No. 23-7

IN THE

Supreme Court of the United States

LYNN HAMLET,
Petitioner,

v.

OFFICER BRANDON HOXIE,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner Lynn Hamlet alleged in his 42 U.S.C. § 1983 complaint that respondent Officer Brandon Hoxie violated the Eighth Amendment when he confined Hamlet to a running shower for 30 to 40 minutes where a potato chip bag containing feces and urine was floating in the water. Nothing in the summary judgment record indicates that Officer Hoxie knew about scratches on Hamlet's ankles or that Hamlet might have gotten any feces on them. The questions presented are:

1. Whether the Eleventh Circuit erred in affirming the award of summary judgment on the ground that the undisputed facts did not constitute an Eighth Amendment violation, or alternatively that Hamlet failed to overcome Officer Hoxie's qualified immunity.

2. Whether this Court should reconsider its 45-year-old precedent in *Procunier v. Navarette*, 434 U.S. 555 (1978), which held that a public-prison official receives qualified immunity.

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STATEMENT OF THE CASE

1. Petitioner Lynn Hamlet is serving a 40-year sentence in Florida prison for aggravated battery and violating a domestic violence injunction.[1] On the night of April 25, 2018, Officer Hoxie[2] and another corrections officer escorted Hamlet to the handicap shower. ECF 112-1 at 29–30 (Hamlet's deposition). Hamlet was given a towel by one of the officers. *Id.* Some time after he began showering, Hamlet noticed a single-serving sized potato chip bag with feces inside it floating in the water. *Id.* at 35–36. According to Hamlet, another inmate had earlier relieved himself in the bag. *Id.* at 31; ECF 115 at 5 (Hamlet's affidavit). Hamlet also noticed urine. ECF 112-1 at 35.

Hamlet asked the officers to let him out of the shower, but Officer Hoxie did not let him leave for 30–40 minutes, accusing Hamlet of being the one who had relieved himself. *Id.* at 14; ECF 115 at 15, 20. Hamlet did not claim he lacked running water while in the shower and admitted he could have sat or stood on a wall to avoid contact with the feces and urine. ECF 112-1 at 14, 30–31, 35, 39. Instead he moved to a "high area" by the entrance to "keep the feces from getting to [his] open wounds," where he had

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[1] Broward County Clerk of Court, Case Search, Case No. 06005997CF10A, *State v. Hamlet*, available at https://www.browardclerk.org//Web2.

[2] Officer Hoxie denies that he was on duty in Hamlet's unit that night. ECF 108-5 at 1–2; ECF 119-2 at 1–2. Because this case comes to the Court following the award of summary judgment, the following statement of facts will accept Hamlet's claim that Hoxie was the officer who took the actions in question.

scratched himself at night due to dry skin. *Id.* at 39–40, 67.

From the shower, Hamlet saw that someone, whom he believed to be Officer Hoxie, had taken his sheets and clothes and thrown them into the hallway. *Id.* at 40–41. Although he had earlier received a towel, Hamlet claims that when he arrived back at his cell wearing only his boxer shorts, he had nothing to clean off his scratches and Officer Hoxie forbade other officers from letting him shower for the rest of the week. *Id.* at 15–16, 29, 42–43. He says he used his hands and the water in his cell's toilet to try to clean off his scratches. *Id.* at 15. He did not ask for clothes or bedding, but received a sheet the next morning. *Id.* at 43–45.

Three days later, on April 28, 2018, Hamlet filed a grievance over the shower incident. ECF 36-5. He did not say anything about being sick or having feces on his body. *Id.* The following day, two nurses took Hamlet to the infirmary to treat him for hypoglycemia. ECF 112-2. The medical report for that treatment does not mention scratches on his ankles or contact with feces. *Id.*[3] From there Hamlet was rushed to the hospital, where he heard from nurses he was being treated for a bacterial infection. ECF 112-1 at 16. No medical records in the summary judgment record, however, confirm this diagnosis. App. 19a. Another medical report indicates that on May 6, 2018, Hamlet refused to take his Hepatitis C medication while at the correctional institution. ECF 119-4 at 4,

[3] A medical report from April 24, the day before the incident, also did not mention scratches on his ankles. ECF 119-4 at 3, 17.

