No. _____

SUPREME COURT OF THE UNITED STATES

RUTH ANN CONDE CHEESMAN and ROY CHEESMAN,

Petitioners,

v.

TABITHA A. SNYDER,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit
Case No. 23-35310

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did Tabitha Snyder abrogate the Cheesmans' Fourteenth Amendment right to family association when she subjected their children to investigatory, medical examinations, when she lacked any reasonable concern of dissipating evidence or any urgent medical problem requiring immediate medical attention?

2. Is Tabitha Snyder entitled to qualified immunity after subjecting the Cheesmans' children to investigatory, medical examinations, without notifying the children's parents or obtaining their consent or judicial approval?

CORPORATE DISCLOSURE STATEMENT

Petitioners are natural persons with no parent companies and no outstanding stock.

LIST OF RELATED PROCEEDINGS

- *Cheesman v. Snyder*, No. 1:18-cv-03013-SAB, United States District Court for the Eastern District of Washington. Judgment entered on February 3, 2023. (ECF no. 177.)

- *Cheesman v. Snyder*, No. 23-35310, United States Court of Appeals for the Ninth Circuit. Judgment entered on July 26, 2024. (ECF No. 208). Petition for Rehearing and Rehearing En Banc denied on September 4, 2024. (ECF No. 209.)

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PETITION FOR WRIT OF CERTIORARI

Ruth A. Cheesman and Roy Cheesman, acting as individuals, respectfully petition this Court for a writ of *certiorari* to the United States Court of Appeals for the Ninth Circuit to review its reversal of the District Court's judgment entered in favor of the Cheesmans.

OPINIONS AND ORDERS BELOW

The United States Court of Appeals for the Ninth Circuit's Order denying the Cheesmans' Petition for Rehearing or Rehearing En Banc is reprinted in Appendix B, at App. 8-9.

The United States Court of Appeals for the Ninth Circuit's Unpublished Memorandum Opinion is reported at *Cheesman v. Snyder*, 2024 WL 3548466 (9th Cir. July 26, 2024) (unpublished) and is reprinted at Appendix A, at App. 2-7.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Ninth Circuit denied the Cheesmans' Petition for Rehearing or Rehearing En Banc on September 4, 2024. The Cheesmans invoke this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this Petition for Writ of Certiorari within ninety days of the Ninth Circuit's Order Denying Rehearing or Rehearing En Banc.

I. STATEMENT OF THE CASE

On December 5, 2016, the Cheesmans' five-year-old daughter, L.C. fell out of a chair and hit her right eye on the corner of a table, injuring herself. The following day, Ruth Cheesman allowed L.C. to stay home from Lincoln Elementary School. L.C. then returned to school the next day, on December 7, 2016. L.C.'s teacher noticed some puffiness and bruising on L.C.'s eye, and the school's principal took three pictures of L.C.'s eye. Despite L.C.'s injury, school officials allowed L.C. to leave home with Mr. Cheesman on December 7, 2016.

On December 8, 2016, L.C. attended school again. At around lunchtime, she was interviewed by a law enforcement detective and Tabitha Snyder for thirty to forty-five minutes. On the same day, a detective also interviewed the Cheesmans' two other children, including their special needs, seventeen-year-old daughter, V.C., and fourteen-year-old son, I.C. Tabitha Snyder failed to notify and obtain the Cheesmans' consent or obtain judicial authorization before subjecting their children to investigatory medical examinations at Kittitas Valley Healthcare Hospital. As a result, the Cheesmans were not present for their children's examinations. The examinations of the children revealed no evidence of any child abuse.

In 2017, the Cheesmans filed suit *pro se* against Tabitha Snyder, as well as other parties that were ultimately dismissed. Before trial, attorney Michael B. Love appeared on behalf of the Cheesmans *pro bono*. The jury trial commenced on January 30, 2023.

At trial, there was insufficient evidence of dissipating evidence or urgent medical problems necessitating immediate medical treatment of the Cheesman children.

Tabitha Snyder observed no injuries to I.C. or V.C. The only injury Tabitha Snyder observed was to L.C.'s right eye, which L.C. sustained three days beforehand on December 5, 2016, and which injury was documented by photographs taken by L.C.'s school principal on December 7, 2016, and law enforcement on December 8, 2016. According to Tabitha Snyder, the principal's photographs conveyed "an accurate representation" of the eye injury that she observed on December 8, 2016. Tabitha Snyder testified that L.C. was able to communicate with her and answer questions, that she did not observe any symptoms of a concussion or broken bones, and that she was aware of the photographs taken by the school principal and law enforcement of L.C.'s injured eye. Tabitha Snyder testified she was concerned the children had other, undisclosed injuries, which could dissipate by the time she obtained a court order for medical examinations. Tabitha Snyder also testified regarding her subjective and speculative concerns about injuries which may not be visible by virtue of being internal or covered by clothing, including speculating that L.C. may have a head injury and possible "internal bleeding." Tabitha Snyder also testified that, in her experience, children underreport abuse, and "[c]hildren love their parents" and naturally "want to protect their parents."

