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 Writ Of Certiorari To The Supreme Court Of Minnesota

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This Court has repeatedly held that qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law," requiring that existing precedent provide fair and clear notice of conduct that violates the Constitution. *E.g.*, *D.C. v. Wesby*, 583 U.S. 48, 63 (2018) (internal quotation omitted). Against this backdrop, the Minnesota Supreme Court in this case announced a new standard for qualified immunity that applies only in Minnesota state court, requiring "less particularity" in the existing law when a public official "is engaging in routine conduct that does not require quick decision-making. . . ." App. 42-43. It then applied that rule to two corrections officers who made security decisions about an inmate from one of the state's most violent prisons, confidently declaring the officers' actions in restraining the inmate were "not justified by a competing government interest." App. 42.

The Minnesota Supreme Court's analysis erodes qualified immunity for public officials accused of wrongdoing in Minnesota state courts, creating difficulty for public officials as well as lower courts. In asking this Court to leave the state court's ruling intact, Respondent Christopher Welters adopts the same flawed analysis, and then suggests that the Minnesota Supreme Court did not really mean what it said, or at least did not understand itself to be creating precedent. But subsequent case law developments in Minnesota have already shown otherwise. The Minnesota Supreme Court's qualified immunity analysis is flatly

inconsistent with this Court's cases and portends a new qualified immunity landscape in Minnesota where the same set of facts will be evaluated differently in state and federal court. Accordingly, the Court should grant review in this case and reverse the decision below.

ARGUMENT

Petitioners Ernest Rhoney and Cornelius Emily, two Minnesota Department of Corrections officers, established in their petition that the Minnesota Supreme Court's denial of qualified immunity contradicts this Court's precedents and is likely to have serious consequences for public officials in Minnesota.[1] Welters' Brief in Opposition (Br. in Opp.) attempts to justify the court's erroneous analysis and minimize its consequences. Ultimately, however, Welters fails to identify any case law that would have put Petitioners on notice that their decisions were unlawful. He also offers no solution for public officials who are litigating a qualified immunity defense that will be weakened in Minnesota state courts unless this Court steps in. This Court should grant the petition and summarily reverse.

[1] Petitioners do not concede that their alleged conduct violated the deliberate indifference standard. Br. in Opp. 1, 14, 25. The issue before the Court, however, is whether that alleged Eighth Amendment violation was "clearly established" within the meaning of this Court's qualified immunity precedent.

I. THE DECISION BELOW IS CONTRARY TO THIS COURT'S PRECEDENTS.

As described in the petition, the Minnesota Supreme Court's analysis is inconsistent with this Court's qualified immunity case law, which requires the Court to identify factually analogous case law so that constitutional violations are clear to "all but the plainly incompetent or those who knowingly violate the law." Pet. 13-23. In contending that the decision below satisfies "this demanding standard," *Wesby*, 583 U.S. at 63, Respondent cites the same inapposite cases as the Minnesota Supreme Court and adopts the same flawed analysis. Br. in Opp. 16-26.

The distinctions between those cases and this one do not turn, as Respondent erroneously contends, on the type of medical condition for which the inmate was receiving treatment, but rather on the conditions actually observed by the corrections officer at the time they were making their respective decisions. *Taylor v. Riojas*, 141 S. Ct. 52, 54 (2020) (stating that "officer-by-officer analysis" is required to determine Eighth Amendment liability); *Taylor v. Barkes*, 575 U.S. 822, 827 (2015) (stating that "Eighth Amendment liability requires actual awareness of risk" and finding applicable law not clearly established for purposes of qualified immunity) (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). Here, according to Welters' own testimony, Officer Rhoney was aware that Welters' handcuffs were tight but not that he was in pain when Rhoney decided not to loosen or remove the handcuffs. Rhoney's comments, as described by Welters, reflect that Rhoney

thought the cuffs would be removed after the 15-minute drive to the high-security prison where the medical facility was located. App.7, 102-103; Doc. 43 at 11-12. Welters admitted that he never told Officer Rhoney he was in pain, and Welters testified he does not "believe [Rhoney] was intending to hurt me." Doc. 43 at 60. These facts, based entirely on Welters' version of events, fall far short of clearly establishing that Rhoney was subjectively aware of a substantial risk of serious harm to Welters. Welters does not distinguish any of the case law cited in the petition and instead uses the same cases cited by the Minnesota Supreme Court, which are inapposite for the reasons discussed therein. Pet. 17-19, 24-28.