21. And yet another medical report indicates that Hamlet was first transferred to the hospital on May 8. *Id.* at 4–5, 23. Eventually Hamlet had to have heart valve surgery. ECF 112-1 at 18.

2. Before this incident, Hamlet had filed a complaint in the Southern District of Florida under 42 U.S.C. § 1983, raising unrelated claims against the prison and three other prison officers. ECF 1; App. 19a–20a. The district court dismissed these claims but allowed Hamlet to amend his complaint to add the claim about the shower incident. ECF 29. In that complaint Hamlet added Hoxie and one other officer as defendants. ECF 26.

To establish that the incident violated the Eighth Amendment, Hamlet had to prove two things. First, he had to show that Officer Hoxie's conduct was "sufficiently serious" to violate the Eighth Amendment "objectively," *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citation omitted), specifically that it resulted in an "extreme deprivation[]" denying "the minimal civilized measure of life's necessities," *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). And second, that Officer Hoxie acted with "'deliberate indifference' to a substantial risk of serious harm"—i.e., that he "was subjectively aware of the risk," *Farmer*, 511 U.S. at 828–29. Evidence of negligence is not enough for deliberate indifference—Officer Hoxie "must both [have] be[en] aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also [have] draw[n] the inference." *Id.* at 835, 837.

Qualified immunity, though, "protects government officials 'from liability for civil damages insofar

as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation omitted). To overcome qualified immunity, a plaintiff must show that the facts made out a violation of his rights, and that "the right at issue was 'clearly established' at the time of [the] defendant's alleged misconduct." *Id.* at 232.

Following discovery, Officer Hoxie moved for summary judgment. ECF 108. The district court granted the motion. ECF 130. "Even accepting every detail in [Hamlet's] story as true," the court concluded, "Hamlet can satisfy neither the objective nor subjective prongs of an Eighth Amendment claim." App. 28a–29a. The court found that "exposure to a small potato-chip bag's worth of feces, and perhaps some urine, for at most 40 minutes was not extreme enough to satisfy the objective component of an Eighth Amendment claim." App. 29a. The court also found that Hamlet had not adduced facts sufficient to show that "Officer Hoxie was aware of Mr. Hamlet's risk of infection," as required to meet the subjective component. App. 32a.

Hamlet then filed an "Opposing of Summary Judgment," ECF 142, which the district court construed as a motion for reconsideration, ECF 147. Hamlet claimed for the first time that when he was taken back to his cell from the shower and put his foot on the toilet, Officer Hoxie "could see[] the feces on [his] ankles." ECF 142 at 9. The district court denied the motion, explaining that Hamlet had identified no newly discovered evidence to support this

claim and no error of law or fact in the district court's order. ECF 147 at 2.

3. Hamlet appealed, but the Eleventh Circuit affirmed on two alternative grounds. To begin with, the court of appeals held that Hamlet had not overcome Officer Hoxie's qualified immunity with respect to the objective prong of the Eighth Amendment inquiry, because "[c]learly established law does not show that a relatively brief exposure to urine and feces in the shower is an objectively extreme deprivation of the minimal civilized measure of life's necessities." App. 6a, 8a–11a. To that end, the court surveyed its case law addressing alleged deprivations of sanitary conditions and found that none set out principles "so well defined" that it would have been "clear to a reasonable officer that his conduct [in Hamlet's case] was unlawful in the situation he confronted." App. 9a–10a (citation omitted).

Next, the court of appeals agreed with the district court that—even setting aside the question of qualified immunity—Hamlet's Eighth Amendment claim failed on the subjective prong because Hamlet had provided insufficient evidence of deliberate indifference. App. 12a. As it explained, nothing in the summary judgment record indicated that Officer Hoxie knew about the wounds on Hamlet's ankles, much less that feces got on the wounds, because Hamlet never suggested that he told Officer Hoxie about the feces on his wounds and admitted that he did not ask him for anything with which to clean himself. *Id.* Likewise Hamlet did not mention his wounds or feces on his body in the grievance he filed. *Id.* And the nurses' reports of the day before and several days af-

ter the incident did not note any wounds or feces either, suggesting that at a minimum any wounds or feces were not so obvious that Officer Hoxie would have noticed them. *Id.*

The Eleventh Circuit denied Hamlet's petition for rehearing and petition for rehearing en banc. App. 34a.