This matter came on for a trial by jury beginning on January 30, 2023. On January 31, 2023, the Cheesmans moved for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(a). The District Court granted the Cheesmans' motion as to liability on their claim under 42 U.S.C. § 1983. Accordingly, the sole issue for the jury to determine was that of the Cheesmans' damages.

The trial concluded on February 1, 2023, on which date the jury concluded that each of the Cheesmans suffered damages in the amount of $80,000. The jury further determined that the Cheesmans were entitled to $15,000 in punitive damages. The Cheesmans' total damages award, thus, was $175,000.

Subsequently, on March 1, 2023, Tabitha Snyder moved for an order granting her judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b) or, alternatively, for an order granting a new trial under Fed. R. Civ. P. 59. The District Court denied both of Tabitha Snyder's motions on April 4, 2023.

II. ARGUMENT

This Court should grant this Petition because the Ninth Circuit's erroneous reversal of the Eastern District of Washington's judgment conflicts with relevant decisions of the Ninth Circuit and this Court concerning parental rights. Specifically, the Ninth Circuit decision conflicts with *Wallis v. Spencer*, 202 F.3d 1126, 1141 (9th Cir. 2000) and *Greene v. Camreta*, 588 F.3d 1011, 1031 (9th Cir. 2009), *vacated*

in part as moot on other grounds in Greene v. Camreta, 661 F.3d 1201 (9th Cir. 2011), as well as their progeny.

The Ninth Circuit misapprehended that Tabitha Snyder is not entitled to qualified immunity, as she violated the Cheesmans' clearly established Fourteenth Amendment rights by failing to notify them their children would be medically examined, and by failing to obtain their consent or judicial authorization for the investigatory examinations. *See, e.g.*, *Wallis*, 202 F.3d at 1141 (reciting clearly established law). Further, the Ninth Circuit overlooked the critical point of law that, in analyzing the clearly established prong, an objective standard must be applied. *Gordon v. Cnty. of Orange*, 6 F.4th 961, 968 (9th Cir. 2021) (citing *Crawford-El v. Britton*, 523 U.S. 574, 588-89 (1998)). Tabitha Snyder's "actual subjective appreciation of the risk is not an element of the established-law inquiry." *Sandoval v. Cnty. of San Diego*, 985 F.3d 657, 678 (9th Cir. 2021). The Ninth Circuit ignored these fundamental tenets of qualified immunity.

A. The Ninth Circuit Decision Conflicts With Prior Supreme Court and Ninth Circuit Decisions Promulgated Before December 2016.

Parents and children have a well-elaborated constitutional right to live together without governmental interference. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). That right is an essential liberty interest protected by the Fourteenth Amendment's guarantee that parents and children will not be separated by the state without due process of law

except in an emergency. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

The right to family association includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state. *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (holding that it is in the interest of both parents and children that parents have ultimate authority to make medical decisions for their children unless a "neutral fact finder" determines, through a due process hearing, the parents are not acting in the child's best interests.).

For nearly twenty-five years, the constitutional right of family association has been clearly established in the Ninth Circuit and the right at issue has been defined with "specificity" and "not at a high level of generality." *City of Escondido v. Emmons*, 586 U.S. 38, 42 (2019) (quoting *Kisela v. Hughes*, 584 U.S. 100, 104 (2018). "[T]he state is required to notify parents and to obtain judicial approval before children are subjected to investigatory physical exams." *Wallis*, 202 F.3d 1126 at 1141. Tabitha Snyder, as a social worker employed by the state, was constitutionally required to notify and receive the consent of the Cheesmans, or, in the absence of consent, obtain judicial authorization before taking the children for investigatory medical examinations, unless one of two exceptions outlined in *Wallis* apply, those being "a reasonable concern that material physical evidence might dissipate or that some urgent medical problem exists requiring immediate attention." *Wallis*, 202 F.3d at 1141.