Officer Emily, according to Welters, was not present when the handcuffs were applied or when he complained to Officer Rhoney about the cuffs being "pretty tight." App. 7. Instead, Welters alleged that he spoke to Officer Emily exactly once, when he and another inmate were in a holding cell waiting for their medical appointments. Doc. 43 at 8, 14-17. Welters said his hands were numb and he asked why he and the other inmate were still in restraints. App. 103, 113, 120. According to Welters, Officer Emily was alone at the time and said he need to go find his partners. App. 103. Welters did not allege that any medical staff ever asked Officer Emily to remove the restraints or that Officer Emily was present when medical staff allegedly asked about the restraints. *See White v. Pauly*, 580 U.S. 73, 77 (2017) (holding that the court "considers only the facts that were knowable to the defendant officers"

in evaluating qualified immunity) (citing *Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015)).

Case law does not establish that a single complaint of numbness from handcuffs would show a reasonable officer's subjective awareness of a serious condition. *See Stepnes v. Ritschel*, 663 F.3d 952, 961 (8th Cir. 2011) (characterizing "bruising, numbness, and soreness" from handcuffs as non-serious injuries in Fourth Amendment context); *DeShane v. City of Minneapolis, et al.*, No. CV 21-1452 (DWF/HB), 2022 WL 624579, at *7 (D. Minn. Mar. 3, 2022) (single complaint of numbness did not put officers on notice of serious medical condition for deliberate indifference purposes). Indeed, the Eleventh Circuit recently concluded that case law did not clearly establish deliberate indifference where an official failed to provide medical attention in response to a complaint about numbness from handcuffs. *Brooks v. Miller*, No. 21-10590, 2023 WL 5355022, at *13 (11th Cir. Aug. 22, 2023). *See also* Pet. 24-28 and cases cited therein.

Contrary to the Minnesota Supreme Court's analysis (which is adopted by Welters), the absence of a "disturbance" does not mean that Officer Emily did not have reasonable safety concerns in the situation that confronted him. App. 20; Br. in Opp. 14-15. Officer Emily explained he decided to keep Welters and the other inmate in full restraints because he was working by himself with two inmates from a high-security prison that accounts for a significant number of assaults on both staff and other prisoners. App. 103, 113,

120. Office of the Legislative Auditor, *Safety in State Correctional Facilities* 4, 22-24 (2020).[2]

In the qualified immunity context, this Court has cautioned against "second-guessing" officials' on-the-scene assessments of danger "with the benefit of hindsight and calm deliberation." *Ryburn v. Huff*, 565 U.S. 469, 477 (2012) (per curiam); *City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 612 (2015). *See also Whitley v. Albers*, 475 U.S. 312, 320 (1986) (discussing "appropriate hesitancy to critique in hindsight" prison officials' decisions). That is exactly what the Minnesota Supreme Court did here. As the Eighth Circuit recently counseled, failure to immediately respond to inmate medical concerns when working alone is not deliberately indifferent. *See Leonard v. St. Charles Cnty. Police Dep't*, 59 F.4th 355, 361 (8th Cir. 2023) (corrections officer was entitled to qualified immunity when "she waited for appropriate backup" instead of immediately entering holding cell while inmate clawed at his eyes). Similar circumstances apply here, as it is undisputed that Officer Emily did not have a colleague present when Welters spoke to him. App. 8, 103, 113, 120. As described by amici, even removing the black box to loosen the cuffs implicated safety concerns. Br. Assoc. of Minn. Counties, *et al.*, 6. Thus, in the absence of caselaw establishing that this decision was unlawful, Officer Emily should be afforded qualified immunity.

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[2] https://perma.cc/8K6A-8698.