REASONS FOR DENYING THE PETITION

I. The first question presented does not warrant certiorari.

Hamlet first invites the Court to take up the deeply fact-bound question of whether, on the unique record in this case, Officer Hoxie violated Hamlet's Eighth Amendment rights—and whether any violation was clear enough to overcome Officer Hoxie's qualified immunity. Pet. 8–20. That question is not certworthy. The Eleventh Circuit properly affirmed the grant of summary judgment in a decision that does not implicate a circuit split, and in no event would the extraordinary remedy of summary reversal be appropriate.

A. The Eleventh Circuit correctly affirmed the grant of summary judgment in favor of Officer Hoxie.

Prison life is often difficult and sometimes messy, but the facts of this case do not amount to "cruel and unusual punishment." U.S. Const. amend. VIII. The Eleventh Circuit correctly concluded that Hamlet failed to adduce sufficient evidence from which a reasonable jury could find an Eighth Amendment violation, much less a violation so "clearly established" or

"obvious" that it would abrogate Respondent Officer Hoxie's immunity from § 1983 suit. Most critically, there is no evidence that Officer Hoxie knew about the scratches on Hamlet's ankles or knew that Hamlet had gotten feces on them, as necessary to establish subjective deliberate indifference under the Eighth Amendment. Nor does the evidence in the summary judgment record, even when viewed in a light most favorable to Hamlet, establish an objective constitutional violation. By his own account, Hamlet retained access to the running water in the shower and was able to move to a higher area of the stall to avoid contact with the potato chip bag containing feces that is the gravamen of his case. The actual exposure of his wounds to standing water in which some feces might have dissolved was thus minimal at best. At a minimum, the court of appeals was correct that Officer Hoxie is entitled to qualified immunity.

1. Hamlet claims that Officer Hoxie violated the Eighth Amendment by keeping Hamlet in the shower for 30 to 40 minutes and then not providing him any means to clean the feces off his ankles for a week. *E.g.*, Pet. 7. But he fails on both prongs of the Eighth Amendment analysis. To establish that the conditions of his confinement violated the Eighth Amendment, Hamlet must show (1) that Officer Hoxie acted with "'deliberate indifference' to a substantial risk of serious harm"—i.e., that he "was subjectively aware of the risk"—and (2) that Officer Hoxie's conduct was "sufficiently serious" to violate the Eighth Amendment "objectively." *Farmer v. Brennan*, 511 U.S. 825, 828–29, 834 (1994) (citation omitted). Evidence of negligence is not enough for deliberate indifference—Officer Hoxie "must both [have] be[en] aware of facts

from which the inference could be drawn that a substantial risk of serious harm exists, and he must also [have] draw[n] the inference." *Id.* at 835, 837. Hamlet has not made any of these showings.

On the subjective prong, the district court correctly found, and the Eleventh Circuit correctly affirmed, that Hamlet failed to "demonstrate that Officer Hoxie was aware of [his] risk of infection." App. 12a, 15a, 32a. Hamlet "does not claim that he ever told Officer Hoxie that the feces from the potato chip bag had become stuck to open cuts on his ankles." App. 32a. "Nothing in [the] record suggests that Hoxie—or anyone but Hamlet himself, for that matter—even knew that he had wounds on his ankles, much less that he had feces stuck to his wounds for days after his shower." App. 12a.