The Ninth Circuit held that Tabitha Snyder took all three of the Cheesmans' children for investigatory medical examinations based on "L.C.'s visible injury and the children's reports of physical abuse," as this evidence caused Tabitha Snyder subjective concern that "there might be an urgent medical problem or dissipating evidence of internal injuries." (App. 4.) The Ninth Circuit determined that Tabitha Snyder is entitled to qualified immunity, based upon the erroneous conclusion that clearly established law demonstrated that a reasonable state official in her circumstances would have understood the unlawfulness of her actions. (App. 6-7.)

The Ninth Circuit opined the facts of *Wallis* are distinguishable from this case, as the children in *Wallis* denied abuse and no evidence of suspiciousness was found. (App. 5 (citing and quoting *Wallis*, 202 F.3d at 1134-35).) But, despite this, the children were subjected to investigatory examinations. (*Id.* (*Wallis*, 202 F.3d at 1135).) While the circumstances of the examinations in *Wallis* are distinguishable,

> it is not necessary that a case be on "all fours" with the facts of the instant case. A right is clearly established if "[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right."

Rogers v. Cnty. of San Joaquin, 487 F.3d 1288, 1297 (9th Cir. 2007) (quoting *Saucier v. Katz*, 533 U.S. 194, 202 (2001)) (emphasis added). "Put differently, 'a general constitutional rule already identified in the

decisional law may apply with obvious clarity to the specific conduct in question." *Dodge v. Evergreen Sch. Dist. #114*, 56 F.4th 767, 784 (9th Cir. 2022). Thus, the right clearly established in *Wallis* applies to Tabitha Snyder's conduct. The parameters of the Cheesmans' right logically flow from the United States Supreme Court authority referenced herein, and has been clearly established since at least *Wallis*.

"The language of *Wallis* is clear and unambiguous: government officials cannot exclude parents entirely from the location of their child's physical examination absent parental consent, some legitimate basis for exclusion, or an emergency requiring immediate medical attention." *Greene v. Camreta*, 588 F.3d at 1037 (emphasis added). *Wallis* remains the law in the Ninth Circuit to this day, being reaffirmed in *Mann v. Cnty. of San Diego*, 907 F.3d 1164 (9th Cir. 2018) and *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1150 (9th Cir. 2021).

The Ninth Circuit's decision cannot be reconciled with *Wallis* or its progeny, and raises questions of substantial importance; namely, whether a public employee is entitled to qualified immunity after subjecting children to investigatory medical examinations, without obtaining parental consent or judicial approval, in virtually all cases. The Ninth Circuit answers this question in the affirmative, holding that, because *Wallis* "did not identify facts that would have supported a reasonable concern of an urgent medical problem or dissipating evidence," then a healing bruise and past assertions of abuse is all

that a social worker needs to ignore parents' Fourteenth Amendment rights. (App. 5.)

The Ninth Circuit's decision, in effect, renders the protections of the Fourteenth Amendment nonexistent, limiting parents' recourse to constitutional violations in only the most egregious factual circumstances, such as the one of *Wallis*, where there was absolutely no evidence of physical abuse. (*Id.*); *Wallis*, 202 F.3d at 1134. If the factual circumstances need be identical to those in *Wallis* for government officials to be held liable for violating a parent's constitutional rights, then officials will seldom need to notify parents or seek authority to have medical examinations conducted.

The Ninth Circuit lowers the bar of application to *Wallis*' dissipation of evidence and medical urgency exceptions so greatly, that it obviates the need for the exceptions to even exist. If notice and authorization to perform investigatory examinations is only required in such limited circumstances, then *Wallis*' exceptions to the rule become the general rule. *See Gordon*, 6 F.4th at 969 (quoting *Kelley*, 60 F.3d at 667) (to define an allegedly violated right too narrowly "would be to allow [the instant defendants], and future defendants, to define away all potential claims."). Practically speaking, in all but the most patently obvious scenarios, the Ninth Circuit's decision permits officials to ignore parents' rights to family association based on speculation and generalized concern, which concern will naturally exist in any investigation of physical abuse. A parent's constitutional right to be notified, and the requirement to obtain consent or

judicial authorization before a medical examination of their children is performed, cannot be ignored for the sake of convenience.

B. Tabitha Snyder is Not Entitled to Qualified Immunity, as She Violated the Cheesmans' Constitutional Rights and Such Rights Were Clearly Established at the Time of Her Misconduct.

When a government official violates a citizen's constitutional rights, qualified immunity will generally shield them "from liability under 42 U.S.C. § 1983 if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Benavidez*, 993 F.3d at 1151 (quoting *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1066 (9th Cir. 2016)).