Welters' continued reliance on *Hope v. Pelzer* and *Nelson v. Correctional Medical Services* is misplaced for the reasons discussed in the petition and that of amici. Pet. 25-27; Br. Assoc. of Minn. Counties, *et al.*, 14-24. The defendant corrections officer in *Nelson* watched the inmate, a nonviolent offender, struggle to walk down the hall, scream in pain, and struggle to give birth while shackled to her hospital bed. 583 F.3d 522, 525 (8th Cir. 2009). The officer also defied a specific directive from her supervisor to not restrain the inmate, as well as repeated requests of medical personnel to unshackle the inmate, which the officer admitted to hearing. *Id*. In this case, there was no such directive provided beforehand to either Petitioner, nor is there any evidence that a doctor or nurse asked either of them to remove the restraints. As discussed in the petition, *Nelson* does not apply to this situation at all, let alone with "obvious clarity." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). And *Hope*, in which an inmate was punished by being chained, shirtless, to a hitching post in the hot sun for seven hours, does nothing to inform officers in the situation of Petitioners of what the law required. Pet. 20-21. Br. Assoc. of Minn. Counties, *et al*., 14-24.

Nelson, *Hope*, and the other cases relied upon by Welters "are simply too factually distinct to speak clearly to the specific circumstances here." *Mullenix v. Luna*, 577 U.S. 7, 18 (2015). Neither *Nelson* nor any other controlling case clearly establishes that the decisions made by Officers Rhoney and Emily "rise to the level of criminal recklessness." *Leonard*, 59 F.4th at

360. *See Farmer v. Brennan*, 511 U.S. 825, 839 (1994) (adopting criminal recklessness standard for deliberate indifference).

Welters' attempt to square the Minnesota Supreme Court's analysis with this Court's case law fails at every turn. As discussed in the next section, this is serious error with real consequences for public officials in Minnesota.

II. THIS COURT FREQUENTLY REVERSES ERRONEOUS DENIALS OF QUALIFIED IMMUNITY SUCH AS THIS ONE.

As established in the petition, this case is precisely the kind of case in which this Court has repeatedly reversed lower courts. Pet. 28-30. Misapplication of qualified immunity creates conundrums for public officials everywhere. *Wesby*, 583 U.S. at 62 (reaching qualified immunity issue because lower court's analysis "if followed elsewhere, would undermine the values qualified immunity seeks to promote"); *White*, 580 U.S. at 79 (2017) (reversing misapplication of "clearly established" prong and emphasizing "qualified immunity is important to society as a whole"). The Court has repeatedly reversed on this very issue: failing to identify case law that is sufficiently analogous to put "all but the plainly incompetent" on notice of what is constitutionally required. Pet. 29-30. Most of these cases have been summary per curiam reversals with no public dissents. *Id*.

Welters' suggestion that this case is somehow less important because it is from a state court judgment should be dismissed out of hand; the Court regularly reviews and reverses state court decisions when they depart from this Court's precedent on issues of federal law. *E.g.*, *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 252-253 (2017) (reversing judgment of state supreme court because decision did not comport with Supreme Court precedent); *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 55-58 (2003) (per curiam) (granting certiorari of state supreme court decision to correct a misreading of Supreme Court precedent); *Oregon v. Mathiason*, 429 U.S. 492, 493 (1977) (per curiam) (granting certiorari and summarily reversing where state court "read *Miranda* too broadly").

The Court also regularly grants certiorari when the state and federal courts from the same state analyze issues of federal law differently. *DirectTV v. Imburgia*, 577 U.S. 47, 52-53 (2015) (granting certiorari and reversing judgment of state appellate court where it was in conflict with federal court of appeals covering that state); *Hagen v. Utah*, 510 U.S. 399, 409 (1994) (granting certiorari "to resolve the direct conflict between these decisions of the Tenth Circuit and the Utah Supreme Court"). *See also Johnson v. California*, 545 U.S. 162, 168 (2005) (granting certiorari of state court judgment on "narrow but important" issue of federal law). Such conflicts encourage forum shopping, which itself is a reason the Court should grant certiorari.

The likelihood of inconsistent results between state and federal court is all too real. In fact, while this

case was pending at the Minnesota Supreme Court, a federal district court in Minnesota granted a Rule 12 dismissal to two law enforcement officers in a case alleging the officers "were deliberately indifferent to [the plaintiff's] obvious medical need caused by unduly tight handcuffs and that they failed to take reasonable measures to address her serious medical need." *DeShane*, 2022 WL 624579, at *5. The plaintiff[3] in that case alleged that she told the officers her hand was going numb while she was handcuffed and that the officers ignored her complaints. *Id*. at *7. The court found that the plaintiff's "single complaint that her hand was going numb is insufficient to allege that [the defendants] actually knew of but deliberately disregarded an objectively serious medical need." *Id*. at *7. Accordingly, the defendants in that case were entitled to qualified immunity *on the face of the pleadings*. Under the Minnesota Supreme Court's analysis, the outcome would almost certainly be different.

