No. ____

IN THE

Supreme Court of the United States

LYNN HAMLET,

Petitioner,

v.

OFFICER HOXIE, ET AL.,

Respondents.

On Petition for a 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 Lynn Hamlet—an elderly man with visible open wounds on his ankles resulting from diabetes—suffered a life-threatening bacterial infection after Officer Brandon Hoxie trapped him in a backed-up shower filled with another person's feces, removed from his cell any method by which he could clean the excrement from his wounds, and barred him from showering for a week while human waste festered in his sores. Hamlet brought this suit under 42 U.S.C. § 1983, challenging Officer Hoxie's conduct as violating the Eighth Amendment. The Eleventh Circuit held that Officer Hoxie was entitled to qualified immunity because there was no circuit precedent holding that the Eighth Amendment bars prison officials from forcing an incarcerated person to have gratuitous contact with human waste under these precise circumstances.

The questions presented are:

I. Whether it is "clearly established" for purposes of qualified immunity that the Eighth Amendment bars a prison official from forcing a person with diabetes and open wounds to endure prolonged and unnecessary exposure to feces.

II. Whether the Court should overrule *Procunier v. Navarette*, 434 U.S. 555 (1978), and hold that qualified immunity under 42 U.S.C. § 1983 does not extend to a suit alleging that a prison guard subjected the plaintiff to unlawful conditions of confinement, because similar state officials were not immune from similar suits at common law.

RELATED PROCEEDINGS

Hamlet v. Hoxie, No. 2:18-cv-14167-DMM, U.S. District Court for the Southern District of Florida. Judgment entered on April 26, 2021.

Hamlet v. Hoxie, No. 21-11937, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered on November 9, 2022.

Hamlet v. Hoxie, No. 21-11937-CC, U.S. Court of Appeals for the Eleventh Circuit. Order entered on March 1, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Lynn Hamlet respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is unpublished but available at 2022 WL 16827438 and reprinted in the Appendix to the Petition ("App.") at 1a-15a. The decision of the district court is unpublished but available at 2021 WL 2384516 and reprinted at App. 16a-33a. The unpublished order of the court of appeals denying rehearing en banc is reprinted at App. 34a.

JURISDICTION

The court of appeals entered its judgment on November 9, 2022, App. 1a, and denied a timely petition for rehearing en banc on March 1, 2023, *id.* at 34a. On May 5, 2023, Justice Thomas extended the time to file a petition for a writ of certiorari to and including June 29, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eighth Amendment to the U.S. Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Relevant statutory provision of the Ku Klux Klan Act of 1871, Pub. L. No. 42-22, § 1, 17 Stat. 13., is reproduced at App. 35a.

INTRODUCTION

This petition presents two important questions about the nature and scope of the "qualified immunity" doctrine this Court began reading into the text of 42 U.S.C. § 1983 some 60 years ago.

The Court has always acknowledged that § 1983 does not expressly provide state officers who violate federal rights any immunity from liability for their conduct. The Court's early qualified immunity decisions reconciled the doctrine with the statute's text on the premise that certain immunities were deeply rooted in the common law when § 1983 was enacted, and that if Congress had intended to override those settled immunities, it would have said so expressly. *See*, *e.g.*, *Pierson v. Ray*, 386 U.S. 547, 554-55 (1967). The initial decisions in this line remained faithful to this principle, allowing state officials to claim immunity from liability for allegedly unlawful conduct under § 1983 only to the extent similar state officials could claim immunity for similar liability at common law.

The Court's decisions first deviated from this principle in the context of public prison guards—the precise context in which this case arises. In *Procunier v. Navarette*, 434 U.S. 555 (1978), the Court held that prison guards who violate federally-protected rights may be immune from § 1983 liability, but *without* any showing that similarly situated officials could claim similar immunity at common law. The Court instead adopted a new, radically broader immunity doctrine—*all* public employees are immune from liability for violating a federal right, *unless* the right at issue was already "clearly established." *Id.* at 562. The Court did not purport to ground this theory in the

common law, which recognized no such general protection for public officials who commit wrongful acts. Rather, the Court extended immunity to all public employees for a mix of purely policy-based reasons related to encouraging public service and promoting efficient government operations. *Id.*; *see Richardson v. McKnight*, 521 U.S. 399, 407-08 (1997) (reciting policy bases for immunizing public employees from liability for violating federal rights). "Truth to tell," Justice Scalia later objected, *Procunier* "did not trouble itself with history," but instead "simply set forth a policy prescription." *Richardson*, 521 U.S. at 415-16 (Scalia, J., dissenting). And as Justice Thomas has observed more recently, the Court's decisions since *Procunier* have "completely reformulated qualified immunity along principles not at all embodied in the common law," instead emphasizing "precisely the sort of free-wheeling policy choices" the Court has so insistently "disclaimed the power to make" in other contexts. *Ziglar v. Abbasi*, 582 U.S. 120, 158-60 (2017) (Thomas, J., concurring) (cleaned up).

