No.

IN THE

SUPREME COURT OF THE UNITED STATES

DENIS QUINETTE,

Petitioner,

v.

DILMUS REED, CHIEF LYNDA COKER, CHIEF DEPUTY MILTON BECK, COLONEL DONALD BARTLETT, COLONEL LEWIS ALDER, COLONEL JANICE PRINCE, COLONEL ROLAND CRAIG, and SHERIFF NEIL WARREN,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Denis Quinette was violently attacked by a jailer at the Cobb County Jail who had a terrifying history of violence and inmate abuse.[1] Despite this history, the jailer's supervisors never suspended him in connection with inmate abuse and offered nothing other than *de minimus* discipline in response to clear and repeated violations of inmates' constitutional rights. Petitioner sued the jailer's supervisors under 42 U.S.C. § 1983 for failing to meaningfully discipline or terminate the jailer despite this history. A divided Eleventh Circuit panel granted qualified immunity to the supervisors on the theory that, while prior precedent established the unconstitutionality of a supervisor failing to meaningfully address an employee's repeated transgressions, those cases involved *zero* discipline or *de minimus* discipline. The panel distinguished the jailer's history because he had received *some* discipline in connection with other unrelated bad conduct, despite the fact that the jailer received only *de minimus* discipline after he attacked and abused inmates.

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[1] The jailer had been the subject of twelve internal affairs investigations, six of which were deemed "founded" or "sustained" and three of which involved attacking restrained inmates. Moreover, in the previous year the jailer had pursued a sustained campaign of inmate abuse including racial slurs, physical threats, religious abuse, cruel and belittling language, and abusive behavior, as well as sexual harassment of a coworker.

The questions presented are:

1. Whether jail command supervisors are entitled to qualified immunity where their repeated supervisory failures result in a foreseeable, inevitable, and unconstitutional attack by a violent and abusive jailer on yet another inmate?

2. How are the courts to apply qualified immunity to supervisory liability claims? Given that qualified immunity is to be applied with unique rigor "in the Fourth Amendment context, where … [i]t is sometimes difficult for an officer to determine how the relevant legal doctrine … will apply to the factual situation,"[2] should the doctrine be applied less stringently, or should it even be applied at all, to a claim of supervisory liability?

3. Should the judge-made doctrine of qualified immunity, which is not justified by reference to the text of 42 U.S.C. § 1983 or its common law backdrop and which has been demonstrated not to serve its policy goals, be narrowed or abolished?

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[2] Mullenix v. Luna, 577 U.S. 7, 12, 136 S. Ct. 305, 308 (2015).

PARTIES TO THE PROCEEDING BELOW

The parties to the proceedings below were Petitioner Denis Quinette and Respondents Lewis Alder, Donald Bartlett, Milson Beck, Lynda Coker, Roland Craig, Janet Prince, Dilmus Reed, and Neil Warren.

RELATED PROCEEDINGS

There are no related proceedings.

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INTRODUCTION

For years, the command staff at the Cobb County Jail sat idly by and provided no meaningful discipline in response jailer Dilmus Reed's abusive behavior towards inmates. Reed's history included several physical attacks on restrained inmates, sexual harassment of a nurse at the jail, and numerous other documented reports of abusive, threatening, racist, and xenophobic behavior towards inmates at the jail. The abuse came to a head when Reed violently attacked Petitioner Denis Quinette and broke his hip. Quinette's only offense was asking politely to make a telephone call.

In its decision below, the Eleventh Circuit panel acknowledged unanimously that Reed's attack was unconstitutional. A 2-1 majority, however, reversed the district court and granted qualified immunity to the supervisors, ignoring this Court's decision in City of Canton, Ohio v. Harris and distinguishing controlling Eleventh Circuit precedent. Previous Eleventh Circuit cases had established the unconstitutionality of a supervisor's deliberate indifference to an employee's repeated transgressions, but the panel majority found here that the supervisors were nevertheless protected by qualified immunity. The panel majority took a granular approach, distinguishing a reported case from its circuit to fit its application of qualified immunity by stating that the case addressed municipal rather than supervisory liability (a distinction without legal significance in the Eleventh Circuit) and involved *de minimus* discipline (a meaningless distinction given

that Reed received, at best, *de minimus* discipline for his violent and abusive behavior toward inmates; his only arguably meaningful discipline was for unrelated conduct).

The Court should review the decision below for four reasons.

First, having found that "[t]he supervisors likely could have (and, as it turns out, should have) done more to discipline Reed" given the obvious risk he posed to inmates, the panel majority strayed from this Court's precedent when it failed to recognize that the obviousness of that risk rendered Respondents' conduct a clearly established constitutional violation.

Second, the decision below further muddies the waters regarding how factually similar a prior case must be to clearly establish a constitutional violation for qualified immunity purposes. The Eleventh Circuit has previously held that a constitutional violation may be clearly established by prior precedent that does not precisely mirror the facts at hand. In this case, however, the Eleventh Circuit read this Court's recent cases to imply a shift to a more stringent standard which requires precedent with nearly identical facts to establish a constitutional violation. Absent further guidance from this Court, the lower courts will continue to struggle to apply the "clearly established" prong of the qualified immunity inquiry.

Third, this case gives the Court an opportunity to flesh out the principle articulated in City of Canton, Ohio v. Harris recognizing liability for the failure to

train, discipline, and monitor employees whose histories demonstrate an obvious risk that the employee will commit a constitutional violation. In Georgia, sheriffs' offices are typically protected by Eleventh Amendment immunity so the only meaningful judicial review for a pattern or practice of constitutional violations in a sheriff's department is an individual capacity claim against a supervisor. By protecting these supervisors with qualified immunity – especially by a qualified immunity standard as stringent as that applied by the Eleventh Circuit here – 42 U.S.C. § 1983 becomes an ineffective tool to curb systemic failures in sheriffs' offices. This case gives the Court the opportunity to reconsider how to apply qualified immunity in this context if at all, since its application to supervisors does not serve the policy justification for the judge-made doctrine.

Fourth, this case presents an opportunity for the Court to abolish or significantly curtail qualified immunity. A growing chorus of critics – including members of this Court, numerous other federal judges, and legal scholars across the ideological spectrum – has demonstrated that qualified immunity is grounded in neither the text of 42 U.S.C. § 1983 nor the common law that existed when that statute was enacted. What began as an attempt by this Court to apply a narrow good-faith defense to a false arrest claim has since been transformed by judicial policy preference into a near-total liability shield across all 42 U.S.C. § 1983 claims. It is time to reexamine the doctrine because it is failing. Qualified immunity is unnecessary to serve its purpose

of protecting officials from the risk of financial liability, it is an unworkable standard that continues to divide the courts, and it regularly leads to patently unjust results – as some scholars put it, qualified immunity is a "moral failure." The Court should revisit qualified immunity in light of the myriad weighty arguments favoring its abolition.