Hamlet asserts that the Eleventh Circuit "seriously misstate[d] the summary judgment factual record" by not considering his post-summary judgment allegation that Officer Hoxie saw the feces on Hamlet's ankles after Hamlet was removed from the shower. Pet. 15–16 & n.4; *see also* Pet. 6, 33 (using allegation to attempt to show Officer Hoxie's subjective awareness of Hamlet's risk of infection). But that allegation was not part of the summary judgment record. When Hamlet did introduce that allegation in his motion for reconsideration, he did not support it with newly discovered evidence. Hamlet's counsel was thus quite right not to rely on this fact in the Eleventh Circuit briefing, *see* Brief of Appellant, *Hamlet v. Hoxie*, No. 21-11937 (11th Cir. Nov. 15, 2022), ECF No. 27; Reply Brief of Appellant, *Hamlet v. Hoxie*, No. 21-11937 (11th Cir. Mar. 23, 2023), ECF

No. 52, and is wrong now to attempt to smuggle it in before the Court.[4]

Turning to the objective prong, Hamlet testified he was exposed to feces in a single-serving sized potato chip bag in a running shower for 30 to 40 minutes. ECF 112-1 at 14, 35–36. He did not claim that at any point he was unable to rinse off his legs with the running water that he controlled. *Id.* at 36:11. He also testified that he was able to move to a higher area of the shower "where the water couldn't get to [his] cuts and wounds." *Id.* at 39, 67. And he apparently chose not to lift himself out of the water and sit on a "wall" designed for inmates to sit so that his legs did not touch the water accumulating on the shower floor. *Id.* at 30:23–31:2; 36:11–12, 16–17; 39:9–16. He was given a towel when he went to the shower, *id.* at 29, and nothing in the record indicates that he asked for anything else with which to clean himself afterwards, *id.* at 43–44. The district court ruled correctly that these facts were not enough to establish objectively unconstitutional conduct on Hoxie's part.

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[4] On June 1, 2021, several weeks after the court's April 26 summary judgment order, Hamlet filed the "Opposing of Summary Judgment," which the district court treated as a motion for reconsideration. ECF 142 at 1; *see also* ECF 147. He purports to have signed the opposition on November 24, 2020, *id.* at 13, but the motion was addressed to and received by the Eleventh Circuit in the same envelope as Hamlet's subsequent notice of appeal. *Id.* at 1, 16; ECF 144 at 25. Further, it refers to the summary judgment order, accusing the district court of "grant[ing] summary[] judgment to get rid of [him]." ECF 142 at 8. Any allegations in the opposition thus were made after the summary judgment order and could not be considered part of the summary judgment record.

2. Though it is not necessary to reach the question, it follows from the foregoing that the Eleventh Circuit was right that Officer Hoxie is also entitled to qualified immunity. The conduct of which he is accused did not violate any "clearly established" law. *Procunier v. Navarette*, 434 U.S. 555, 562 (1978). Indeed, a violation of the Eighth Amendment could not have been "obvious," *Hope v. Pelzer*, 536 U.S. 730, 738 (2002), given Hoxie's unawareness of Hamlet's condition and Hamlet's admitted ability to evade contamination. Confining a prisoner to a running shower with a dung-filled potato chip bag would certainly not be exemplary disciplinary practice, but neither is it something "any reasonable officer should have realized . . . offend[s] the Constitution." *Taylor v. Riojas*, 141 S. Ct. 52, 54 (2020) (per curiam). "[E]xtreme deprivations are required to make out a conditions-of-confinement claim." *Hudson v. McMillian*, 503 U.S. 1, 9 (1992).

Nor would any governing precedent have put Hoxie on notice that the conduct of which he is accused would violate the Eighth Amendment. The facts of this case pale by comparison to those in other § 1983 cases involving purposeful, prolonged periods of fecal contamination, most notably *Taylor*, in which an inmate was confined for four days to a cell covered in massive amounts of feces and then another two days to a cell in which he was forced to sleep naked in sewage. 141 S. Ct. at 53. Similarly, in *Brooks v. Warden*, the prisoner "was forced to defecate into his jumpsuit and sit in his own feces for two days." 800 F.3d 1295, 1303 (11th Cir. 2015).