This case illustrates the consequences of the Court's doctrinal shift away from the common law. Applying an overly rigid formulation of the Court's current "clearly established right" standard, the Eleventh Circuit extended immunity in the most ghoulish of circumstances to a prison guard who never would have received immunity from liability for similar conduct at common law. Officer Hoxie forced Petitioner Lynn Hamlet, a diabetic with open wounds, to remain in a flooded shower contaminated with feces and urine from another person, and then prevented Hamlet from cleaning the human filth from his wounds for

days. Infection inevitably ensued, and prison officials rushed him to the hospital to undergo life-saving heart surgery. Wrongly assuming that a right is not "clearly established" unless a specific circuit precedent had already found liability in essentially the same circumstances, the Eleventh Circuit held that Officer Hoxie could not be held liable for his obviously unlawful conduct because, in the court's view, his conduct was less egregious than the conduct in the only other precedent the court considered.

That holding raises two issues worthy of this Court's review. The first assumes that the ahistorical, policy-based "clearly established right" standard requires the kind of rigid, exacting comparison to prior precedent the Eleventh Circuit pursued below. The Court's cases require no such thing. And by demanding such a precise match here, the Eleventh Circuit extended qualified immunity to shameful, inhumane conduct that obviously violated Hamlet's Eighth Amendment right, in direct conflict with cases from this Court and other circuits addressing substantially similar conduct. Indeed, the violation here is obvious enough to warrant summary reversal, as this Court has done in other qualified immunity cases where lower courts refused to apply settled law. *See Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020); *Tolan v. Cotton*, 572 U.S. 650, 655-60 (2014); *Wilkins v. Gaddy*, 559 U.S. 34 (2010); *see also Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (summarily reversing a lower court for advancing a proposition when "this Court ha[d] previously considered—and rejected—almost that exact formulation of the qualified immunity question").

The second question is more fundamental. As summarized above and as further elaborated in the body of this petition, this Court's qualified-immunity jurisprudence took a wrong turn in *Procunier* away from the text of § 1983 and the common-law immunities the text was presumed to embody, and toward an explicitly policy-based approach to determining when a state official should be immune from liability for violating federally protected rights. The inherently subjective, mileage-varies "clearly established right" standard has led directly to the conflict and confusion illustrated by this case. It is time to restore § 1983 immunity to its objective, common-law foundation.

Justice Thomas has already well-summarized the case for certiorari on this issue: "Until we shift the focus of our inquiry to whether immunity existed at common law, we will continue to substitute our own policy preferences for the mandates of Congress. In an appropriate case, we should reconsider our qualified immunity jurisprudence." *Ziglar*, 582 U.S. at 160 (Thomas, J., concurring). Now is the time, and this is the case.

STATEMENT OF THE CASE

Respondents Locked Lynn Hamlet, an Elderly Man with Diabetes and Open Wounds, Inside a Flooded Shower with Another Person's Excrement and Subsequently Disallowed Him from Showering for One Week

At the time of the events giving rise to this suit, Hamlet was incarcerated in Martin Correctional Institution, and respondent Officer Brandon Hoxie was

an official at Martin Correctional Institution. App. 17a.

Hamlet is an elderly man with physical impairments resulting from diabetes, which include open wounds on his ankles. Those bright red sores were on full display when Officer Hoxie escorted him to and from a handicap shower in nothing but his underwear. App. 2a-4a. As the locked, cramped shower filled with water, Hamlet discovered that a prior occupant had defecated and urinated inside the enclosure. *Id.* at 4a.[1] Unable to avoid the excrement because the shower was flooded to his ankles, Hamlet notified Officer Hoxie and asked to be released. *Id.* Rather than letting Hamlet out of the excrement-filled shower stall, Officer Hoxie pushed him back inside it, trapping him there for 40 minutes in ankle-deep standing water, as excrement and urine seeped into Hamlet's open wounds. *Id.*