OPINIONS AND ORDERS BELOW

The opinion of the Eleventh Circuit Court of Appeals reversing the district court in part and dismissing the claims against the supervisory Respondents may be found at Quinette v. Reed, 805 F. App'x 696 (11th Cir. 2020) and is reproduced at Pet. App. 1a-27a. The order of the district court denying Defendants' Motion to Dismiss may be found at Quinette v. Reed, No. 1:17-CV-1819-TWT, 2018 WL 466504, at *1 (N.D. Ga. Jan. 18, 2018) and is reproduced at Pet. App. 28a-62a. The order of the Court of Appeals denying the petition for panel rehearing and rehearing en banc on October 23, 2020 is reproduced at Pet. App. 63a.

JURISDICTION

The Eleventh Circuit Court of Appeals entered its opinion on February 21, 2020. Pet. App. 1a. A timely petition for rehearing en banc was denied on October 23, 2020. Id. at 63a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 provides in relevant 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….

STATEMENT OF THE CASE

The Attack of Quinette

On May 28, 2015, Petitioner Denis Quinette was in a holding cell at the Cobb County Jail when Respondent Dilmus Reed, a Cobb County jailer, opened the door to escort another inmate into the cell. Pet. App. 68a, ¶¶ 13-17. Quinette respectfully tried to flag down Reed as Reed allowed the inmate into the cell – Quinette can even be heard saying, "excuse me," on the video. Id. at 69a, ¶¶ 20-22. Rather than addressing Quinette's concern, Reed closed the door on Quinette. Id. at 69a, ¶ 22.

As the door was closing in his face, Quinette placed his hand on the window of the cell door but did not push the door. Id. at 69a, ¶¶ 24-25. Nevertheless, despite Quinette's calm, respectful demeanor, Reed re-opened the door, took one large step forward, and, without warning, forcefully shoved Quinette with two hands toward the back of the cell. Id. at 71a, ¶ 35. Quinette, then 54 years old, was thrown to the floor and landed on his left hip, breaking his hip in the fall. Id. at 71a-72a, ¶¶ 38-41.

Reed's Violent and Abusive Disciplinary History

Reed was the subject of twelve internal affairs investigations during his tenure with the Cobb County Sheriff' Office, six of which were deemed "founded" or "sustained." Pet. App. 76a, ¶ 68. Three of these investigations were for violently attacking restrained inmates. Id. at 76a, ¶ 69. In the first excessive force incident, an inmate with a colostomy bag complained that Reed had twisted the chains of the inmate's waist cuffs, rupturing the inmate's colostomy bag and causing extreme discomfort and some bleeding. Id. at 77a, ¶¶ 73-75. In the second incident, a restrained inmate made a comment that angered Reed, and Reed slammed the handcuffed inmate face-first to the floor, sending the inmate to the hospital for stitches. Id. at 79a-80a, ¶¶ 84-90. In the third incident, Reed was escorting a group of inmates who were all handcuffed to each other in a "chain gang" configuration. Id. at 80a, ¶ 91. When an inmate cursed at Reed, Reed grabbed the inmate in a headlock and slammed the inmate to the floor. Id. at 80a-81a, ¶¶ 92-94.

Then, in the year before the incident with Quinette, Reed engaged in a year-long campaign of inmate abuse yielding 15 separate complaints. The inmate complaints are nauseating – there are allegations of cruel and belittling language,[3] racial slurs,[4] physical threats,[5] abusive behavior,[6] religious abuse,[7] and

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[3] An inmate reported that Reed "talked about my girlfriend, my children, and my deceased father;" another reported that he "comes to work like he has a vengeance … demoralizes us and speaks about our wives;" another reported that he "calls me a N-word and bitch, makes comments that question my sexual orientation, queer, faggot, that kind of stuff;" another reported he was "talking about my mother and picking on me every time he comes in the dorm." Id. at 83a-85a, ¶¶ 102(c), (d), (e), (o).

[4] Four inmates say Reed called them the N-word. Id. at 83a-85a, ¶¶ 102(e), (f), (m), (n).

[5] Reed threatened an inmate and told him "I am the Department of Corrections;" when the inmate asked if that was a threat, Reed said, "we'll see." Id. at 84a-85a, ¶ 102(k).

[6] An inmate claimed Reed sent the inmate to a new housing unit without socks or underwear, making him leave his personal things behind "just to be nasty;" another inmate asked for hygiene products because he'd been wearing the same clothes for 7 days, to which Reed responded, "get the F out of my face and sit the F down;" he took one inmate's armband so inmate couldn't get his meals (the inmate was likely Muslim and had a Halal meal profile); and he took the bedroll of an inmate with a two-mat profile for a herniated disc. Id. at 83a-85a, ¶¶ 102(c), (h), (l), (m).

[7] Reed told a Muslim inmate to get rid of his Qu'ran and told another Muslim inmate his religion is "shit." Id. at 83a-84a, ¶¶ 102(b), (i).

sexual harassment of a coworker.[8] In other words, Reed's history shows three past incidents of violent inmate attacks then a year-plus campaign of escalating inmate abuse. Reed's abusive behavior culminated with the attack on Quinette.[9]

The supervisory defendants responded to this history of violence and abuse with meaningless and ineffective discipline. After the first excessive force incident, no action was taken. Id. at 79a, ¶ 82. After the second excessive force incident (where Reed slammed a restrained inmate's face into the floor, sending him to the hospital), Reed was only given a written reprimand and required to go to a "refresher" on *defensive* tactics (i.e., how to defend himself), but was not suspended and lost no pay. Id. at 80a, ¶ 90. After the third excessive force incident (where Reed grabbed a restrained inmate in a headlock and tried to pull him to the floor, pulling the "chain-gang" of handcuffed inmates back and forth), Reed was again given only a written reprimand and "counseling related to the proper response to verbal abuse from inmates"

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[8] Reed spread his legs open and told a nurse to "look at this." Id. at 83a, ¶ 102 (a).