Other cases cited by Hamlet similarly do not indicate that fleeting exposure to feces constitutes an

Eighth Amendment violation. In *Chandler v. Baird*, the prisoner testified that he was confined to a cold and filthy cell without adequate clothing, bedding, soap, a toothbrush, toothpaste, toilet paper, or running water for several days. 926 F.2d 1057, 1063 (11th Cir. 1991). The Eleventh Circuit reversed the district court's finding of qualified immunity only because the prisoner was "entitled to have the trier of fact determine whether the conditions of his administrative confinement, principally with regard to the cell temperature and the provision of hygiene items, violated the minimal standards required by the Eighth Amendment." *Id.* at 1065. And in *Novak v. Beto*, the prisoner's claim concerned solitary confinement. 453 F.2d 661, 665 (5th Cir. 1971).[5] The prisoner had cited out-of-circuit cases involving contact with feces, but the court responded by simply noting that they concerned "deprivation of basic elements of hygiene." *Id.* Even if this generic comment in dicta is precedential, it is too general a proposition with which to discern whether Officer Hoxie's specific alleged conduct is unlawful. *See City of Tahlequah v. Bond*, 142 S. Ct. 9, 11 (2021) (per curiam) ("[C]ourts [may] not define clearly established law at too high a level of generality."); *Hope*, 536 U.S. at 739 ("For a constitutional right to be clearly established, its contours 'must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the

[5] Decisions of the Fifth Circuit issued on or before September 30, 1981 are precedential in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent.'" (citations omitted)).

In short, the governing precedents do not establish that the presence of a dung-filled potato chip bag in a shower with running water, as well as room to maneuver away, amounts to an "extreme deprivation[]" denying "the minimal civilized measure of life's necessities." *Hudson*, 503 U.S. at 9.

* * *

At bottom, this case "turns entirely on an interpretation of the record," and Hamlet "simply disagrees with the [Eleventh] Circuit's application of" Eighth Amendment precedents "to the facts in a particular record." *Taylor*, 141 S. Ct. at 55 (Alito, J., concurring in the judgment) (explaining why certiorari should not have been granted). "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." S. Ct. R. 10. "Every year, the courts of appeals decide hundreds if not thousands of cases in which it is debatable whether the evidence in a summary judgment record is just enough or not quite enough to carry the case to trial." *Taylor*, 141 S. Ct. at 55 (Alito, J., concurring). "[A]s a rule," this Court does not review these cases simply because the losing party thought the court of appeals got it wrong. *Id.*

B. The decision below does not conflict with those of other circuits.

Hamlet next argues that this Court should grant his petition because the decision below conflicts with other circuit cases which supposedly held that Eighth Amendment violations occurred under "'materially similar' or 'fundamentally similar'" facts. Pet. 10 (citing *Hope*, 536 U.S. at 741). He is incorrect. The cruelty of prison officers in the cases Hamlet cites (Pet. 10–15) was far more purposeful, pronounced, and prolonged than what he claims to have experienced in his case.

First Circuit: In *Surprenant v. Rivas*, the court of appeals held it reasonable for the jury to have found an Eighth Amendment violation when the prisoner was placed in a "combination of near-continuous confinement, denial of exercise time, water, and items of personal hygiene, exposure to bodily waste, and forced insertion of inmates' unwashed fingers into their mouths up to five times per day." 424 F.3d 5, 20–21 (1st Cir. 2005).

Second Circuit: In *Willey v. Kirkpatrick*, the court of appeals reversed the entry of summary judgment denying the Eighth Amendment claim of a prisoner who was forced to "breath[e] a miasma of his own accumulating waste" for "at a minimum, seven days," after "officers placed him in solitary confinement with a Plexiglas shield restricting the airflow to his small cell and then incapacitated his toilet." 801 F.3d 51, 55, 67 (2d Cir. 2015).

Third Circuit: In *Young v. Quinlan*, the court of appeals reversed the entry of summary judgment for prison officials on the Eighth Amendment claim of a

prisoner who was "not allow[ed] to leave his [toiletless] cell more than once to defecate or urinate over a period of several days, not provid[ed] with a plastic urinal for 29 hours, not allow[ed] to empty his urinal more than twice, not allow[ed] to wash his hands before eating, not allow[ed] to bathe or shower, not provid[ed] with toilet paper despite his diarrhea, not provid[ed] with water to drink, [told] instead [to] drink his urine, and [subjected to] the mocking taunts by guards and their threats to chain [him] to a steel slab if he complained about his conditions." 960 F.2d 351, 365 (3d Cir. 1992).