> The qualified immunity inquiry involves two sequential questions: (1) "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the [official's] conduct violated a constitutional right?" and (2) "if a violation could be made out on a favorable view of the parties' submissions, . . . [was] the right . . . clearly established . . . in light of the specific context of the case[?]"

Eng v. Cooley, 552 F.3d 1062, 1067 (9th Cir. 2009) (quoting *Saucier*, 533 U.S. at 201).

1. Tabitha Snyder Violated the Cheesmans' Fourteenth Amendment Constitutional Rights.

In 2016, clearly established law required Tabitha Snyder to: (1) notify the Cheesmans of their children's medical examinations, (2) obtain parental consent or a court order in advance of the medical examinations, and (3) permit the Cheesmans to be present at the examinations or to be in a waiting room or other nearby area if there is a valid reason for excluding them while all or a part of the medical procedure is being conducted. *See Wallis*, 202 F.3d at 1142.

It is undisputed Tabitha Snyder did not notify the Cheesmans of their children's investigatory medical examinations or otherwise obtain their consent to have the examinations performed. It is also undisputed Tabitha Snyder did not seek or obtain judicial authorization before the examinations were conducted. When medical examinations are performed on children without notifying the parents and "without obtaining either the parents' consent or judicial authorization," the parents' Fourteenth Amendment rights are violated. *Wallis*, 202 F.3d at 1142; *Benavidez*, 993 F.3d at 1150 (quoting *Mann*, 907 F.3d at 1161).

Furthermore, neither of the exceptions outlined in *Wallis* and its progeny applied in the instant case, as insufficient evidence existed of "a reasonable concern that material physical evidence might dissipate or that some urgent medical problem exist[ed] requiring immediate attention." *Wallis*, 202

F.3d at 1141 (emphasis added). Any subjective concerns Tabitha Snyder had of the children requiring immediate medical attention or that evidence might dissipate does not satisfy the qualified immunity analysis, which "remains objective even when the constitutional claim at issue involves subjective elements." *Sandoval v. Cnty. of San Diego*, 985 F.3d at 674.

The requirements of *Wallis* cannot be ignored by a government official simply because there is an allegation of abuse. If this were the case, the *Wallis* court would have qualified its ruling accordingly. The exceptions outlined in *Wallis* were not intended to create a convenient way of abrogating parental rights, but rather protecting them by requiring a public official to notify parents and, in the absence of consent, obtain judicial authorization before taking a parent's minor children for an investigatory medical examination. *Wallis*, 202 F.3d at 1141. If a public official can act pursuant to *Wallis*' exceptions based on their subjective fear that evidence may dissipate or that urgent medical problems may exist, based on speculation, the constitutional right defined by *Wallis* is meaningless. Nothing in the rule statement from *Wallis* limited the clearly established rights to the purported facts presented to Tabitha Snyder.

Tabitha Snyder's concerns arose solely from L.C.'s visible eye injury and the Cheesman children's reports of physical abuse in the past. These concerns will naturally exist in any circumstance of purported physical abuse. There will always be a concern of unobservable injuries when a person is allegedly

struck. And there will always be a concern of a child underreporting alleged abuse, because, as Tabitha Snyder testified, "[c]hildren love their parents" and naturally "want to protect their parents." If general fears of unobservable injuries or children underreporting justify circumventing parents' Fourteenth Amendment rights, then *Wallis* is left hollow, as these exact fears will naturally present themselves in virtually all cases involving alleged physical abuse.

Photographs taken of L.C.'s right eye on December 7 and 8, 2016 preserved evidence of her injury. As Tabitha Snyder acknowledged, the December 7, 2016 photographs were an accurate representation of the injury, as she personally observed it, on December 8, 2016. Therefore, any concern regarding the dissipation of evidence would have entirely abated. Aside from L.C.'s eye injury, Tabitha Snyder observed no other injuries sustained by either L.C. or her two siblings. To the extent that Tabitha Snyder was concerned about dissipation of any undisclosed or unobservable injuries, such a concern was unreasonable, as no evidence was introduced suggesting that any other unknown or amorphous injuries existed, justifying foregoing the requirements of notice and consent of the Cheesmans or judicial authorization. Simply put, an allegation of abuse coupled with no signs of further injury cannot warrant an investigatory examination, without notice or judicial authorization, based on fear that evidence of such an undefined injury may dissipate. In this case, the unreasonableness of Tabitha Snyder's

concerns was confirmed when the investigatory examinations of all three children revealed no physical evidence of abuse.