Welters suggests that the concerns about inconsistency are overblown absent some data about the frequency with which state courts decide qualified immunity issues. But "[s]ection 1983 actions are routinely heard in the courts of all the states." Steven Steinglass, *Section 1983 Litigation in State and Federal Courts* § 9:1A (West 2022). Future plaintiffs are more likely to choose a state forum, with the diluted

[3] The plaintiff in *DeShane* was a pretrial detainee. Although her claims are therefore analyzed under the Fourteenth Amendment, the court used the same deliberate indifference standard that applies to convicted persons. 2022 WL 624579, at *6.

standard from the Minnesota Supreme Court controlling the outcome. Liability for civil rights actions should not turn on the forum in which a defendant is sued, particularly in light of this Court's recognition that "[q]ualified immunity gives government officials breathing room to make reasonable but mistaken judgments." *Stanton v. Sims*, 571 U.S. 3, 6 (2013) (internal quotations omitted).

Moreover, as discussed in the petition, removal from state court to federal court is not an attractive option because plaintiffs frequently join individual capacity claims against officials with claims against state agencies, which enjoy sovereign immunity. Pet. 32-33. Even when state defendants can remove an action to federal court without waiving the sovereign immunity of any attendant defendants, the risk of prolonged litigation in multiple forums persists because federal courts are not required to exercise supplemental jurisdiction over state law claims. *E.g.*, *McManemy v. Tierney*, 970 F.3d 1034, 1040 (8th Cir. 2020) (per curiam) (affirming decision to decline supplemental jurisdiction in 1983 action after affirming qualified immunity).

Welters makes no attempt to argue that the Minnesota Supreme Court's qualified immunity standard, which requires "less particular" notice to public officials engaging in "routine conduct," is consistent with this Court's case law, and instead tries to explain it away as "dicta." Br. in Opp. 15. Although the Minnesota Supreme Court declined "to parse precisely where [the constitutional] line is to be drawn," it went on to do

exactly what this Court has said it cannot: define the law at a high level of generality and draw analogues from inapposite case law. App. 44-45. The Court applied the "basic directive" of *Hope* and *Farmer* to the specific circumstances confronting Petitioners. App. 41-42. In other words, the Minnesota Supreme Court *did* define the applicable right at a high level of generality, a legal error that this Court frequently reverses.

The Minnesota Supreme Court itself already applied its new qualified immunity standard just a few months later in *McDeid v. Johnston*, denying qualified immunity in constitutional claims arising out of the Minnesota Sex Offender Treatment Program. 984 N.W.2d 864, 872 (Minn. 2023). The Minnesota Supreme Court is not treating its holding in *Welters* as dicta, and lower state courts are unlikely to regard it as such.

Furthermore, the Minnesota Supreme Court's analysis was indisputably an "expression of opinion on a question directly involved and argued by counsel." *State v. Rainer*, 103 N.W.2d 389, 396 (1960). It would therefore be "judicial dictum" and "entitled to much greater weight than mere obiter dictum and should not be lightly disregarded." *Id*. *See also Williams v. State*, 910 N.W.2d 736, 741 (Minn. 2018) (following dicta from prior cases). This is precisely the situation where certiorari is warranted because the Minnesota Supreme Court's analysis, "if followed elsewhere, would undermine the values qualified immunity seeks to promote." *Wesby*, 583 U.S. at 62 (internal quotations omitted). This case is worthy of this Court's attention

and should be decided in accordance with this Court's precedent.

CONCLUSION

Time and time again, this Court has granted certiorari to ensure that lower courts properly apply its precedents, especially qualified immunity. The Court should do so here too. The Minnesota Supreme Court's analysis is deeply flawed and creates a significant risk of inconsistency between state and federal courts in Minnesota. The Court should grant certiorari, vacate the Minnesota Supreme Court's decision, and remand with instructions to reinstate summary judgment for the Petitioners on Welters' §1983 claim.

Dated: August 29, 2023

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