[9] Reed was also found to have violated department policy in four other incidents, including a knowing misrepresentation in the context of doing headcounts (Id. at 87a, ¶ 110); a citizen report that Reed was acting "irate" as if he was on steroids (Id. at 87a, ¶ 111); an improper and illegal personal use of the Georgia Crime Information Center ("GCIC"), a felony under Georgia law (Id. at 87a, ¶ 112); and an incident involving favoritism, where Reed repeatedly allowed a favored inmate out of his cell in violation of jail policy, resulting in a fight between segregated inmates (Id. at 89a, ¶¶ 116-18).

by two command staff members but was not suspended and lost no pay. Id. at 81a-82a, ¶¶ 96-99.

Finally, and most importantly, after the year-plus sustained campaign of inmate abuse, *Reed was given only a verbal reprimand* – he was not suspended, he lost no pay, and he was allowed to continue overseeing inmates without direct supervision. Id. at 86a, ¶¶ 108-09.

Divided Opinion on Whether the Supervisors Are Protected by Qualified Immunity

Quinette filed suit against Respondents under 42 U.S.C. § 1983, alleging that (1) Reed's attack was excessive force, and (2) the supervisory Respondents were aware of Reed's violent and abusive history and failed to properly monitor, discipline, or terminate Reed despite the obvious risk his continued employment and ability to supervise inmates without monitoring posed to the inmate population. Respondents filed a motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6), claiming that they were protected by qualified immunity.

The district court denied the motion, finding that neither Reed nor the supervisory Respondents were protected by qualified immunity. See Pet. App. 26a-62a. Regarding the supervisory Respondents, the district court held that they were not protected by qualified immunity because "Reed's extensive history of using excessive force and violence toward inmates was sufficient to put the Command Staff Defendants on notice of his misconduct and was sufficiently blatant to require them to act." Id. at 57a.

Respondents appealed to the Eleventh Circuit. As to the claims against Reed, the three-judge panel affirmed the district court 3-0, easily finding that the attack was sufficiently egregious that Reed was not protected by qualified immunity. Id. at 7a-17a. Regarding the supervisory Respondents, however, a 2-1 majority reversed the district court and dismissed the claims on qualified immunity grounds because the supervisors had imposed *some* discipline, lacking as it was. Id. at 17a-21a. The majority reasoned, "The supervisors likely could have (and, as it turns out, should have) done more to discipline Reed … [but] [i]n this Circuit, the published excessive-force cases imposing supervisory liability appear to all involve supervisors who took *no* action when aware of their subordinate's unlawful conduct." Id. at 20a. The majority further distinguished a prior Eleventh Circuit case where municipal liability existed based on insufficient discipline of an officer, reasoning that (1) the prior precedent involved municipal rather than supervisory liability, and (2) the discipline there (verbal reprimand) was *de minimus* compared with the previous discipline of Reed. Id. at 21a.

The Eleventh Circuit panel's dissenting judge agreed with the district court, that "Reed's history of 'obvious, flagrant, [and] rampant' use of excessive force and related conduct, such as using racial epithets, profanity, and threats, and losing his temper with inmates provided meaningful notice to the supervisors that they needed to correct a constitutional violation." Id. at 24a-27a.

Quinette timely filed a petition for rehearing en banc, which was denied on October 23, 2020. Id. at 63a. This petition followed.

REASONS FOR GRANTING THE WRIT

1. The Panel Majority Improperly Applied Qualified Immunity to Protect Jail Supervisors Who Repeatedly Failed to Meaningfully Discipline a Violent and Abusive Jailer

Quinette was attacked by a jailer who had an unconscionable disciplinary history – he had assaulted restrained inmates on three separate occasions, and in the year before he had been the subject of more than fifteen reports of inmate abuse ranging from racial epithets to physical threats. Respondents' failure to adequately discipline Reed was obviously unconstitutional and they should not be protected by qualified immunity.

A. The panel majority's holding that Respondents are entitled to qualified immunity despite the obvious unconstitutionality of their conduct conflicts with this Court's precedent

As this Court recently reaffirmed, "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question." Taylor v. Riojas, 141 S. Ct. 52, 52–54 (2020) (quoting Hope v. Pelzer, 536 U.S. 730, 741, 122 S.Ct. 2508 (2002)). The general constitutional rule here was stated in City of Canton, Ohio v. Harris:

> It may seem contrary to common sense to assert that a municipality will actually have a policy of not taking reasonable steps to train its employees. But it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.

489 U.S. 378, 390, 109 S. Ct. 1197, 1205 (1989). Applying this principle in the context of a failure to discipline, the Eleventh Circuit has explained, "supervisors are liable for the excessive force ... of their employees where the supervisors received numerous reports of prior misconduct of that nature by those same employees and did nothing to remedy the situation." Danley v. Allen, 540 F.3d 1298, 1315 (11th Cir. 2008), overruled on other grounds as recognized in Randall v. Scott, 610 F.3d 701, 705 (11th Cir. 2010).

Here, the "need for more or different training" was patently obvious and the inadequacy of the discipline imposed was "so likely to result in the violation of constitutional rights" that a jury could easily find that Respondents were deliberately indifferent to the need.

Reed's disciplinary history, recounted in the Complaint, speaks for itself:

April 2000	Lying about head count	One-day suspension
January 2005	Attack of restrained inmate	No discipline ("unfounded" because not on video)
August 2005	"Irate" conduct with citizen motorist; exhibiting symptoms of steroid abuse	Verbal reprimand
September 2005	Unauthorized use of GCIC for personal reasons (two-year felony)	No discipline
March 2006	Attack of restrained inmate on video, inmate sent to hospital	Reprimand and "refresher" on defensive tactics
June 2008	Arrest on bench warrant (probate court warrant revealed Reed's embezzlement of minor daughter's settlement proceeds)	No discipline

September 2009	Attack of restrained inmate on video	Reprimand and informal "counseling" (merely an informal conversation)
2013-2014	Campaign of inmate abuse (15+ incidents)	Verbal reprimand (no accompanying training or counseling)
May 2015	Allowing a favored inmate out of segregation, resulting in a fight	16-hour suspension

As this Court has explained, a municipal decisionmaker's "continued adherence to an approach that they know or should know has failed to prevent tortious conduct by employees may establish the conscious disregard for the consequences of their action—the 'deliberate indifference'—necessary to trigger municipal liability." Bd. of Cty. Comm'rs of Bryan Cty., Okl. v. Brown, 520 U.S. 397, 407, 117 S. Ct. 1382, 1390 (1997) (citing City of Canton).