Tabitha Snyder's concern that the children had "urgent medical problem[s] . . . requiring immediate attention" was even more unreasonable. *Wallis*, 202 F.3d at 1141 (emphasis added). *Wallis* and its progeny utilize the terms "urgent" and "immediate," both of which heavily restrict when the medical urgency exception of *Wallis* applies. "Urgent" is defined as "calling for immediate attention." *Merriam-Websters Online Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/urgent, accessed on November 25, 2024. "Immediate" means "occurring, acting, or accomplished without loss or interval of time: instant." *Id.*, https://www.merriam-webster.com/dictionary/immediate, accessed on November 25, 2024 (emphasis added). Finally, "instant" is defined as follows: "produced or occurring with or as if with extreme rapidity and ease." https://www.merriam-webster.com/dictionary/instant, accessed on November 25, 2024.

Tabitha Snyder was subjectively concerned that L.C.'s eye injury could potentially indicate a head injury, including "internal bleeding." The circumstances, and the evidence Tabitha Snyder had at the time, however, did not justify an investigatory medical examination without notice and consent or judicial authorization. L.C.'s injury was three days old by the time of her examination. L.C. was able to communicate and answer questions during her

interview on December 8, 2016, and Tabitha Snyder observed no symptomology of a concussion or any other underlying injury. Tabitha Snyder's concerns that L.C. had any other injuries were purely speculative and not couched in common sense. L.C. attended school on December 7 and 8, 2016, and no evidence even suggested that L.C. was in distress, feeling ill, behaving strangely, or acting in any way that was unusual.

The plain meaning of *Wallis*' medical urgency exception clearly implies emergent circumstances. Such circumstances would include those in which, without expeditious medical intervention, significant harm or death would result. *Wallis*, of course, does not expect government officials to have the knowledge and training of medical professionals. It does, however, require that there be a "reasonable concern" that the medical problem be an urgent one. In this case, Tabitha Snyder's definition of an urgent medical problem was a bruised eye, which was sustained by L.C. three days earlier and unaccompanied by any evidence of an internal head injury, including concussive indicators, or symptomology of anything more than superficial trauma. If a multiple-day-old bruise, with no accompanying symptoms, qualifies as an "urgent medical problem," then practically all visible injuries would require immediate medical attention under *Wallis*. The purpose of *Wallis* was not to broaden the circumstances in which government officials could forego notifying parents or obtaining judicial authorization to perform investigatory medical examinations, but instead to narrow such

circumstances and to require notice and consent, or, without consent, judicial authorization.

2. The Cheesmans' Fourteenth Amendment Constitutional Rights Were Clearly Established at the Time Tabitha Snyder Violated Them and, Therefore, She is Not Entitled to Qualified Immunity.

"Whether a constitutional right is clearly established is purely a question of law for the court to decide." *Gordon v. Cnty. of Orange*, 6 F.4th 961, 968 (9th Cir. 2021). It is legal error to use a "subjective standard in analyzing the clearly established prong of the qualified immunity test." *Gordon*, 6 F.4th at 965. "'The [individual defendant's] actual subjective appreciation of the risk is not an element of the established-law inquiry.'" *Id.* at 968 (quoting *Sandoval v. Cnty. of San Diego*, 985 F.3d 657, 678 (9th Cir. 2021)). The "'qualified immunity analysis remains objective even when the constitutional claim at issue involves subjective elements.'" *Gordon*, 6 F.4th at 968 (quoting *Sandoval*, 985 F.3d at 674 (citing *Crawford-El v. Britton*, 523 U.S. 574, 588-89 (1998)). This objective standard was first adopted by the United States Supreme Court in 1982. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) ("Reliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment."). "Qualified immunity is not meant to be analyzed in terms of a 'generalized

constitutional guarantee,' but rather the application of general constitutional principes 'in a particular context.'" *Gordon*, 6 F.4th at 969 (citing and quoting *Todd v. United States*, 849 F.2d 365, 370 (9th Cir. 1988)). "On the other hand, casting an allegedly violated right too particularly, 'would be to allow [the instant defendants], and future defendants, to define away all potential claims." *Id.* (citing and quoting *Kelley v. Borg*, 60 F.3d 664, 667 (9th Cir. 1995)).

While Tabitha Snyder may have subjectively felt that a "prompt medical examination was necessary" based on her concern that "there might be an urgent medical problem or dissipating evidence," her subjective feelings do not bear relevance to the question of whether the Cheesmans' constitutional right was clearly established. The question, then, is whether the Cheesmans' rights were sufficiently clear, in 2016, such that a reasonable official in Tabitha Snyder's position would have understood them. *Rogers*, 487 F.3d at 1297 (quoting *Saucier*, 533 U.S. at 202).