While Hamlet was trapped in the shower, Officer Hoxie removed the sheets and clean clothes from his cell. *Id.* When Officer Hoxie finally escorted Hamlet to his ransacked cell, Officer Hoxie left Hamlet nothing but toilet water in his cell and his bare hands to clean his wounds. *Id.* But he "wasn't successful. [He] couldn't get [the feces] out. It was stuck there." ECF 112-1 at 15; App. 18a. Officer Hoxie stood and watched as Hamlet tried cleaning his wounds in his toilet, with no success. ECF 142 at 9. After watching Hamlet's feeble attempts to remove the feces from his

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[1] According to Officer Hoxie, "it is undisputed that Plaintiff *claims* that" prison officials trapped the prior occupant "in a shower stall for 14 hours with no toilet break." ECF 112 at 3 n.2.

body, Officer Hoxie forbade officials from allowing Hamlet to shower for the next week. App. 4a.

As bacteria from the feces and urine spread through Hamlet's body, he became increasingly sick and was eventually hospitalized. *Id.*; ECF 112-1 at 18; App. 18a. He was "so ill that he beg[g]ed and prayed to die." ECF 10 at 10. The bacterial infection destroyed Hamlet's heart valve, requiring emergency heart surgery to save his life. App. 18a, 5a. In total, he spent months in the hospital and continues to suffer serious complications years later. ECF 115 at 23; App. 5a.

Hamlet Files Suit Challenging the Constitutionality of Respondents' Conduct, and The District Court Rules in Respondents' Favor

While hospitalized and proceeding *pro se*, Hamlet filed suit against Respondents under 42 U.S.C. § 1983, alleging, as relevant here, that Officer Hoxie violated the Eighth Amendment by confining him to an excrement-filled, backed-up shower stall while he had visible, open wounds on his ankles, and barring him from cleaning the feces from his sores for a week, until he developed a near-fatal infection that required heart surgery. App. 5a. The district court granted Officer Hoxie's motion for summary judgment, finding no Eighth Amendment violation. App. 28a.

With the assistance of pro bono counsel, Hamlet appealed, and the Eleventh Circuit affirmed. App. 6a-7a. The court granted qualified immunity to Officer Hoxie, ignoring overwhelming case law from this Court, its own circuit, and multiple other circuits holding both that (1) forcing an incarcerated person to

endure gratuitous contact with feces is unconstitutional and (2) qualified immunity is unavailable even in novel factual situations if the violation is obvious. App. 9a, 11a n.6, 12a. The court also dramatically misconstrued the record, cherry-picking facts that were favorable to Officer Hoxie and ignoring material facts supporting Hamlet, the non-movant. It then relied on those facts in a strict side-by-side comparison with a single in-circuit case, *Brooks v. Warden*, 800 F.3d 1295 (11th Cir. 2015). Because the (misconstrued) facts of Hamlet's case were not identical to *Brooks*, the Eleventh Circuit held that prior case law did not clearly establish the unlawfulness of Officer Hoxie's conduct.

The court declined to consider whether the violation here was so obviously unlawful that any reasonable officer would have known it was illegal—even though Hamlet specifically briefed the issue, pointing out that this Court has recently reaffirmed this "obviousness" doctrine multiple times. *See McCoy v. Alamu*, 141 S. Ct. 1364 (2021) (mem.); *Taylor*, 141 S. Ct. at 53-54; *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Subsequently, the Eleventh Circuit denied Hamlet's petition for rehearing. App. 34a.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH PRECEDENTS OF THIS COURT AND OTHER CIRCUITS

Under the current version of the judge-made qualified immunity doctrine, a state officer can be liable for depriving an individual of federally-protected rights only if the officer's conduct violated a legal rule

that was "clearly established" when the conduct occurred. According to this Court's precedents, a law can be "clearly established" for purposes of qualified immunity in essentially two ways. First, a prohibition on official conduct can be set forth in precedent with "materially similar" or "fundamentally similar" facts. *Hope*, 536 U.S. at 741. Second, a legal prohibition "may apply with obvious clarity to the specific conduct in question, even though the very action in question has not previously been held unlawful." *Id.* (cleaned up) (quoting *United States v. Lanier*, 520 U.S. 259, 271 (1997)).

The Eleventh Circuit held that Officer Hoxie was entitled to qualified immunity because he did not violate "clearly established" law when he trapped Hamlet in a flooded, feces-contaminated shower and deprived him of means to remove feces from his wounds for many days thereafter. According to the Eleventh Circuit, the facts of this case were not similar enough to any existing precedents to put Officer Hoxie on notice that his treatment of Hamlet violated the Eighth Amendment. App. 9a, 11a n.6, 12a. That analysis contravenes the precedents of this Court and other circuits in two ways, each of which independently justifies review and reversal of the decision below.

