

No. 17-7089

In the Supreme Court of the United States

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MARIO CAVIN, PETITIONER

V.

DANIEL H. HEYNS AND JEFFREY WOODS

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

BRIEF IN OPPOSITION

Bill Schuette
Michigan Attorney General

Aaron D. Lindstrom
Solicitor General
Counsel of Record
P.O. Box 30212
Lansing, Michigan 48909
LindstromA@michigan.gov
(517) 373-1124

James E. Long
Assistant Attorney General
Civil Litigation, Employment, and
Elections Division

Attorneys for Respondents

QUESTION PRESENTED

Cavin, a prisoner of the Michigan Department of Corrections, committed several instances of serious misconduct (for example, he possessed a razor) and so was temporarily confined to his cell under what is called “toplock” status. Under the operating procedure at his particular prison, prisoners on toplock status are not allowed to attend group religious services. Cavin alleges the ban on attending group religious services while on toplock status, which resulted in him missing two Wiccan group services, violated his First Amendment right to practice his religion.

The question presented is: Were the respondent prison officials entitled to qualified immunity where they did not allow a prisoner who was temporarily confined to his cell for disciplinary reasons to attend group religious services?

PARTIES TO THE PROCEEDING

The petitioner, Mario Cavin, was the plaintiff-appellant in the proceeding below. He is a state prisoner confined in the Michigan Department of Corrections (MDOC).

The respondents—Daniel Heyns, former Director of the MDOC, and Jeffrey Woods, Warden of the Chippewa Correctional Facility—were defendants-appellees in the proceedings below.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. A), which affirmed the district court's judgment, is unreported. The order of the United States District Court for the Western District of Michigan (Pet. App. B), which granted summary judgment to the respondents on Cavin's 42 U.S.C. § 1983 complaint, is not published but is available at 2016 WL 6275347.

JURISDICTION

The district court had jurisdiction over Cavin's claims under 28 U.S.C. § 1331. The court of appeals had jurisdiction to review the district court's final judgment under 28 U.S.C. § 1291. The court of appeals filed its order affirming the district court's judgment on September 12, 2017. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

42 U.S.C. § 1983 states, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

INTRODUCTION

Cavin, a prisoner of the MDOC, alleges that the respondent prison officials violated his First Amendment free-exercise right by imposing a “blanket ban” on his ability to attend group religious services while he was temporarily confined to his cell for misconduct, misconduct that included possessing a razor. He contends that this ban violated clearly established law and created a circuit split.

He is wrong on each point. There is no circuit split; none of the cases he cites held that it violates the First Amendment for prison officials to temporarily confine a prisoner to his cell and so to preclude him from attending group religious services in response to misconduct by the prisoner. Nor is there clearly established law holding that this type of temporary restriction violates the First Amendment; to the contrary, circuit precedent holds that it does *not* violate the First Amendment to impose a total ban on prisoners attending group religious services for a period of six months. And that circuit precedent is consistent with this Court’s caselaw. This Court too has upheld policies that prevented prisoners from attending group religious services, *O’Lone v. Shabazz*, 482 U.S. 342 (1987), and has recognized that the need to provide incentives for better prisoner behavior—the precise reason asserted by the officials here—is a legitimate reason for restricting constitutional rights.

Here, Cavin remained free to practice his religion on an individual basis even while confined, and the temporary limitation on his associational interest in congregating with others for religious purposes was a reasonable restriction that supported legitimate penological goals.

The Sixth Circuit properly applied this Court's test in *Turner v. Safley*, 482 U.S. 78 (1987), and properly concluded that the prison officials were entitled to qualified immunity. Certiorari is not warranted.

STATEMENT OF THE CASE

A. MDOC policy regarding confining a prisoner to his cell

Under MDOC policy directives, prisoners who have been found guilty through a misconduct hearing may be placed under a restriction known as "toplock." Pet. App. C. Toplock means that a prisoner must remain in his cell: "A prisoner on toplock is restricted to his/her own cell, room, or bunk and bunk area." *Id.* Toplock may also include depriving a prisoner "of use of his/her television, radio, tape player, and portable media player," *id.*, though those restrictions are not at issue here. Under MDOC policy, prisoners on toplock "shall be released from toplock for regular showers, visits, medical care (including individual and group therapy), school, and law library." *Id.* The state-wide policy also provides that the warden of a particular facility "*may* authorize prisoners on toplock to go to the dining room, work assignments, and/or other specified activities, including group religious services." *Id.*

Toplock may be imposed only for a limited duration; it may be imposed for no more than 30 days for a violation, even if the violation is for serious misconduct such as homicide, assault and battery, or possession of dangerous contraband. MDOC Policy Directive 03.03.105, Attachment D.