At best, Respondents turned a blind eye to Reed's repeated transgressions. More cynically, the disciplinary history sends a troubling message: while insubordination is frowned upon, attacking and/or abusing inmates is tolerated. In two cases of insubordination as opposed to attacking and/or abusing inmates, Reed was suspended. Reed was

suspended for eight hours after lying to superiors about a head count and he was suspended for 16 hours after letting a favored segregated inmate out of his cell, allowing for a fight among inmates. In almost 20 instances of attacking or abusing inmates, however, Reed suffered at most a reprimand and, in only two of those instances, meaningless counseling, after which his abusive conduct toward inmates continued.

Despite the unambiguous language from this Court that in a claim of a failure to discipline and/or train "the focus must be on the *adequacy* of the training program in relation to the tasks which the particular municipal officers must perform," City of Canton at 390 (emphasis supplied), the panel majority below refused to examine the adequacy of Respondents' employment decisions. Instead, the panel majority read this Court's admonition in City of Escondido v. Emmons, 139 S. Ct. 500, 503 (2019) "not to define clearly established law at a high level of generality," took that language to require an overly-harsh application of qualified immunity, and dismissed the suit on the pleadings because there is no identical case where an employee is repeatedly given *inadequate* discipline (as opposed to no discipline) but continues to attack and abuse people.

The majority's microscopic application of qualified immunity is misguided. First, the principles from this Court's decisions in City of Canton and Bd. of Cty. Comm'rs of Bryan Cty., Okl. v. Brown make it clear that the proper inquiry is into the *adequacy* of the supervisory response. Second, the Eleventh Circuit has "long recognized that supervisors are liable for the

excessive force ... of their employees where the supervisors received numerous reports of prior misconduct of that nature by those same employees and did nothing to remedy the situation."[10] Third, in the few cases in which there has been some response to a disciplinary issue, though inadequate – the Eleventh Circuit has not afforded those defendants qualified immunity.[11]

The panel majority also fails to adequately distinguish Depew, where municipal liability existed despite insufficient discipline of an officer. The majority reasoned that (1) the prior precedent involved municipal rather than supervisory liability, and (2) the discipline there (verbal reprimand) was "*de minimus*" compared with the previous discipline of Reed. Both distinctions fail, however. Regarding the distinction between municipal and supervisory liability, the Eleventh Circuit itself has emphasized that the focus in a qualified immunity analysis is not the legal source

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[10] Danley at 1315. See also Brown v. Crawford, 906 F.2d 667, 671 (11th Cir. 1990).

[11] See, e.g., Depew v. City of St. Marys, Georgia, 787 F.2d 1496 (11th Cir. 1986) (finding supervisory liability despite prior discipline against offending officer; "Officer Ring was never disciplined other than by verbal reprimand although he had been cited for poor and improper work on many occasions."); Valdes v. Crosby, 450 F.3d 1231, 1240 (11th Cir. 2006) (finding supervisory liability because, in part, one corrections officer bragged that he had been suspended but not terminated for using excessive force); Williams v. Santana, 340 F.App'x 614, 617 (11th Cir. 2009) (rejecting a supervisor's claim of qualified immunity when an officer with a history of excessive force had been subjected to a previous written reprimand).

of the right but the contours of the right itself, so the distinction between municipal and individual liability in previous authority is irrelevant so long as the right is clearly established.[12] Regarding the supervisory response, the discipline in Depew is substantially the same as the discipline here – verbal reprimand. The panel majority puts great weight in Reed's suspensions, but those suspensions were only for insubordination, never for his repeated abusive and violent behavior with inmates. Reed was never meaningfully disciplined after he violated an inmate's constitutional rights. The panel majority's meaningless distinction here is similar to the Fifth Circuit's distinction between confining an inmate in a cell "teeming with human waste" for months versus doing so for six days. Taylor v. Riojas, 141 S. Ct. 52.

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[12] See Al-Amin v. Smith, 511 F.3d 1317, 1335–36 (11th Cir. 2008) (finding that clear law in the context of a Sixth Amendment violation created the proper notice for a First Amendment violation notwithstanding the different source of the right violated: "We have never required that, in order for an official to know his conduct is unlawful, a reasonable official must be able to cite by chapter and verse all of the constitutional bases that make his conduct unlawful.") See also, e.g., Dodds v. Richardson, 614 F.3d 1185, 1206 (10th Cir. 2010) (finding that precedent in the context of municipal liability provides proper notice for an individual capacity claim against a sheriff for supervisory liability: "while [previous authority] admittedly involved municipal liability, other cases of ours and the great weight of authority from other circuits clearly established by 2007 that officials may be held individually liable for policies they promulgate, implement, or maintain that deprive persons of their federally protected rights.").

Ultimately, it is not surprising that there is no perfectly identical case from the Eleventh Circuit. What employee keeps his or her job after three violent attacks, more than fifteen verified instances of racist language, religious intolerance, and abuse, embezzling from his daughter, and committing a felony on the job? As this Court has noted, obviously unconstitutional conduct is by its nature less likely to lead to the development of precedent to serve as clearly established law – because it is obviously unconstitutional, officials are less likely to do it. See Safford Unified Sch. Dist. No. 1 v. Redding, 557 U.S. 364, 377-78 (2009) ("[O]utrageous conduct obviously will be unconstitutional, this being the reason … that the easiest cases don't even arise." (internal quotation marks and brackets omitted)).

The Court should grant review to clarify the correct application of qualified immunity. Does a plaintiff alleging a claim of failure to discipline have to identify a prior case where the response by supervisors to an employee's pattern of disturbing conduct was identical to the response in the plaintiff's case? Is qualified immunity applied *this* narrowly? Alternately, are the general rules from City of Canton and Danley, read in conjunction with Depew, narrow enough to put these supervisors on notice of the unconstitutionality of their actions? Or, even in the absence of this authority, does the outrageous decision to allow Reed to continue supervising (and abusing) inmates despite his history put the unconstitutionality of Respondents' behavior beyond debate?

B. The decision below conflicts with circuit court decisions from the Second, Sixth, Seventh, and Ninth Circuits, which have authorized suit on similar facts

The panel majority's decision also conflicts with precedent from at least the Second, Sixth, Seventh, and Ninth circuits.

