowingly use handcuffs in a way that will inflict unnecessary pain or injury on an individual who presents little or no risk of flight").

For example, the Seventh Circuit held the law was clearly established in *Ajala v. Tom*, a case arising under highly factually-analogous circumstances: "officers refused to loosen painfully tight handcuffs for 4.5 hours during a transport, resulting in chronic injury and pain." Pet. App. 46; 658 F. App'x 805, 806 (7th Cir. 2016). As the Minnesota Supreme Court noted, the Seventh Circuit in *Ajala* cited *Hope* and "determined that, like Officers Rhoney and Emily here, the officers 'never even *alleged* a penological justification for refusing to loosen Ajala's handcuffs' and that 'reasonable officers in their positions would have known that

it was unlawful for them to disregard Ajala's pleas for help.'" Pet. App. 47 (emphasis in original).[5]

As for the remaining circuit cases cited above that rely on *Hope* to clearly establish the law regarding improper restraints, *supra* at 24, Petitioners have no meaningful response. They simply say that those cases "are different than this one, in which Welters alleges he complained of numbness in his hands once." Pet. 18. But that is contrary to the summary judgment record. Respondent complained of numbness many times and repeatedly requested that his handcuffs be properly fastened and double locked—to no avail, until his hands literally turned blue.[6] On these facts, a reasonable corrections officer would know—as a result of *Nelson* and *Hope*, not to mention DOC

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[5] Petitioners claim that *Ajala* is distinguishable on three grounds, none of which work. Pet. 26. First, because the *Ajala* plaintiff complained that he was in pain—but so did Respondent. *See* Pet. App. 8 & 10 n.2. Second, because the episode lasted around 4.5 hours—but Respondent's also lasted several hours. *See* Pet. App. 3. And, third, because the *Ajala* defendants did not allege any specific penological justification for refusing to properly fasten the handcuffs—but neither did Petitioners. Pet. App. 41.

[6] *See, e.g.*, Pet. App. 7 (Respondent notified Petitioner Rhoney of his overtightened handcuffs before getting into the transport vehicle); *Id.* (same, while getting into the transport vehicle); Pet. App. 8 (Respondent told Petitioner Emily his hands were numb, and asked him to "loosen them, please loosen them"); Pet. App. 8-9 (Oak Park Heights officer looked for Petitioners); Pet. App. 9 (after procedure, Respondent told Petitioner Emily he cannot use the restroom; Emily again did not adjust the handcuffs). The Minnesota Supreme Court rejected Petitioners' argument that the summary judgment record was insufficient to prove their subjective knowledge, Pet. App. 30-36, and Petitioners do not challenge that decision here.

regulations—that they had an obligation to fix Respondent's overtightened, improperly-applied handcuffs, given the utter lack of penological justification for the state of his cuffs.

II. This Case Does Not Warrant Summary Reversal.

This case does not warrant summary reversal for a multitude of reasons. To start, there is no error here, as explained above. The Minnesota Supreme Court correctly applied the clearly-established analysis prescribed by this Court, and properly concluded that decisions from this Court and the Eighth Circuit clearly established the law. *See supra* Section I. But even if there were error here, this case would not be worthy of this Court's time, even on a summary basis.

First, viewing the facts under the appropriate summary-judgment standard, this is a case involving two prison officials' decision to leave a prisoner in overtightened, improperly-applied handcuffs for hours, including when he was under general anesthesia—despite any penological justification and contrary to DOC regulations. That is to say, when the facts are properly construed, Petitioners resemble exactly those officers to whom this Court has declined to grant qualified immunity: "the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

Second, and relatedly, Petitioners' attempts to frame this case as implicating security concerns rings hollow. It is difficult to understand why a ruling that requires prison officers to follow DOC regulations poses any threat at all to safety or security. One would assume the opposite to be true—that safety and

security are aided when officers abide by (and not ignore, as Petitioners were chastised for doing here) DOC regulations.

Third, this case is not remotely important enough to warrant this Court's review. This is the decision of one *state* high court, on an issue of "how to do" qualified immunity—a defense that only comes into play when assessing federal claims. At the outset, it is unclear how many § 1983 suits Minnesota state courts are hearing—Petitioners certainly do not say.

And, if Minnesota state employees take issue with this Minnesota Supreme Court decision on qualified immunity, they are always free to remove any or all of their § 1983 cases to federal court. Petitioners' claim that such removal is "problematic" because it might waive sovereign immunity (Pet. 32) cannot be countenanced. With respect to § 1983 claims seeking prospective injunctive relief, that immunity has not existed for state officials (comprising the bulk of state-employee defendants) who are sued in their official capacity since *Ex Parte Young*, 209 U.S. 123 (1908). And the Eighth Circuit holds that states within its territory (such as Minnesota) do not waive applicable immunities relating to § 1983 claims seeking monetary damages upon removal to federal court. *Kruger v. Nebraska*, 820 F.3d 295, 301 (8th Cir. 2016). With respect to any state-law claims over which a federal court might assert supplemental jurisdiction, the case on which Petitioners rely only provides that a state waives sovereign immunity upon removal to federal court with respect to claims on which the state *already* waived immunity in state courts (such as the state-law claims subject to the Minnesota Tort Claims Act in this case). *Lapides v. Board of Regents of Univ. Sys.*

of Ga., 535 U.S. 613, 617 (2002); *see also Kruger*, 820 F.3d at 301 (applying state-law immunities doctrine to state claims after removal to federal court); Minn. Stat. § 3.736 (waiving the state's sovereign immunity). Petitioners have not provided a sound basis, therefore, for the proposition that it would be "unappealing" to remove § 1983 suits to federal court (Pet. 32) if they are concerned about how the Minnesota courts assess qualified immunity.

In any event, Petitioners' grumbling about the risk of inconsistent results between state and federal courts in Minnesota (Pet. 32) is unwarranted. The decision below shows that the Minnesota state courts are applying the exact same qualified immunity law as the federal courts—after all, one of the primary cases the Minnesota Supreme Court relied upon to clearly establish the law here was a (decidedly-federal) Eighth Circuit decision. Given that state courts faithfully apply federal law in these kinds of cases, it is unsurprising that of the twenty of this Court's qualified immunity cases that Petitioners point to (Pet. 29 n.11), *zero* involve decisions from a state court. They would have to be *really* wrong or *really* important to make them worth the candle. This one certainly is not.

And although this Court does, occasionally, summarily reverse denials of qualified immunity, those cases are almost exclusively in the Fourth Amendment excessive-force-in-policing context where this Court has stated that the "hazy border between excessive and acceptable force" renders specificity "especially important" for the clearly-established inquiry. *Kisela*, 138 S. Ct. at 1152-53. *See* William Baude, *Is Qualified Immunity Unlawful?*, 106 Cal. L. Rev. 45, 88-90 (2018) (appendix compiling this Court's

applications of qualified immunity from 1982 through 2017); *see also* Pet. 29 n.11 (collecting cases). In contrast, in Eighth Amendment cases, this Court tends to summarily reverse grants, not denials, of qualified immunity. *See, e.g.*, *Taylor v. Riojas*, 141 S. Ct. 52 (2020); *Hope v. Pelzer*, 536 U.S. 730 (2002); *cf. McCoy v. Alamu,* 141 S. Ct. 1346 (2021) (granting, vacating, and remanding in light of *Taylor*).

CONCLUSION

The Court should deny the petition for a writ of certiorari.

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Respectfully submitted,

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