B. Cavin's religious practices and misconduct

Mario Cavin has been a Wiccan since 2005 or 2006. Defs.' Mot. for Summ. J., Exh. A, Page ID 301. The Wiccan religion celebrates eight Sabbats (Wiccan holidays) each year; these sabbats include a group ceremony. *Id.* at 302, 304. In addition to group practices, the Wiccan religion includes "solitary rituals," prayers, and chants. *Id.* at 304–05. According to Cavin, he was allowed to keep both books about his Wiccan faith (including study guides) and religious items (such as tarot cards) in his cell. *Id.* at 304, 306.

In June 2014 and September 2014, while incarcerated at the Chippewa Correctional Facility, Cavin was serving "toplock" sanctions because he violated prison rules, including possessing dangerous contraband (a razor). Defs.' Mot. for Summ. J., Page ID 303. The record does not reflect whether these toplocks lasted a full month, but it does show that one of his prior detentions (for threatening a guard) lasted only ten days. Defs.' Mot. for Summ. J. re Exhausting Administrative Remedies, Exh. B at Page ID 92.

In accordance with MDOC's prisoner discipline policy, the warden of the Chippewa Correctional Facility, Jeffrey Woods, issued an operating procedure allowing prisoners on toplock to go to the dining room, to attend vocational or academic school, and to attend the law library on toplock library call out. But Warden Woods precluded prisoners on toplock from attending religious services or work assignments. Pet. App. A at 4. Because Cavin was serving toplock sanctions in June and September 2014, he was prevented from attending two Wiccan group religious services, one on June 21, 2014, and one on September 21, 2014.

C. Cavin's lawsuit

Cavin brought a *pro se* civil rights claim under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1 against respondents Daniel Heyns (the former Director of the MDOC) and Warden Woods. Cavin alleged that his rights were violated under the First Amendment, the Fourteenth Amendment, and RLUIPA when he was precluded from attending group religious services on two occasions, in June and September 2014, during his incarceration at the Chippewa Correctional Facility. He alleged that the MDOC, through defendant Heyns, instituted a policy that gave wardens the discretion to preclude prisoners on toplock from attending group religious services. Cavin alleged that Warden Woods abused his discretion by implementing a blanket ban for prisoners on toplock from attending group religious services.

The prison officials moved for summary judgment, arguing that Cavin's RLUIPA claim, which sought injunctive relief, was moot because Cavin had transferred to another prison. The respondents also argued they were entitled to qualified immunity and that Cavin's claim under the Fourteenth Amendment should be dismissed because the First Amendment offers a source of protection for prisoners' religious rights. Pet. App. A at 2.

The district court granted the respondents summary judgment, determining that Cavin's RLUIPA claim for declaratory and injunctive relief was moot as to defendant Woods and unripe as to defendant Heyns, that the respondents were entitled to qualified immunity on Cavin's First Amendment claim, and that Cavin's

Fourteenth Amendment claim was improper because it was covered by his First Amendment claim. Pet. App. A at 2.

On appeal, Cavin did not challenge the dismissal of his RLUIPA and Fourteenth Amendment claims. Pet. App. A at 2. Instead, the sole issue Cavin raised was whether the district court erred in granting the respondents qualified immunity on his First Amendment claim. Cavin contended that his right to attend religious services while on toplock status was clearly established and that Woods' operating procedure was unreasonable because it "fails to consider individual prisoners or the misconduct involved" and imposes a blanket ban. Pet. App. A at 6.