A. The Decision Below Conflicts With Many Decisions Clearly Establishing That Unnecessary And Prolonged Exposure To Feces Violates The Eighth Amendment

Before Officer Hoxie forced Hamlet to soak his open wounds in feces-contaminated water and forbade him from cleaning the excrement out of his sores for a week, every circuit with a prison population had

held that forcing incarcerated persons to endure gratuitous, close contact with human feces violates the objective prong of the Eighth Amendment. The Eleventh Circuit's own decisions clearly established the same rule. In this case, however, the Eleventh Circuit escaped application of its precedents by applying a rigid, overly exacting standard of comparisons to prior cases. Its resulting holding that Officer Hoxie's conduct did not violate a clearly established right creates a direct conflict among the circuits as to the existence and nature of that right.

This Court has made clear that when determining whether an officer's conduct violated a legal rule clearly established by existing precedents, a court should not look for a precise fit with the facts of prior cases. An existing precedent need only involve "materially similar" or "fundamentally similar" facts. *Hope*, 536 U.S. at 741. Multiple precedents from the Eleventh Circuit and elsewhere satisfied this standard and provided Officer Hoxie notice that his conduct violated the Eighth Amendment.

More than 50 years ago, the Fifth Circuit (predecessor to the Eleventh) held that the Eighth Amendment prohibits keeping an incarcerated person in conditions lacking "basic elements of hygiene." *Novak v. Beto*, 453 F.2d 661, 665 (5th Cir. 1971).[2] Two decades later, the court applied that rule in *Chandler v. Baird*, 926 F.2d 1057 (11th Cir. 1991)—denying summary

[2] *See Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (adopting as Eleventh Circuit precedent all decisions of the former Fifth Circuit issued before October 1, 1981).

judgment to prison officials who denied the plaintiff toilet paper, running water, linens, or other items to clean himself, explaining that "the right of a prisoner not to be confined . . . in conditions lacking basic sanitation was well established." *Id.* at 1063, 1066. More recently, in *Brooks v. Warden*, 800 F.3d 1295 (11th Cir. 2015), the Eleventh Circuit held that confining an incarcerated person to a hospital bed for two days in a jumpsuit filled with his own waste was a clearly established Eighth Amendment violation. *Id.* at 1298. According to *Brooks*, "the health risks of prolonged exposure to human excrement are obvious" and therefore objectively present "a substantial risk of serious harm" sufficient to establish an Eighth Amendment violation. *Id*. at 1305.

The *Brooks* court recognized that conduct need not be as heinous as in *Brooks* itself to violate clearly established law. To the contrary, the court observed, the facts there were a "rare case of obvious clarity" with facts "worse than those found in the governing caselaw." *Id.* at 1307, 1305 (alterations and quotations omitted). Years later, the Eleventh Circuit confirmed that *Brooks* is more "extreme" than "other situations courts [have] encountered." *Bilal v. Geo Care, LLC*, 981 F.3d 903, 915 (11th Cir. 2020). *Brooks*, then, is the current high-water mark for egregiousness, not a constitutional floor that compels qualified immunity whenever the facts are less egregious.

The Eleventh Circuit, however, applied an overly exacting standard of precision and held that *Novak*, *Baird*, and *Brooks* did not provide adequate notice because, in the court's view, Hamlet experienced a less egregious exposure to feces than the plaintiffs in those

cases. App. 11a, n.6. That asserted comparison is not just overly exacting—it is demonstrably false. *Baird* did not allege contact with feces at all—only proximity to filth and the deprivation of certain cleaning tools. 926 F.2d at 1063. And as *Brooks* recognized, *Novak* relied on cases holding that mere "*close proximity* with excrement" sufficed to state an Eighth Amendment claim. *Brooks*, 800 F.3d at 1304 (emphasis added). *Novak* and *Baird* thus clearly established that the Eighth Amendment forbids forcing people to endure more than de minimis proximity to feces. *See also Canupp v. Paul*, 716 F. App'x 836, 841 (11th Cir. 2017) ("This Court's precedent establishes that an inmate's prolonged exposure to human waste 'sufficiently allege[s] a substantial risk of serious harm.'" (quoting *Brooks*, 800 F.3d at 1305)).

