

No. 21-1522

In the Supreme Court of the United States

WAYNE TORCIVIA, *Petitioner*

v.

SUFFOLK COUNTY, NEW YORK, ET AL.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Second Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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As the petition explained (at 30-32), there is no reason for qualified immunity to continue giving non-police state actors the same protections that it gives to police officers. Late last week, Judge Ho agreed. In an opinion concurring in the denial of en banc rehearing, he explained that “when public officials make the deliberate and considered decision to trample on a citizen’s constitutional rights, they deserve to be held accountable.” *Wearry v. Foster*, No. 20-30406, slip op. at 3 (5th Cir. Oct. 27, 2022) (Ho, J., concurring in denial). Judge Ho’s opinion provides yet another reason for this Court to consider the second question presented in this case—i.e., the availability of qualified immunity for non-police state actors.

In his opinion, Judge Ho (at 3-4) quoted JUSTICE THOMAS’s opinion in *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2422 (2021) (THOMAS, J., respecting denial), where JUSTICE THOMAS expressed doubt that such officials, “who have time to make calculated choices about enacting or enforcing unconstitutional policies,” should “receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting[.]” Judge Ho then explored several Fifth Circuit opinions that involved “split-second, good faith decision[s]” of police officers—one involving an active shooter and the other a man who threatened to light his home and family on fire. Slip op. at 4. Those circumstances, he explained, were markedly different from cases that “fall[] squarely in the deliberate violation bucket” where qualified immunity is less necessary. *Id.*

Judge Ho’s conclusion that “deliberate misconduct” deserves to be treated differently from split-second

police decisions was correct. And it provides another reason to grant the petition because of the deliberate misconduct in petitioner's case.

As noted in the petition, petitioner was held for hours after being medically cleared for discharge—just to carry out the seizure of his firearms from his home. Pet. 15 (citing Pet. App. 46a-47a, 11a-12a). The doctrine of qualified immunity is not furthered by protecting non-police state actors in those circumstances.

For all the reasons identified in the petition and in Judge Ho's opinion, this Court should grant the petition to make that clear.

Respectfully submitted,

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