The Sixth Circuit, in affirming the district court, applied the four factors set forth in *Turner v. Safley*, 482 U.S. 78 (1987), which are used to determine whether a prison regulation that impinges on a prisoner's constitutional right is reasonably related to a legitimate penological interest. Those factors include: (1) whether there is a " 'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it"; (2) whether a prisoner has alternative means of exercising the asserted right; (3) the impact that accommodating the right will have on guards, other prisoners, and the allocation of prison resources; and (4) whether there are alternatives available that accommodate the prisoner's rights at a minimal cost to penological interests. Pet. App. A at 4–5.

As to the first factor, the Sixth Circuit found that the respondents' rationale for barring participation in group religious services for toplock prisoners—to give them an incentive to behave better in the future—was a valid penological interest.

Pet. App. A at 5. Indeed, the Sixth Circuit noted that “the Supreme Court held that the very reason cited by the defendants in this case—the need to provide increased incentives for better prison behavior—was an adequate justification for a prison’s policy denying certain prisoners in a long-term segregation unit access to newspapers, magazines, and photographs.” Pet. App. A at 5 (citing *Beard v. Banks*, 548 U.S. 521, 530 (2006)). As to Cavin’s argument that a “blanket ban” and the failure to consider an individual prisoner’s misconduct makes Warden Woods’ policy unreasonable, the Sixth Circuit noted that binding circuit precedent had upheld a blanket ban that limited access to group religious services for all prisoners in administrative segregation. Pet. App. A at 6 (citing *Walker v. Mintzes*, 771 F.2d 920, 930 (6th Cir. 1985)).

The Sixth Circuit also determined that the other *Turner* factors, on balance, weighed in the respondents’ favor. Specifically, as to the second factor, the Sixth Circuit noted that although Cavin was prevented from attending group religious services while on toplock, he had alternative means to practice his Wiccan faith. For example, although Cavin contended that he did not really know what to do for the sabbats, despite having been a Wiccan since 2005 or 2006, he had a book and a study guide to assist him and he conceded that he was not prevented from practicing his religion on his own. Pet. App. A at 6.

As to the third and fourth *Turner* factors, the Sixth Circuit determined that allowing Cavin to attend group religious services while on toplock would have only a small impact on prison resources (staff would have to let him in and out of his cell), but that there would be an overall negative impact if he attended group religious

services because it would undermine efforts to encourage better behavior. Pet. App. A at 6.

The Sixth Circuit's conclusion that the ban on group religious services for prisoners on toplock was reasonably related to a legitimate penological interest meant that Cavin could not overcome the respondents' claim of qualified immunity.

REASONS FOR DENYING THE PETITION

I. There is no split between the circuits as to whether barring prisoners from group religious services violates the First Amendment.

Cavin asserts that the circuits are split on whether prisoners are entitled to attend religious services while in disciplinary confinement. He is incorrect. Of the six circuit cases he cites, only three even involve religious services; the other three involve religious dietary issues. And not one of the cases about religious services held that it violated the First Amendment to temporarily prevent a prisoner from attending group religious services. Instead, in all three cases the courts merely let the case proceed beyond a motion to dismiss or a motion for summary judgment because the prison officials had not yet asserted any penological interest that might justify the restrictions and thus might show that no First Amendment violation had occurred. In short, no circuit has reached a holding that conflicts with the Sixth Circuit's holding here.

A. None of his cases about religious services held that a First Amendment violation had occurred.

Consider first *Young v. Coughlin*, 866 F.2d 567 (2d Cir. 1989). In that case, the defendants never proffered a reason for preventing the plaintiff from attending

religious services while he was confined to his cell; though they moved for summary judgment against the prisoner (and were awarded summary judgment by the district court), “[a]t no time during the pendency of this action did the defendants proffer an explanation as to why Young was denied access to religious services, or articulate a particular penological interest that was served by denying appellant such access.” *Id.* at 570; see also *id.* (“A prisoner’s first amendment right to the free exercise of his religious beliefs may only be infringed to the extent that such infringement is ‘reasonably related to legitimate penological interests.’” (quoting *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987) (some quotation marks omitted))). Accordingly, the Second Circuit correctly reversed and remanded, stating that “[w]hile it very well may be true, on remand, appellees will be able to show that the restrictions at issue here are reasonably adapted to achieving a legitimate penological objective, the district court should not have dismissed appellant’s first amendment claim without requiring prison officials to establish the basis for the first amendment restrictions imposed.” *Id.* Unlike the defendants in *Young*, the respondents in Cavin’s case set forth a legitimate penological reason for restricting him from attending group religious services—namely, to encourage future good behavior.