Instead of properly applying *Novak* and *Baird*, the Eleventh Circuit focused almost exclusively on *Brooks*, but its analysis inverted the proper inquiry. Rather than treating *Brooks* as *one example* of a clear Eighth Amendment violation—as *Brooks* itself instructed, *see supra* at 11—the court treated the facts in *Brooks* as if they established an *absolute threshold* for qualified immunity, i.e., any conduct arguably less egregious would necessarily qualify for immunity. But even accepting for the moment the false premise that the conduct in *Brooks* was worse than the violation here,[3] the legal question was not whether

[3] In fact, Hamlet's experience was in important ways *worse* than that of the *Brooks* plaintiff. Whereas the *Brooks* plaintiff sat in his own excrement for two days, Hamlet was unable to wash off the feces for an entire week. The *Brooks* plaintiff endured feces on his skin; Hamlet's ordeal left feces festering in open wounds.

Hamlet's experience reached the same exact threshold of egregiousness in *Brooks*. It was whether relevant prior precedents together provided adequate notice that Hamlet's conditions violated the Eighth Amendment.

Brooks certainly is not the only case establishing the unconstitutionality of contact with human feces. It is just one particularly horrific example. In addition to *Novak* and *Baird*, many cases from other circuits—including several discussed in both *Brooks* and *Bilal*—have held that the "deprivation of basic sanitary conditions," including "exposure to human waste" without prompt remediation, "can state a constitutional violation." *Bilal*, 981 F.3d at 915 (quoting *Brooks*, 800 F.3d at 1304 (collecting cases)).

As far back as 1990, the Eighth Circuit allowed an Eighth Amendment claim to proceed where the plaintiffs were asked to clean "a wet-well portion of the prison's raw sewage lift-pump station," which would have put them in close proximity to raw sewage for up to 10 minutes at a time. *Fruit v. Norris*, 905 F.2d 1147, 1148-49 (8th Cir. 1990). It emphasized that "courts have been especially cautious about condoning conditions that include an inmate's proximity to human waste" and that "common sense" suggested prison officers "should have had knowledge that unprotected contact with human waste could cause disease." *Id*. at 1150-51 (collecting cases).

Unlike the *Brooks* plaintiff, Hamlet was exposed to someone else's excrement. And while the *Brooks* plaintiff "did not allege any physical injury," 800 F.3d at 1307, Hamlet suffered life-threatening injuries from his exposure.

In *Shannon v. Graves*, 257 F.3d 1164 (10th Cir. 2001), the Tenth Circuit concluded that blankets and clothing that had been contaminated with sewage "with a consequent risk to human health" could satisfy the objective prong of an Eighth Amendment claim, even though the items were cleaned in a commercial washer before being provided to incarcerated persons. *Id.* at 1169. In reaching this conclusion, the court found it "obvious" that "exposure to the human waste of others carries a significant risk of contracting infectious diseases such as Hepatitis A, shigella, and others." *Id.* at 1168.

In *Willey v. Kirkpatrick*, 801 F.3d 51 (2d Cir. 2015), the Second Circuit went farther, vacating summary judgment where prison officials forced someone to smell—not touch—their own waste. *Id.* at 55. It is unconstitutional, the court held, to "restrict[] the airflow to [the plaintiff's] small cell and then incapacitate[] his toilet, so that he was reduced to breathing a miasma of his own accumulating waste." *Id.* The court emphasized that the Eighth Amendment imposes no "bright-line durational requirement for a viable unsanitary-conditions claim." *Id.* at 68.

The list goes on. *See Surprenant v. Rivas*, 424 F.3d 5, 20-21 (1st Cir. 2005) (finding "the combination of near-continuous confinement, denial of exercise time, water, and items of personal hygiene," along with "exposure to bodily waste . . . posed an intolerable health and safety hazard"); *Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996) (remanding for trial where plaintiff was denied toothbrushes and soap, while cell was "saturated with the fumes of feces, urine, and vomit"); *Young v. Quinlan*, 960 F.2d 351, 355, 357, 365 (3d Cir.