Wallis and *Greene*, alone, would have put Tabitha Snyder, or a reasonable official in her position, on notice, in 2016, of the illegality of their actions at the time of the Cheesman children's investigatory medical examinations. The holding of *Wallis* applies to Tabitha Snyder's conduct "with obvious clarity." *Dodge*, 56 F.4th at 784. At trial, Tabitha Snyder failed to present sufficient evidence that she had a reasonable, objective concern of evidence dissipation or urgent medical problems with respect to any of the Cheesman children, as required

by *Wallis* and *Harlow* to ignore the notice, consent, and judicial authorization requirements. A reasonable official in Tabitha Snyder's circumstances, presented with the same evidence, may be subjectively concerned, but this concern would certainly not rise to the level required by *Wallis* to abridge the Cheesmans' constitutional rights. *Wallis*, 202 F.3d at 1141.

As the Ninth Circuit highlighted, qualified immunity does not protect "'the plainly incompetent or those who knowingly violate the law.'" *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). For a public official in Tabitha Snyder's circumstances to honestly believe that a photographed, days' old bruise and unsupported allegations of physical abuse is all that is required to invoke the protections of *Wallis*' exceptions, that official would necessarily be "plainly incompetent." *Mullenix*, 577 U.S. at 12 (quoting *Malley*, 475 U.S. at 341).

III. CONCLUSION

Based on the Ninth Circuit decision's conflict with existing Ninth Circuit and United States Supreme Court law, and the exceptional importance of the matter at hand, the Cheesmans respectfully request that this Court issue a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Ninth Circuit.

RESPECTFULLY SUBMITTED this 6th day of February, 2025.

ETTER, McMAHON, LAMBERSON,
VAN WERT & ORESKOVICH, P.C.

By: /s/ *Robert F. Greer*
Robert F. Greer (Bar #: 323353)
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APPENDIX

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APPENDIX A

NOT FOR PUBLICATION
United States Court of Appeals
For the Ninth Circuit

FILED
JUL 26 2024
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RUTH ANN CONDE CHEESMAN; ROY D. CHEESMAN, Plaintiff-Appellees, v. TABITHA A. SNYDER, Defendant-Appellant, and MAYRA CUENCA; PAMELA ANDERSON;BERTA NORTON; DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Children's Administration; DSHS REGION 1/DCFS CHILDRENS ADMINISTRATION; ATTORNEY GENERAL FOR THE STATE OF	No. 23-35310 D.C. No. 1 :18-cv-03013-SAB Eastern District of Washington MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

WASHINGTON; BOB FERGUSON, State of Washington Attorney General,
Defendants.

Appeal from the United States District Court
for the Eastern District of Washington
Stanley A. Bastian, Chief District Judge, Presiding

Argued and Submitted July 10, 2024
Seattle, Washington

Before: McKEOWN, CLIFTON, and BRESS, Circuit Judges

Ruth Ann and Roy Cheesman brought this 42 U.S.C. § 1983 suit claiming that Child Protective Services (CPS) investigator Tabitha Snyder violated their Fourteenth Amendment rights when Snyder took the Cheesmans' three hildren for a medical examination without parental consent or judicial authorization. The district court held that Snyder was not entitled to absolute or qualified immunity. After the district court granted judgment as a matter of law in favor of plaintiffs on the issue of liability, a jury awarded $175,000 to the Cheesmans. Snyder appealed. Reviewing the denial of qualified immunity de novo and construing any disputed facts in favor of plaintiffs, *see O'Doan v. Sanford*, 991 F.3d 1027, 1035, 1043 (9th Cir. 2021), we conclude that Snyder is entitled to qualified immunity. We reverse and remand for entry of judgment in favor of Snyder.

Public employees "are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *District of Columbia v. Wesby*, 583 U.S. 48, 62–63 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). Under this circuit's Fourteenth Amendment precedents, "the state is required to notify parents and to obtain judicial approval before children are subjected to investigatory physical examinations" unless there is "a reasonable concern that material physical evidence might dissipate or that some urgent medical problem exists requiring immediate attention." *Wallis v. Spencer*, 202 F.3d 1126, 1141 (9th Cir. 2000) (internal citation omitted). If a defendant "fails to notify 'parents about the examinations and performs the examinations without obtaining either the parents' consent or judicial authorization,' the [defendant] . . . 'violates parents' Fourteenth Amendment substantive due process rights.'" *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1150 (9th Cir. 2021) (brackets omitted) (quoting *Mann v. Cnty. of San Diego*, 907 F.3d 1154 1160–61 (9th Cir. 2018)).