The situation was similar in the other two cases Cavin cites that involves religious services. In *Mawhinney v. Henderson*, 542 F.2d 1 (2d Cir. 1976), the district court dismissed the prisoner’s First Amendment claim “that he was denied access to religious services while in punitive segregation” at the screening stage, “prior to service of summons and answer.” *Id.* at 2. As in *Young*, the Second Circuit correctly

reversed and remanded to require the officials to answer and explain what penological interest justified the restriction. *Id.* at 4. And in so doing, it acknowledged that restrictions on religious freedoms are permissible “ ‘if the state regulation has an important objective and the restraint on religious liberty is reasonably adapted to achieving that objective.’ ” *Id.* at 3 (quoting *LaReau v. MacDougall*, 473 F.2d 974, 979 (2d Cir. 1972)). Similarly, in *Lovelace v. Lee*, 472 F.3d 174 (4th Cir. 2006), a prisoner brought RLUIPA and First Amendment claims when he was removed from Ramadan participation, including from “congregational prayers,” after he allegedly broke Ramadan fast. *Id.* at 181. The Fourth Circuit vacated the district court’s grant of summary judgment to the defendants on the First Amendment claim because the district court failed to apply the *Turner* factors and because “the prison [had] yet to come forward with any substantive rationale for the restrictions.” *Id.* at 200 & n.9. And in its ruling, the *Lovelace* court reiterated that a prisoner’s free exercise rights may be restricted by punitive measures that are “ ‘reasonably adapted to achieving a legitimate penological objective.’ ” *Id.* at 200 (quoting *Young*, 866 F.2d at 570).

In each of these three cases, the courts applied the correct test from *Turner* (or its progeny, *O’Lone*) and, in so doing, properly reversed and remanded because the district court had either not considered the *Turner* factors or because the defendants did not present evidence to address the *Turner* factors. But unlike the defendants in *Young*, *Mawhinney*, and *Lovelace*, the officials here did assert a penological interest, and it is one that this Court has held to be an adequate justification for prison policies: the need to “provid[e] increased incentives for better prison behavior.” *Beard v.*

Banks, 548 U.S. 521, 530 (2006) (plurality); accord *id.* at 537 (Thomas, concurring in judgment) (concluding that the Eighth Amendment, not the First Amendment, supplies the relevant standard for evaluating prison policies).

In short, not one of Cavin’s cases that involves the same issue—temporary preclusion from attending religious services—held that such a policy violates the First Amendment, and therefore no circuit split exists.

B. His remaining cases did not even involve religious services and so also did not reach any holding that conflicts with the decision below.

His remaining three cases are farther afield, as they dealt with issues about the food prisoners received while restricted to their cell, not about whether prison officials had to allow them to leave their cell to associate with others via religious services.

In *Ford v. McGinnis*, 352 F.3d 582 (2d Cir. 2003) (Sotomayor, J.), for example, a Muslim prisoner alleged that his First Amendment rights were violated when he was denied participation in a particular meal, the Eid ul Fitr feast. *Id.* at 584. The Second Circuit noted that the defendants had “not argue[d] that legitimate penological interests justified their conduct, and the district court therefore never reached the issue.” *Id.* at 595. It accordingly vacated the district court’s grant of summary judgment to the prison officials and “remand[ed] for the district court to determine whether the denial of the meal was reasonably related to a legitimate penological interest under the test applied in *Turner v. Safley*, 482 U.S. 78 (1987), and [*O’Lone*].” *Id.* (parallel citations omitted). The Second Circuit declined to weigh the *Turner*

factors for the first time on appeal and remanded so that, “[i]f the defendants renew their motion for summary judgment, the district court will be able to access the facts in light of the *Turner* balancing test in the first instance.” *Id.* at 596. *Ford* thus did not reach a holding even as to the religious-diet issue it confronted, let alone as to any religious-services issues.