Fourth Circuit: In *Williams v. Griffin*, the court of appeals reversed the entry of summary judgment denying the Eighth Amendment claim of a prisoner who "described his cell toilet, shared by twelve inmates, as 'constantly coated with urine day and night,'" "contended that only four showers were available for ninety-six inmates," and "pointed out that the floors leading to the showers were constantly flooded with sewage as a result of toilets that continually leak." 952 F.2d 820, 825 (4th Cir. 1991).

Fifth Circuit: In *McCord v. Maggio*, the court of appeals reversed a judgment for a prison official on the Eighth Amendment claim of a prisoner who was forced to sleep for ten months "on a bare mattress in filthy water contaminated with human waste." 927 F.2d 844, 847–48 (5th Cir. 1991).

Sixth Circuit: In *Berkshire v. Dahl*, the court of appeals affirmed the denial of summary judgment to prison employees on the Eighth Amendment claim of a prisoner who was left "to lay in his own urine and

feces for several hours." 928 F.3d 520, 538 (6th Cir. 2019).

Seventh Circuit: In *Johnson v. Pelker*, the court of appeals reversed the entry of summary judgment denying the Eighth Amendment claim of a prisoner who was placed "in a cell for three days without running water and in which feces [were] smeared on the walls," while prison officers "ignor[ed] his requests for cleaning supplies and for the water to be turned on." 891 F.2d 136, 139 (7th Cir. 1989).

Eighth Circuit: In *Fruit v. Norris*, the court of appeals reversed the dismissal of the Eighth Amendment claim of three inmates who were forced to go inside the "wet-well portion of the prison's raw sewage lift-pump station" to clean it, without protective gear. 905 F.2d 1147, 1148 (8th Cir. 1990). "Waste from the prison, including sewage from over 490 toilets, flow[ed] continuously into the wet-well from an underground sewage pipe. . . . A small opening at the top allow[ed] entry by ladder down into the well for cleaning and maintenance. . . . During the cleaning process the flow of raw sewage into the wet-well [was] continuous." *Id.* at 1148–49.

Ninth Circuit: In *Keenan v. Hall*, the court of appeals reversed the entry of summary judgment against the Eighth Amendment claim of a prisoner who was forced to breathe air "saturated with the fumes of feces, urine, and vomit" when he was confined to an "Intensive Management Unit" for six months. 83 F.3d 1083, 1088, 1090 (9th Cir. 1996).

Tenth Circuit: In *Shannon v. Graves*, the prisoner got solid waste on her arm from cleaning a component of a prison sewer system because the prison

did not provide adequate protective gear and then was given blankets previously used to wipe up sewage that still had a stench after being washed. 257 F.3d 1164, 1167 (10th Cir. 2001). On the first claim, the court of appeals held only that plaintiff "*may* be able to satisfy the objective component," but in any event "cannot demonstrate that prison officials acted with deliberate indifference (subjective component) insofar as her one-time exposure to sewage while she was cleaning the lift basket." *Id.* at 1168 (emphasis added). Similarly on the second claim, the court left open the possibility that a "jury could conclude that" providing previously sewage-soaked blankets was objectively unconstitutional conduct, but held that the plaintiff "ha[d] not made a showing of deliberate indifference." *Id.* at 1169. The Tenth Circuit accordingly affirmed summary judgment for the prison officials. *Id.*

D.C. Circuit: Finally, in *Inmates of Occoquan v. Barry*, the court of appeals issued no constitutional holdings. It vacated and remanded a district court judgment for prisoners on their confinement claims because "[r]eading the [district] court's opinion, with its elaborate recitation of expert testimony at trial concerning 'sound correctional practice,' we are unable to discern whether the conditions as described rose to the level of deprivations of *constitutional* moment." 844 F.2d 828, 839 (D.C. Cir. 1988) (emphasis added).

Contrary to Hamlet's contention, these cases do not establish a rule that "gratuitous, close contact with human feces" or "forcing people to endure more than [a] de minimis proximity to feces" violates the

Eighth Amendment. Pet. 10, 12. None has sufficiently similar facts to make the specific conduct here a clear violation of the Eighth Amendment or establish a conflict with the Eleventh Circuit's ruling in this case. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011) ("clearly established law" is not to be defined "at a high level of generality").