In Curry v. Scott, 249 F.3d 493, 508–09 (6th Cir. 2001), the Sixth Circuit found that several inmates had stated valid claims of deliberate indifference against supervisors after the supervisors failed to adequately discipline a jailer with a troubled history. That jailer's disciplinary history is astonishingly similar to Reed's here – a total of nineteen complaints including verbal abuse, racial slurs, abusive behavior, and reports of uses of force (though none verified, as opposed to Reed's here which were on video). Id. at 498. Notably, the Curry court rejected the supervisors' argument that they met each of the jailer's individual transgressions with an appropriate response (the jailer had been ordered to undergo re-training and corrective counseling on several occasions), reasoning that this argument overlooked the vast number of complaints and pattern of harassment. Id. at 508-09.

Similarly, in Blankenhorn v. City of Orange, 485 F.3d 463, 486 (9th Cir. 2007), the Ninth Circuit found that an arrestee who was assaulted by an officer stated a valid supervisory liability claim against the police chief because of the officer's disciplinary history. The officer had been the subject of three previous excessive force complaints, and after each incident the officer was suspended or reprimanded. Id. at 485. With the

benefit of discovery, the court considered expert testimony that the reprimands were insufficient and found this history of "repeated and serious complaints" sufficient to impose liability on the police chief despite the discipline imposed. Id. at 485-86.

Or, in J.K.J. v. Polk Cty., 960 F.3d 367, 383 (7th Cir. 2020) (en banc), cert. denied sub nom. Polk Cty., WI v. J. K. J., No. 20-427, 2021 WL 78483 (U.S. Jan. 11, 2021), the Seventh Circuit authorized a claim of deliberate indifference against a county after a female inmate was sexually assaulted by a jailer because the jail captain was aware of a prior instance of sexual misconduct by a jailer but inadequately addressed the problem: "the County's investigation of [the jailer] ended with the considered conclusion that a reprimand was adequate discipline. But even the reprimand came with jail officials assuring [the jailer] that the censure was 'not a big deal.' The jury could have viewed this slap on the wrist as confirming the jail's broken culture…."

In Lucente v. Cty. of Suffolk, 980 F.3d 284, 289–90 (2d Cir. 2020), the Second Circuit held that an inmate stated a valid claim of deliberate indifference against supervisory jail officials after a female inmate was sexually assaulted by a jailer because supervisors were aware of a prior instances of sexual harassment, despite the fact that the jailer had been previously reprimanded and cautioned that repetition of his behavior would result in more serious disciplinary action. Id. at 307 ("supervisors 'had to correct [his behavior] so many times it was like being a mother ...

you would be frustrated sometimes and just say, okay, you gotta stop"').

The panel majority broke with its sister circuits when it failed to recognize that a wholly inadequate response to a jailer's repeated transgressions creates liability for the supervisors or government entity. This Court should grant review to establish consistency among the circuits.

C. In the alternative, the Court should summarily reverse because the Eleventh Circuit applied qualified immunity improperly

If the Court chooses not to grant plenary review, it should summarily reverse the Eleventh Circuit. First, as detailed above, the majority holding is plainly contrary to City of Canton, Danley, and Depew. Moreover, the decision deviates from the Court's qualified immunity doctrine because the absence of identical precedent does not guarantee immunity for egregious constitutional violations. See, e.g., Hope v. Pelzer, 536 U.S. 730, 741, 745-46 (2002), Taylor v. Riojas, 141 S. Ct. 52 (2020). For these reasons, if the Court does not grant review it should summarily reverse the Eleventh Circuit.

2. The Court Should Grant Review to Revise or Eliminate the Application of Qualified Immunity to Claims of Supervisory Liability

In Georgia, sheriffs' offices are powerful law enforcement agencies. See O.C.G.A. §§ 15-16-1 et seq. There are 143 county jails in Georgia that incarcerate

approximately 236,000 people every year, all run by county sheriffs.[13] Georgia sheriffs also provide law enforcement duties, register and track sex offenders, serve civil papers, and provide courthouse security throughout the state.[14]

Nonetheless, the patchwork of applicable immunities makes it nearly impossible to subject a policy or practice of a sheriff's office to judicial review. Under Georgia law, a lawsuit against a sheriff in his official capacity is considered a suit against the county and the sheriff is protected by the county's sovereign immunity. See Gilbert v. Richardson, 264 Ga. 744, 747(2), 452 S.E.2d 476 (1994). The only waivers of that immunity are narrow, such as the automobile insurance waiver. See, e.g., O.C.G.A. § 33-24-51. Under federal law, claims against Georgia sheriffs for municipal liability (i.e., an unconstitutional policy or practice) under 42 U.S.C. § 1983 are typically barred by Eleventh Amendment immunity because sheriffs are usually considered "arms of the state" for Eleventh Amendment immunity purposes. See, e.g., Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003).

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[13] See Wanda Bertram and Alexi Jones, How many people in your state go to local jails every year?, Prison Policy Initiative (available at https://www.prisonpolicy.org/blog/2019/09/18/state-jail-bookings/) (last visited March 18, 2021).

[14] The Georgia Sheriff, March 2021, p.3 (available at https://georgiasheriffs.org/modules/mod_flipbook_23/tmpl/book.html) (last visited March 18, 2021) (publication by the Georgia Sheriffs' Association outlining the duties of Georgia sheriffs). See also, e.g., O.C.G.A. § 15-16-10.

In other words, the Eleventh Circuit and the courts of Georgia have worked hard to ensure that Georgia sheriffs are insulated from suit in their official capacities for claims of unconstitutional policies or practices. As a result, a citizen injured because of an unconstitutional policy or practice of a Georgia sheriff's office has but one recourse – an individual capacity suit against supervisory officials under 42 U.S.C. § 1983. There is no other meaningful option.

Given this backdrop, the fundamental unfairness of protecting Georgia sheriffs and supervisors with qualified immunity for the policies and practices of their offices comes into focus. While qualified immunity is unjust in its normal application, as is discussed below, the injustice is at its apex when it insulates a decision made by a committee of supervisors to adopt a formal policy, to allow a pattern of unconstitutional behavior, or to allow a jailer with a reprehensible disciplinary history to continue abusing inmates. This Court has explained that qualified immunity is especially necessary in the context of an officer's split-second decision. See Mullenix v. Luna, 577 U.S. 7, 12, 136 S. Ct. 305, 308 (2015) ("We have repeatedly told courts ... not to define clearly established law at a high level of generality. … Such specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts.") (citations and internal quotation omitted).

If that is the case, then this Court should consider the corollary – qualified immunity is *less* important, and should be applied with less specificity, when supervisors have the time and experience to make reasoned decisions.