McEachin v. McGuinnis, 357 F.3d 197 (2004), follows the same pattern. There, the prisoner alleged he was denied a religious meal for seven days as discipline. *Id.* at 198. After the district court dismissed his complaint at the screening stage, *id.* at 200 (noting that the defendants “were not served and did not file an answer”), the Second Circuit reversed, concluding that his complaint should not have been dismissed “at such an early stage of the proceedings,” *id.* at 201. But the Court also noted that his “success on his First Amendment free exercise claim, of course, still depends upon the defendants’ inability to demonstrate a reasonable relationship between the potentially infringing policy and a legitimate penological interest.” *Id.* at 201 n.8 (citing *Turner*). So it merely remanded for the district court to consider whether the officials could offer a legitimate penological interest that supported the policy.

Makin v. Colorado Dep’t of Corrections, 183 F.3d 1205 (10th Cir. 1999), also does not support the existence of a circuit split. In *Makin*, the Tenth Circuit upheld the district court’s determination that a prisoner’s First Amendment rights were violated when prison officials refused to serve meals in accordance with Ramadan to prisoners in punitive segregation. The Ramadan meals needed to be consumed before dawn or after sunset, but prison officials delivered the meals after dawn. While the

Makin defendants argued qualified immunity on appeal, the Tenth Circuit did not consider their arguments because defendants failed to preserve the issue. *Id.* at 1210. Moreover, the Tenth Circuit determined that defendants failed to present any evidence to support its proffered reasons for not serving meals to Muslim prisoners in segregation before dawn or after sunset. *Id.* at 1214. In contrast, in Cavin’s case, the respondents properly raised and preserved their qualified-immunity argument and provided support for their actions.

No circuit split exists. The Sixth Circuit applied the same legal test (the *Turner* factors) that the Second, Fourth, and Tenth Circuits applied. The one case Cavin cites that held that prison officials violated the First Amendment (*Makin*) involved a substantially different issue—what food a prisoner would eat within the confines of his cell, not whether a prisoner could be let out of his cell to associate with other prisoners at a religious service. In the other five cases he relies on, the courts did not even hold that a First Amendment violation occurred; instead, they simply allowed the case to proceed because the defendants had not yet put forward a legitimate penological reason for temporarily limiting a particular religious practice. Here, in contrast, the respondents provided a legitimate penological reason for temporarily restricting participation in group religious services while on toplock, and the district court and the Sixth Circuit properly applied the *Turner* factors and determined that the respondents were entitled to qualified immunity.

II. The Sixth Circuit correctly held that the defendants are entitled to qualified immunity.

As this Court has repeatedly explained, qualified immunity “protects all but the plainly incompetent or those who knowingly violate the law.” *Kisela v. Hughes*, No. 17-467, 2018 WL 1568126 (U.S. Apr. 2, 2018) (internal quotation marks omitted). To satisfy that standard, “existing precedent must have placed the statutory or constitutional question beyond debate.” *Id.* ((internal quotation marks omitted).

Here, existing precedent *avored* the prison officials: the Sixth Circuit had “previously upheld as reasonable a blanket ban that limited access to group religious services for all inmates in administrative segregation.” Pet. App. A at 6 (citing *Walker v. Mintzes*, 771 F.2d 920 (6th Cir. 1985)). In *Walker*, the prisoners argued, just as Cavin does here, “that by restricting their access to group religious meetings, prison officials have violated their first amendment right to the free exercise of their religions.” 771 F.2d at 929. While the district court in *Walker* agreed “that this ‘total ban’ on group services violated the first amendment,” the Sixth Circuit reversed, holding that the total ban on group services was reasonable for a period of at least six months. (The lockdowns began on May 27, 1981, and extended past the end of the trial on November 12, 1981, through January 1, 1982. *Id.* at 924, 930, 931.) Here, the prison officials imposed a ban for a much shorter period of time—no more than 30 days for each serious misconduct. If anything, a competent prison official could conclude that binding Sixth Circuit precedent affirmatively authorized this restriction as constitutional.