In any event, this case would not come out any differently in those circuits. As discussed, Hamlet was exposed to feces in a small potato chip bag in a running shower for at most 30 to 40 minutes. ECF 112-1 at 40. He had continual access to running water with which he could have washed his legs. *Id.* at 36:11. He admitted that he moved to a higher area to avoid the potato chip bag containing feces, *id.* at 39, 67, and that he could have sat on a wall to prevent his lower legs from touching the water accumulating on the shower floor, *id.* at 30–31; 36:16–17; 39. After the incident, he did not claim to Officer Hoxie or anybody else that he had gotten feces on his wounds or ask for anything with which to clean himself. *Id.* at 43–44. The facts here would not amount to an Eighth Amendment violation in any circuit.

C. Summary reversal is inappropriate.

This case also does not call for the "extraordinary remedy" of summary reversal. *Brosseau v. Haugen*, 543 U.S. 194, 207 (2004) (Stevens, J., dissenting); *see Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting) (summary reversal is "usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error"). Even when a

purported error is of constitutional dimension, summary reversal "should be reserved for palpably clear cases of constitutional error." *Eaton v. City of Tulsa*, 415 U.S. 697, 707 (1974) (Rehnquist, J., dissenting). Far from presenting such a case, Hamlet's Eighth Amendment claim is predicated on an interpretation of the record that is demonstrably incorrect. In all events, this is not an instance where "this Court ha[d] previously considered—and rejected—almost th[e] exact formulation of the qualified immunity question." *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (finding summary reversal appropriate in such a circumstance). This Court should not summarily reverse.

II. The second question presented does not warrant certiorari.

Hamlet's second question presented likewise does not warrant review. Pet. 21–31. In *Procunier*, this Court held that public-prison officials are entitled to qualified immunity and can be sued only "if the constitutional right allegedly infringed by them was clearly established at the time of their challenged conduct." 434 U.S. at 562. The Court should not reconsider that precedent here, both because Hamlet has not shown that it was wrongly decided and because this case is a poor vehicle to take on that question.

A. Hamlet has not shouldered his burden to show that a 45-year-old precedent of this Court should be overruled.

Hamlet contends that, in acknowledging the qualified immunity of public-prison officials, *Procunier*

"contravenes the very foundation of the doctrine" of qualified immunity. Pet. 21. On his telling, at common law "prison officials were afforded no immunity from liability for unlawful acts causing injury to persons in their custody." *Id.* But "[t]he Court's embrace of qualified immunity has . . . been emphatic, frequent, longstanding, and nonideological," Aaron L. Nielson & Christopher J. Walker, *A Qualified Defense of Qualified Immunity*, 93 Notre Dame L. Rev. 1853, 1858 (2018), upholding qualified immunity "more than two dozen times, often with no recorded dissent," *id.* at 1857. This includes prison officials, to whom this Court has afforded the protection for over half a century, starting with *Procunier* itself.

"[*S*]*tare decisis* carries enhanced force when a decision," like *Procunier*, "interprets a statute," like § 1983. *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015); *Rasul v. Bush*, 542 U.S. 466, 493 (2004) (Scalia, J., dissenting) (explaining that the "rule of *stare decisis* in statutory cases" is "almost categorical"). This "superpowered form of *stare decisis*" derives force from the fact that "Congress can correct any mistake it sees." *Kimble*, 576 U.S. at 458, 456. "Indeed, [this Court] appl[ies] statutory *stare decisis* even when a decision has announced a 'judicially created doctrine' designed to implement a federal statute." *Id.* at 456 (citation omitted).

Hamlet has not shown that *Procunier* was wrongly decided, let alone identified a "superspecial justification to warrant reversing" it. *Id.* at 458. Consider Hamlet's suggestion that "suits against sheriffs and other public prison officials were widely *allowed* at common law." Pet. 23–24. It is true that this Court's qualified-immunity cases have asked