That principle – that qualified immunity should be applied less stringently or not at all to reasoned decisions by supervisors – makes sense because a claim for supervisory liability is the functional equivalent of a claim for municipal liability, for which there is no qualified immunity. The current approach of applying qualified immunity to claims against Georgia sheriffs for unconstitutional policies and procedures creates a bizarre disconnect. If a citizen is injured by an unconstitutional policy of city or county law enforcement where a claim for municipal liability under 42 U.S.C. § 1983 is viable, he or she has a right to meaningful judicial review without clearing the hurdle of qualified immunity. But if that citizen is injured by a sheriff's unconstitutional policy which is not "clearly established" under a microscopic examination of then-current law, there is no meaningful judicial review of the potentially unconstitutional policy.

Moreover, qualified immunity makes less sense in a claim for supervisory liability because the standard is so exacting. A plaintiff like Quinette asserting a claim for a supervisor's failure to train or discipline an employee must establish that the failure amounts to deliberate indifference to the constitutional rights of the people with whom the employee will interact. City

of Canton at 388. Qualified immunity is redundant when applied to a claim for deliberate indifference because the "good faith" justification for qualified immunity is baked into the deliberate indifference standard. As one author has mused, "[T]he notion that a supervisor can be deliberately indifferent to a subordinate's violation of clearly established law and at the same time can act in 'objective legal reasonableness' or make a 'reasonable mistake' is incongruous on its face." Kit Kinports, Iqbal and Supervisory Immunity, 114 Penn St. L. Rev. 1291, 1305 (2010).

Finally, qualified immunity makes especially bad policy in the context of a supervisory liability claim. Supervisors like Georgia sheriffs are ultimately responsible for the policies and procedures of their offices; they are the ones with the power and resources to make necessary reforms. Liability under 42 U.S.C. § 1983 creates the incentive for supervisors to make reforms when necessary, and it can hold them to account when they do not. In the current landscape, it is exceedingly difficult to justify such a regressive policy which does not exist in the text of 42 U.S.C. § 1983 or the common law of official immunity.

The Court should grant review to revisit the application of qualified immunity to claims against supervisors, where the justification for the doctrine is at its least defensible.

3. The Court Should Recalibrate or Abolish Qualified Immunity

Petitioner adds his voice to the chorus of justices, judges, authors, and advocates who are calling for the Court to reexamine qualified immunity and either abolish it entirely or, at a minimum, limit its application.

A. Qualified immunity has no basis in text or history

Judge Reeves' opinion in Jamison v. McClendon, where he was bound by precedent to dismiss a lawsuit brought by an innocent black man who was illegally stopped, harassed, and searched, makes the case for a reexamination of qualified immunity as well as it can be made. 476 F. Supp. 3d 386 (S.D. Miss. 2020).

As Judge Reeves recounts, 42 U.S.C. § 1983, initially the "Ku Klux Klan Act," came to life during reconstruction as an effort to curb the "reign imposed by the Klan upon black citizens and their white sympathizers in the Southern States." Id. at 399. The Ku Klux Klan Act "targeted the racial violence in the South undertaken by the Klan, and the failure of the states to cope with that violence." Id. at 399. The Act targeted state officials with civil liability because many of the perpetrators of racial terror were members of law enforcement. Id. Of course, the Act failed for a century as reconstruction gave way to white supremacy, until the Court revived it in the 1961 Monroe v. Pape decision, breathing life back into the statute and creating real liability for state actors. Id. at 400-01.

Then came qualified immunity or, as Judge Reeves puts it, "The Empire Strikes Back." Id. at 402. Qualified immunity was born in Pierson v. Ray, where several "white and Negro Episcopal clergymen" were arrested and prosecuted because they "attempted to use segregated facilities at an interstate bus terminal" thereby violating a Mississippi law that essentially gave police officers unfettered power to order protesters to disburse and arrest them when they did not (the law was later invalidated by the Court when it was used to arrest Freedom Riders in an identical situation). 386 U.S. 547, 548-49, 87 S.Ct. 1213 (1967). The officers claimed that they should be able to avoid civil liability if they "acted in good faith and with probable cause in making an arrest under a statute that they believed to be valid." Id. at 555. The Court agreed, noting that "A policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does." Id. at 555-57.[15]

[15] Of course, the common law defense contemplated in Pierson is not a freestanding defense to any tort claim against a government official, it is a defense specific to a cause of action for false arrest which remains a defense to the tort today. See, e.g., Brown v. City of Huntsville, Ala., 608 F.3d 724, 734 (11th Cir. 2010) ("An arrest without a warrant and lacking probable cause violates the Constitution and can underpin a § 1983 claim, but the existence of probable cause at the time of arrest is an absolute bar to a subsequent constitutional challenge to the arrest.") So, the first reading of an immunity defense into 42 U.S.C. § 1983 is that of a

After Pierson, however, the Court diverged from any historical inquiry and "completely reformulated qualified immunity along principles not at all embodied in the common law." Ziglar v. Abbasi, 137 S. Ct. 1843, 1871, 198 L. Ed. 2d 290 (2017) (Thomas, J. concurring) (citation omitted). The Court created the modern qualified immunity doctrine and applied it "across the board and without regard to the precise nature of the various officials' duties or the precise character of the particular rights alleged to have been violated." Id. As Justice Thomas noted, the Court has yet to "locate that standard in the common law as it existed in 1871," and "some evidence supports the conclusion that common-law immunity as it existed in 1871 looked quite different from our current doctrine." Id.

In short, there is no defensible claim that qualified immunity is rooted in text or history – it is not. "The Supreme Court came up with it in 1982." Jamison at 404. Nor is this a novel take on history; there is a

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specific defense to a specific tort rather than an inherent immunity applicable to all claims against all government actors.

growing consensus among judges[16] and authors[17] that qualified immunity is a modern invention without basis in common law.