And reasonable prison officials could also believe that *O’Lone* itself supports this restriction on group religious services. In *O’Lone*, a group of Islamic prisoners

“challenged policies adopted by prison officials which resulted in their inability to attend Jumu’ah, a weekly Muslim congregational service . . .” 482 U.S. at 345. This Court held that the permanent restriction on the group religious service did *not* violate the First Amendment under the four-factors set out in *Turner*. As to the first factor, the policies in *O’Lone* were “justified by concerns of institutional order and security.” *Id.* at 351. Here, the prison’s policy is also justified by concerns about promoting order and security, specifically by providing incentives to prisoners to refrain from serious misconduct (such as possessing a razor). Indeed, as the Sixth Circuit pointed out, in *Beard v. Banks*, 548 U.S. 521 (2006) (plurality), this Court “held that the very reason cited by the defendants in this case—the need to provide increased incentives for better prison behavior—was an adequate justification for a prison’s policy denying certain prisoners in a long-term segregation unit access to newspapers, magazines, and photographs.” Pet. App. A at 5.

The other three *Turner* factors also favor the prison officials here. As to the second, even though in *O’Lone* there was “no alternative means of attending Jumu’ah,” the prisoners were able “to participate in other Muslim religious ceremonies” and “other religious observances of their faith” at other times. *Id.* at 352. Here, although there was no alternative way to attend the sabbat ceremonies, Cavin was able to participate in other religious exercises, including studying his cell and praying. Pet. App. A at 6. As to the third *Turner* factor, allowing Cavin to attend religious services would have “an impact on prison resources, albeit a mild one.” *Id.* And as to the fourth *Turner* factor, providing an alternative way to engage in group religious

services would undermine the very rationale of the policy: the incentive to behave or to face losing the opportunity to engage in group activities is more effective if those are the only two choices. See *Overton v. Bazzetta*, 539 U.S. 126, 134 (2003) (explaining that “[w]ithdrawing visitation privileges is a proper and even necessary management technique to induce compliance with the rules of inmate behavior, especially for high-security prisoners who have few other privileges to lose”).

One additional point further supports the reasonableness of the restriction at issue here. Cavin is not complaining that he has been prohibited in any way from freely exercising his religion on an individual basis; he has remained free, even when confined to his cell, to pray, to study the Wiccan faith, and to use Wiccan religious items such as tarot cards. Defs.’ Mot. for Summ. J., Exh. A, Page ID 305–06. Rather, his complaint is about exercising his religion by *associating* with others. But “freedom of association is among the rights least compatible with incarceration.” *Overton*, 539 U.S. at 131. In *Overton*, this Court held that it is reasonable for “Michigan, like many other States, [to use] withdrawal of visitation privileges for a limited period as a regular means of effecting prison discipline.” *Id.* at 137. The same is true of the associational privilege of attending group religious services.

As this shows, the law was not clearly established such that it is “beyond debate,” *Kisela*, 2018 WL 1568126 at *2, that a temporary restriction on attending group religious services violates the First Amendment. And this means that this case presents a poor vehicle for reaching the underlying constitutional question, because anything the Court says about whether there was a constitutional violation would be

dicta: even if this Court were to state that this policy violates the First Amendment, these prison officials would nonetheless be entitled to qualified immunity because at the time of their conduct, the law (in both *Walker* and *O'Lone*) did not clearly establish that this would be a violation. E.g., *Kisela* 2018 WL 1568126 at *4 (reversing denial of qualified immunity where “the most analogous Circuit precedent favor[ed] [the defendant police officer]”); *Carroll v. Carman*, 135 S. Ct. 348, 351 (2014) (reversing denial of qualified immunity where the controlling circuit precedent “arguably support[ed] [defendant police officer] Carroll’s view”). So the officials will ultimately be entitled to qualified immunity, even if this Court were to announce a new rule of constitutional law. Accordingly, if this Court wants to reach the underlying constitutional issue, this Court should wait for a case where a decision on that issue would matter to the rights of the litigants. See *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974) (repeating “the familiar proposition that ‘federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them’”).

Because there is no circuit split, because the Sixth Circuit applied the correct legal test, and because the officials engaged in conduct that was permissible under governing law, this case does not warrant further review by this Court.

CONCLUSION

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

Respectfully submitted,

Bill Schuette
Michigan Attorney General

A handwritten signature in cursive script that reads "Aaron D. Lindstrom (ms)". The signature is written in black ink and is positioned above the printed name of the signatory.

Aaron D. Lindstrom
Solicitor General
Counsel of Record

James E. Long
Assistant Attorney General
Civil Litigation, Employment, and
Elections Division

Attorneys for Respondents

Dated: APRIL 2018