We have discretion to resolve this case on the clearly established prong of the qualified immunity analysis. *See O'Doan*, 991 F.3d at 1036. "To be clearly established, a right must be sufficiently clear 'that every reasonable official would have understood that what he is doing violates that right.' In other words, 'existing precedent must have placed the statutory or constitutional question beyond debate.'" *Reichle*, 566 U.S. at 664 (brackets and internal quotation marks omitted) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731,

741 (2011)). "This demanding standard protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Wesby*, 583 U.S. at 63 (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

Plaintiffs primarily rely on *Wallis*, but *Wallis* involved facts very different from this case. In *Wallis*, officers seized two children, ages two and five, after "a mental patient who had a long history of delusional disorders and was confined to a mental institution told her therapist a fantastic tale of Satanic witchcraft within her family and an impending child sacrifice." 202 F.3d at 1131. When police arrived at the family's house, there was no evidence of "anything suspicious," and the children appeared unharmed and denied they had been abused. *Id.* at 1134. Nonetheless, the children were taken away in the middle of the night, placed in a county institution for days, and the subjected to invasive examinations. *Id.* at 1134–35. In these circumstances, we held that a constitutional violation occurs when children are taken for a medical examination without parental notification or judicial authorization. *Id.* at 1141. We did not identify facts that would have supported a reasonable concern of an urgent medical problem or dissipating evidence at the time of the medical examinations.

Plaintiffs also point to *Greene v. Camreta*, 588 F.3d 1011 (9th Cir. 2009), *vacated in part*, 563 U.S. 692 (2011). In *Greene*, we held that a mother's constitutional rights were violated when she was ordered to leave the premises while her daughter underwent a genital examination following allegations of sexual abuse. *Id.* at 1019. In that case, it was clear that allowing the mother (who was already waiting outside the medical examination

room) to remain in the waiting room would not interfere with the collection of evidence or treatment of urgent medical problems. *Id.* Finally, plaintiffs cite *Benavidez*, 993 F.3d 1134, and *Mann*, 907 F.3d 1154, but those case were decided after the events in question and could not put Snyder on notice of the alleged unconstitutionality of her actions. *See Kisela v. Hughes*, 584 U.S. 100, 107 (2018). In any event, those cases involved facts very different from this case.

Neither *Wallis*, *Greene*, nor any other precedent clearly established that Snyder's "conduct was unlawful in the situation [s]he confronted." *Wesby*, 583 U.S. at 63. Snyder took the children for immediate medical examinations based on evidence of physical injury and recent physical abuse. Five-year-old L.C. showed up to school with puffiness, bruising, and a red linear mark on her eye, and she stated her father caused the injury by hitting her I the head. LC. also stated that her father hit her sister V.C. when V.C. tried to get ice for L.C. Siblings V.C. and I.C. likewise told police that their father regularly hit them, with V.C. reporting that she had been hit the night before. V.C. stated that she was scared to go home and that she might get hit if she spoke to the police about her father.

Based on L.C.'s visible injury and the children's reports of physical abuse, Snyder determined that a prompt medical examination was necessary because she was concerned there might be an urgent medical problem or dissipating evidence of internal injuries. No clearly established law demonstrated that every reasonable official in Snyder's circumstances would

understand that what she was doing was unlawful. *See id.*[1]

We reverse and remand for the entry of judgment in favor of Snyder and for any further proceedings consistent with this decision.

REVERSED AND REMANDED.

[1] As our analysis indicates, we disagree with the district court's determination that evidence that Roy Cheesman allegedly abused the children was not relevant to the question of whether Snyder violated the Cheesmans' constitutional rights. Because we resolve this case on qualified immunity grounds, we do not address the other issues raised on appeal.

APPENDIX B

United States Court of Appeals
For the Ninth Circuit

FILED

SEP 4 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RUTH ANN CONDE CHEESMAN; ROY D. CHEESMAN, Plaintiff-Appellees, v. TABITHA A. SNYDER, Defendant-Appellant, and MAYRA CUENCA; PAMELA ANDERSON;BERTA NORTON; DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Children's Administration; DSHS REGION 1/DCFS CHILDRENS ADMINISTRATION; ATTORNEY GENERAL FOR THE STATE OF WASHINGTON; BOB FERGUSON, State of Washington Attorney General, Defendants.	No. 23-35310 D.C. No. 1 :18-cv-03013-SAB Eastern District of Washington ORDER

Before: McKEOWN, CLIFTON, and BRESS, Circuit Judges.