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[16] See, e.g., Horvath v. City of Leander, 946 F.3d 787, 795 (5th Cir. 2020), as revised (Jan. 13, 2020) (Ho, J., concurring in the judgment in part and dissenting in part); McCoy v. Alamu, 950 F.3d 226, 237 (5th Cir. 2020) (Costa, J., dissenting in part); Kelsay v. Ernst, 933 F.3d 975, 987 (8th Cir. 2019) (Grasz, J., dissenting); Zadeh v. Robinson, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part, dissenting in part); Rodriguez v. Swartz, 899 F.3d 719, 732 n.40 (9th Cir. 2018); Thompson v. Cope, 900 F.3d 414, 421 n.1 (7th Cir. 2018); Irish v. Fowler, No. 15-CV-0503 (JAW), 2020 WL 535961, at *51 n.157 (D. Me. Feb. 3, 2020); Ventura v. Rutledge, 398 F. Supp. 3d 682, 697 n.6 (E.D. Cal. 2019); Russell v. Wayne Cty. Sch. Dist., No. 17-CV-154 (CWR) (JCG), 2019 WL 3877741, at *2 (S.D. Miss. Aug. 16, 2019); Manzanares v. Roosevelt Cty. Adult Det. Ctr., 331 F. Supp. 3d 1260, 1293 n.10 (D.N.M. 2018); Thompson v. Clark, No. 14-CV-7349 (JBW), 2018 WL 3128975, at *9-10 (E.D.N.Y. June 26, 2018).

[17] See, e.g., Joanna C. Schwartz, The Case Against Qualified Immunity, 93 NOTRE DAME L. REV. 1797, 1801 (2018); Joanna C. Schwartz, How Qualified Immunity Fails, 127 YALE L.J. 2, 14 (2017); William Baude, Is Qualified Immunity Unlawful?, 106 CAL. L. REV. 45, 81 (2018); Pamela S. Karlan, Foreword: Democracy and Disdain, 126 HARV. L. REV. 1, 61 (2012); John C. Jeffries, Jr., What's Wrong with Qualified Immunity?, 62 FLA. L. REV. 851, 859 (2010); Mark R. Brown, The Fall and Rise of Qualified Immunity: From Hope to Harris, 9 NEV. L.J. 185, 195 (2008); Charles R. Wilson, "Location, Location, Location": Recent Developments in the Qualified Immunity Defense, 57 N.Y.U. ANN. SURV. AM. L. 445, 447 (2000); Samuel R. Bagenstos, Who Is Responsible for the Stealth Assault on Civil Rights?, 114 MICH. L. REV. 893, 909 (2016); Brief of Cross-Ideological Groups Dedicated to Ensuring Official Accountability, Restoring the Public's Trust in Law Enforcement, and Promoting the Rule of

Given the lack of any justification in the text of 42 U.S.C. § 1983 or in the history of common law tort defenses, it is time for this Court to reexamine the doctrine.

B. Qualified immunity fails in implementation and it fails is to achieve its policy goals

Qualified immunity is also an unworkable standard. One only need to look at the procedural history of this case to see it. The chief district judge (a federal judge of 24 years) reviewed the facts here, read the Eleventh Circuit's decision in Williams v. Santana,[18] and drew the eminently reasonable conclusion that, if the supervisors in Williams were on notice of the unconstitutionality of their actions in 2009, the supervisors here were on similar notice. The Eleventh Circuit dissenting judge (a federal judge of 31 years) likewise believed the supervisors here were on notice of the unconstitutionality of their actions. The

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Law as Amici Curiae in Support of Petitioner, Baxter v. Bracey, 140 S. Ct. 1862 (2020) (No. 18-1287) 2019 WL 2370285.

[18] In Williams, the Eleventh Circuit denied supervisors' claims of qualified immunity in an analogous case where "numerous prior incidents involving [a police officer's] use of force were sufficient to put [the supervisor] on notice of misconduct that was sufficiently 'obvious, flagrant, rampant and of continued duration' to require him to act" even though the officer had been subject to a previous written reprimand. 340 F. App'x 614 at 618. There, the Court found the constitutional principle was clearly established via Brown v. Crawford, 906 F.2d 667, 671 (11th Cir.1990) and Danley, 540 F.3d at 1315.

panel majority (two judges who have been on the bench four and 19 years respectively) applied qualified immunity more narrowly, believing that this Court's recent precedents require a much narrower articulation of constitutional principles before even allowing Petitioner to undertake discovery.

In other words, four federal judges with almost 80 collective years on the bench devoted the substantial resources of their offices and, doing their level best to apply this Court's precedent faithfully, came out differently on the question. How workable is a standard that repeatedly divides the best jurists, and does so not on political or ideological lines, but purely on the difficulty of applying the standard?[19]

It would be easy to say Quinette's case is uniquely difficult, but it is not. This level of difficulty in applying the broken doctrine is not the exception, it is the rule. Every year, this Court sees petition after petition where the question of qualified immunity is either

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[19] "Although the Court is not always unanimous on these issues, it is fair to say that qualified immunity has been as much a liberal as a conservative project on the Supreme Court. Judges disagree in these cases no matter which President appointed them. Qualified immunity is one area proving the truth of Chief Justice Roberts' statement, 'We do not have Obama judges or Trump judges, Bush judges or Clinton judges.'" Jamison at 408 (internal citations and quotations omitted).

difficult or impossible to apply correctly.[20] This is not the hallmark of a workable doctrine.[21]

Nor does qualified immunity accomplish its policy goals. Qualified immunity, which protects government actors from personal financial liability, is primarily justified by the purported fear of chilling government actors from exercising their duties lest they see personal financial ruin.[22] But when an individual does not face personal financial liability – when the damages will be paid by an insurer or the public

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[20] Last year's crop of difficult cases included Baxter v. Bracey, 140 S. Ct. 1862 (2020); Brennan v. Dawson, 141 S. Ct. 108 (2020) and Dawson v. Brennan, 141 S. Ct. 108 (2020); Zadeh v. Robinson, 141 S. Ct. 110 (2020); Corbitt v. Vickers, 141 S. Ct. 110 (2020); West v. Winfield, 141 S. Ct. 111 (2020); Mason v. Faul, 141 S. Ct. 116 (2020); Anderson v. City of Minneapolis, Minnesota, 141 S. Ct. 110 (2020); and Hunter v. Cole, 141 S. Ct. 111 (2020).

[21] See Johnson v. United States, 135 S. Ct. 2551, 2562 (2015) ("The doctrine of stare decisis allows us to revisit an earlier decision where experience with its application reveals that it is unworkable").

[22] See, e.g., Forrester v. White, 484 U.S. 219, 223, 108 S. Ct. 538, 542 (1988) ("Special problems arise [] when government officials are exposed to liability for damages. … By its nature [] the threat of liability can create perverse incentives that operate to inhibit officials in the proper performance of their duties. … When officials are threatened with personal liability for acts taken pursuant to their official duties, they may well be induced to act with an excess of caution or otherwise to skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct.")

treasury – the policy justification fails, and this Court does not normally extend immunity.[23]

But recent scholarship has revealed that, in practice, government actors almost never face personal financial liability – police officers almost never contribute to settlements and judgments, they never contribute to punitive damages awards, and they almost never have to pay for defense counsel.[24] The same is true for corrections officers like Reed – personal financial exposure is almost never a

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[23] See, e.g., Richardson v. McKnight, 521 U.S. 399, 411 (1997) (comprehensive insurance coverage for private prison guards "reduces the employment discouraging fear of unwarranted liability"); Owen v. City of Independence, 445 U.S. 622, 654 (1980) (noting that the "injustice … of subjecting to liability an officer who is required … to exercise discretion" is "simply not implicated when the damages award comes not from the official's pocket, but from the public treasury").