"whether an official claiming immunity under § 1983 can point to a common-law counterpart to the privilege he asserts." *Malley v. Briggs*, 475 U.S. 335, 339–40 (1986). But, as Justice Scalia observed, just 10 years before § 1983's adoption a Massachusetts court recognized the immunity of a jailer. *Richardson v. McKnight*, 521 U.S. 399, 415 (1997) (Scalia, J., dissenting, joined by Rehnquist, C.J., Thomas, and Kennedy, JJ.) (citing *Williams v. Adams*, 85 Mass. 171 (1861)). The same was true in a case decided in New York "virtually contemporaneous[ly] with the enactment of § 1983." *Id.* at 417 (citing *Alamango v. Board of Supervisors of Albany Cnty.*, 32 N.Y. Sup. Ct. 551 (1881)). Against those authorities, Hamlet points to no "explicit rejection of immunity by any common-law court," *id.* at 415, and the case law he cites (Pet. 23–25) finding prison guards liable may simply reflect the *qualified* nature of the privilege. Thus, "the historical principles on which common-law immunity was based" support qualified immunity for prison guards. *Richardson*, 521 U.S. at 416 (Scalia, J., dissenting) (emphasis omitted).

In any event, Hamlet has failed to meaningfully differentiate prison guards from the public officials that unquestionably receive qualified immunity, like police officers, *Pierson v. Ray*, 386 U.S. 547, 555–57 (1967), state executive officers, *Scheuer v. Rhodes*, 416 U.S. 232 (1974), and school officials, *Wood v. Strickland*, 420 U.S. 308 (1975). Aside from assessing history, this Court's precedents have looked to "the special policy concerns involved in suing government officials." *Richardson*, 521 U.S. at 404 (quotation omitted). Hamlet cannot fairly debate that the work of prison guards is akin to that of police, including

their need to make split-second decisions under difficult and dangerous working conditions.

What is more, overruling *Procunier* would have a massive impact on prison litigation—well over 20,000 federal lawsuits are filed each year by prisoners alleging civil rights violations or unconstitutional conditions of confinement. Table A: Incarcerated Population and Prison/Jail Civil Rights/Conditions Filings, FY 1970–FY 2021, Incarceration and the Law (last accessed Oct. 26, 2023), https://incarcerationlaw.com/resources/data-update/#TableA. In this arena, "[q]ualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). For prison administrators and employees, the balance also accounts for the ever-expanding scope of liability to which they have become subject under the "evolving standards of decency" that constitute the Eighth Amendment. *Farmer*, 511 U.S. at 833 (quotations omitted). In other words, qualified immunity meets the State's need "to ensure that talented candidates" are "not deterred by the threat of damages suits from entering public service." *Wyatt v. Cole*, 504 U.S. 158, 167 (1992).

In short, the reliance of public officials, especially prison guards, on how the courts have struck that balance has been immense. *See Kimble*, 576 U.S. at 457–58 ("So long as we see a reasonable possibility that parties have structured their [behavior] in light of [a decision], we have one more reason to let it stand.").

B. This case is a poor vehicle for revisiting *Procunier*.

Even if this Court were inclined to consider upending 45 years of precedent, this case would hardly be the vehicle to do so. For a case to squarely present the question of whether public-prison officials should receive qualified immunity, the facts must amount to a constitutional violation, but one that is nevertheless not clearly established, making qualified immunity the only barrier to relief. Only in that circumstance could an inmate stand to gain from a ruling receding from *Procunier*. *See* Stephen M. Shapiro et al., Supreme Court Practice § 4.4(f), at 4–18 (11th ed. 2019) (observing that where the question presented "is irrelevant to the ultimate outcome of the case before the Court, certiorari may be denied"). Here, however, it is unnecessary to reach the question of qualified immunity because Hamlet has not provided sufficient evidence from which a reasonable jury could find an Eighth Amendment violation.

Indeed, Hamlet has shown neither that Officer Hoxie acted with "'deliberate indifference' to a substantial risk of serious harm"—i.e., that he "was subjectively aware of the risk"—nor that the conduct here was "sufficiently serious" to violate the Eighth Amendment "objectively." *Farmer*, 511 U.S. at 828–29, 834 (citation omitted). As the district court ruled and the Eleventh Circuit affirmed, nothing in the summary judgment record indicates that Hoxie knew about Hamlet's wounds or that feces got on them. For that reason alone, Hamlet's Eighth Amendment claim must fail, irrespective of any questions about qualified immunity.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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