The panel unanimously voted to deny the petition for panel rehearing. Judge Bress voted to deny the petition for rehearing en banc, and Judges McKeown and Clifton so recommended. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc, Dkt. No. 45, is DENIED.

APPENDIX C

United States District Court
Eastern District of Washington

RUTH ANN CONDE CHEESMAN; ROY D. CHEESMAN,
Plaintiff-Appellees,

v.

TABITHA A. SNYDER,
Defendant-Appellant,

and

MAYRA CUENCA; PAMELA ANDERSON;BERTA NORTON; DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Children's Administration; DSHS REGION 1/DCFS CHILDRENS ADMINISTRATION; ATTORNEY GENERAL FOR THE STATE OF WASHINGTON; BOB FERGUSON, State of Washington Attorney General,
Defendants.

No. 1:18-CV-03013-SAB

ORDER DENYING DEFENDANT'S RULE 50(B) MOTION FOR JUDGMENT AS A MATTER OF LAW AND RULE 59 MOTION FOR NEW TRIAL

Before the Court is Defendant's Rule 50(b) Motion for Judgment as a Matter of Law and Rule 59 Motion for New Trial, ECF No. 185. The motion was heard without oral argument. Plaintiffs are represented by Michael B. Love and Robert Greer. Defendant is represented by Stephen Garvin.

On February 1, 2023, after hearing the evidence, a jury awarded a total of $175,000 in damages to Plaintiffs. Defendant now moves for judgment as a matter of law in favor of her, or in the alternative, to grant a new trial pursuant to Fed. R. Civ. P. 59.

Defendant asserts the uncontradicted evidence supports dismissal of Plaintiffs' claims based on qualified immunity and quasi-prosecutorial immunity. The Court disagrees.

First, Defendant argues there was no clearly established law sufficient for her to be on notice that she was violating a clearly established right. While couched as a Rule 50 Motion, this argument was previously made by Defendant and addressed by the Court in 2019. As such, it is no more than a thinly veiled untimely motion for reconsideration and the Court declines to re-hear Defendant's arguments regarding qualified immunity. Moreover, while the defense of qualified immunity relates in part to immunity from liability, more importantly it provides immunity from standing trial. *See Cunningham v. City of Wenatchee*, 345 F.3d 802, 809 (9th Cir. 2003). To the extent that Defendant now wants to appeal the Court's legal finding that Defendant was on notice that the Constitution requires that she obtain

Plaintiffs' permission or court order or notify Plaintiffs or allow them to be present before she takes their children for an investigative medical examination, the time to do so was before trial.

In asserting that she is entitled to quasi-prosecutorial immunity, it appears that Defendant continues to misunderstand the nature and scope of Plaintiffs' claims. This trial was not about the decision to investigate Plaintiff Roy Cheesman for suspected child abuse. Rather, Plaintiffs' claims at trial were based on Defendant's decision to take Plaintiffs' children for a medical examination, without a court order or Plaintiffs' permission and without notifying Plaintiffs and allowing Plaintiffs to be there. These facts were all uncontroverted. Notably, Defendant never explained to either the jury or the Court why, at the minimum, she did not notify the parents and did not allow Ruth Anne Cheesman, who had not been accused of doing anything wrong, to be in the examining room, or at least be at the hospital when her children were undergoing an investigative medical examination. It is clearly established that this is what the law requires.

Additionally, as the Court found at trial after hearing the evidence, exigent circumstances did not exist that would have prevented Defendant from asking for Plaintiffs' permission or obtaining a court order, or, at the minimum, permit Ruth Anne Cheesman to be present in the examination room or in the waiting room at the hospital.

Finally, substantial evidence supported the jury's verdict, there was sufficient to submit the issue of punitive damages to the jury, and Defendant has not shown that she is entitled to a new trial.

Accordingly, **IT IS HEREBY ORDERED**:

1. Defendant's Rule 50(b) Motion for Judgment as a Matter of Law and Rule 59 Motion for New Trial, ECF No. 185, is **DENIED**.

IT IS SO ORDERED. The Clerk of the Court is directed to enter this Order and forward copies to counsel and close the file.

DATED this 4th day of April 2023.

By: /s/ *Stanley A. Bastian*
Stanley A. Bastian
United States District Judge