[24] See Joanna C. Schwartz, Police Indemnification, 89 N.Y.U. L. Rev. 885, 890 (2014) ("Although my data has some arguably inevitable limitations, it resoundingly answers the question posed: Police officers are virtually always indemnified. Between 2006 and 2011, in forty-four of the country's largest jurisdictions, officers financially contributed to settlements and judgments in just .41% of the approximately 9225 civil rights damages actions resolved in plaintiffs' favor, and their contributions amounted to just .02% of the over $730 million spent by cities, counties, and states in these cases. Officers did not pay a dime of the over $3.9 million awarded in punitive damages. And officers in the thirty-seven small and mid-sized jurisdictions in my study never contributed to settlements or judgments in lawsuits brought against them.")

legitimate concern.[25] The research therefore suggests that the dilemma which concerned the Court in Pierson – "A policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does" – is a false one. 386 U.S. at 555-57.

C. Qualified immunity is unjust

In addition to being unmoored in text or history, categorically unworkable, and unable to accomplish its stated goals, qualified immunity is also unjust. Judge Reeves' accounting of recent qualified immunity decisions makes the point:

> A review of our qualified immunity precedent makes clear that the Court has dispensed with any pretense of balancing competing values. Our courts have shielded a police officer who shot a child while the officer was attempting to shoot the family dog;[26] prison guards who forced

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[25] See Margo Schlanger, Inmate Litigation, 116 Harv. L. Rev. 1555, 1675–76 (2003) ("But for individual officers, litigation is mostly a minor inconvenience because, although lawsuits name them as defendants, officers do not have to pay for either their defense or any resulting settlement or judgment. Instead, in nearly all inmate litigation, it is the correctional agency that pays both litigation costs and any judgments or settlements, even though individual officers are the nominal defendants.")

[26] Citing Corbitt v. Vickers, 929 F.3d 1304, 1323 (11th Cir. 2019), cert. denied, No. 19-679, —— U.S. ——, 141 S.Ct. 110 (U.S. June 15, 2020).

a prisoner to sleep in cells "covered in feces" for days;[27] police officers who stole over $225,000 worth of property;[28] a deputy who body-slammed a woman after she simply "ignored [the deputy's] command and walked away";[29] an officer who seriously burned a woman after detonating a "flashbang" device in the bedroom where she was sleeping;[30] an officer who deployed a dog against a suspect who "claim[ed] that he surrendered by raising his hands in the air";[31] and an officer who shot an unarmed woman eight times after she threw a knife and

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[27] Citing Taylor v. Stevens, 946 F.3d 211, 220 (5th Cir. 2019). Taylor v. Stevens was reversed by this Court for improperly applying qualified immunity, which further demonstrates the unworkability of the standard – the Fifth Circuit took this Court's precedent to require immunity for the deplorable conduct in that case. See Taylor v. Riojas, 141 S. Ct. 52 (2020).

[28] Citing Jessop v. City of Fresno, 936 F.3d 937, 942 (9th Cir. 2019), cert. denied No. 19-1021, 140 S.Ct. 2793 (U.S. May 18, 2020).

[29] Citing Kelsay v. Ernst, 933 F.3d 975, 980 (8th Cir. 2019), cert. denied, No. 19-682, 140 S.Ct. 2760 (U.S. May 18, 2020).

[30] Citing Dukes v. Deaton, 852 F.3d 1035, 1039 (11th Cir. 2017).

[31] Citing Baxter v. Bracey, 751 F. App'x 869, 872 (6th Cir. 2018), cert. denied, 140 S. Ct. 1862 (2020).

> glass at a police dog that was attacking her brother.[32]
>
> If Section 1983 was created to make the courts "guardians of the people's federal rights," what kind of guardians have the courts become?

Jamison, 476 F. Supp. 3d at 403–04.

Many scholars call qualified immunity a moral failure because it "routinely leaves individuals whose rights are violated without any legal remedy."[33] In practice, the ability of the victim of governmental misconduct to get redress "turns not on whether state actors broke the law, nor even on how serious their misconduct was, but simply on the happenstance of whether the case law in their jurisdiction happens to include prior cases with fact patterns that match their own." Id. This is an impossible criticism to answer because it is an injustice inherent in the standard itself.

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[32] Citing Willingham v. Loughnan, 261 F.3d 1178, 1181 (11th Cir. 2001), cert. granted, judgment vacated, 537 U.S. 801, 123 S.Ct. 68 (2002).

[33] See Jay Schweikert, Qualified Immunity: A Legal, Practical, and Moral Failure, available at https://www.cato.org/policy-analysis/qualified-immunity-legal-practical-moral-failure (last visited March 16, 2021). See also, infra, note 14.

Moreover, the doctrine creates the uniquely perverse outcome of barring the more egregious cases (like Quinette's) because obviously unconstitutional conduct is by its nature less likely to lead to the development of precedent to serve as clearly established law – because it is obviously unconstitutional, officials are less likely to do it. See Safford, 557 U.S. at 377-78.

This is an ideal case for the Court to reconsider qualified immunity because the facts are straightforward and entirely uncontested – the parties are here on a dismissal under Fed. R. Civ. P. 12(b)(6). The law is also squarely presented with no stray or ancillary issues – the only holding before this Court is whether the supervisors below were protected by qualified immunity. Moreover, the context here – a supervisory decision by multiple commanders in committee to allow a violent and abusive jailer to continue overseeing and abusing inmates – is not clouded with the "split-second decision-making" of a dynamic decision by a law enforcement officer. Finally, the granularity of the panel majority's decision, and the divide it created among the four judges who reviewed the matter, perfectly demonstrates the difficulty courts face in applying this unworkable doctrine.

CONCLUSION

The petition for writ of certiorari should be granted or, in the alternative, the Court should summarily reverse because the Eleventh Circuit applied qualified immunity improperly.

Respectfully Submitted

This 18th day of March, 2021.

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