1992) (forcing plaintiff to defecate and urinate on cell floor and depriving him of toilet paper, showers, drinking water, and ability to wash hands or empty urinal for four days is "a violation of the basic concepts of humanity and decency that are at the core of the protections afforded by the Eighth Amendment"); *Williams v. Griffin*, 952 F.2d 820, 825 (4th Cir. 1991) (reversing summary judgment, where unsanitary conditions included urine-soaked toilets, sewage on floors, and deprivation of blankets); *McCord v. Maggio*, 927 F.2d 844, 848 (5th Cir. 1991) (plaintiff sleeping on "mattress in filthy water contaminated with human waste, unquestionably a health hazard" and the "environment was so unhygienic as to amount to a clear violation of the Eighth Amendment"); *Johnson v. Pelker*, 891 F.2d 136, 139-40 (7th Cir. 1989) (vacating summary judgment where prison officials placed plaintiff in cell for three days, "without running water and in which feces [we]re smeared on the walls[,] while ignoring his requests for cleaning supplies" and water); *c.f. Inmates of Occoquan v. Barry*, 844 F.2d 828, 836 (D.C. Cir. 1988) (recognizing "deprivations of essential food, medical care, or sanitation" as protected by the Eighth Amendment) (emphasis added).[4]

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[4] In addition to making an overly precise comparison to other cases, the Eleventh Circuit's decision seriously misstates the summary judgment factual record, which is far worse than the decision suggests. *See Tolan*, 572 U.S. at 657 (summarily reversing appellate court for granting qualified immunity in § 1983 case without viewing facts in light most favorable to non-movant). According to the Eleventh Circuit, "[n]othing in this record suggests that Hoxie . . . even knew that he had wounds on his ankles, much less that he had feces stuck to his wounds for days after his shower." App. 12a. Wrong. The record shows that

In short, a mountain of case law compels the conclusion that when Officer Hoxie forced Hamlet to marinate his open wounds in another person's feces and keep that feces on his body and in his wounds for a full week, Officer Hoxie violated Hamlet's clearly established right to be free from gratuitous and prolonged contact with feces. The Eleventh Circuit improperly focused on just one case—to the exclusion of dozens of others—and wrongly concluded that Officer Hoxie's conduct did not violate "clearly established" law merely because he forced Hamlet to endure contact with another human's feces in a context different from that one case.

Before the Eleventh Circuit's decision, the circuits were united in holding that the Eighth Amendment bars more than de minimis proximity and contact with feces without prompt remediation. The Eleventh Circuit broke with other circuits in declaring that forcing someone to soak their open wounds in another human's feces and allowing that feces to fester in those wounds until it causes life-threatening illness violates no clearly established right. This Court should grant review—or summarily reverse—to restore uniformity among the lower courts.

Officer Hoxie *stood and watched* as Hamlet unsuccessfully sought to clean his wounds after being removed from the shower. ECF 142 at 9. Further, after watching that failed attempt, Officer Hoxie forbade officials from allowing Hamlet to shower for the next week. App. 4a.

B. The Decision Below Conflicts With This Court's Decisions In *Lanier*, *Hope*, And *Taylor* Establishing The "Obvious Violation" Doctrine

In addition to applying an overly exacting and rigid standard of case similarity to determine whether a rule is clearly established, the Eleventh Circuit did not even *consider* the "obvious violation" doctrine this Court elaborated in *Hope*, *Taylor*, and other decisions. Had the court below applied and followed that doctrine as Hamlet urged, it would have been compelled to reverse the order granting summary judgment for respondents.

The obvious violation standard recognizes that "officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Hope*, 536 U.S. at 741; *see Taylor*, 141 S. Ct. at 53-54 (citing *Hope*, 536 U.S. at 741) (per curiam). For example, there may be no precedent holding a state official liable for "selling foster children into slavery," but "it does not follow that if such a case arose, the officials would be immune from damages" under § 1983." *Lanier*, 520 U.S. at 271 (quotation omitted).

The obviousness principle is essential to ensuring that the most egregiously unconstitutional conduct does not escape accountability. After all, the more egregious the conduct, the less likely another official has engaged in it—and, therefore, the less likely it is that an on-point factual precedent serves as clearly established law. *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." (cleaned up)). As then-Judge Gorsuch observed, "it would be remarkable if the most obviously unconstitutional conduct should be the most immune from liability only because it is so flagrantly unlawful that few dare its attempt." *Browder v. City of Albuquerque*, 787 F.3d 1076, 1082-83 (10th Cir. 2015).

In the last few years, this Court has repeatedly reaffirmed that obviously illegal conduct can defeat qualified immunity. *See Taylor*, 141 S. Ct. at 53-54; *McCoy v. Alamu*, 141 S. Ct. 1364 (2021) (mem.). The decision in *Taylor* is especially illustrative, as it involved circumstances strikingly similar to those here.

The plaintiff in *Taylor* was left naked for six days in two filthy cells; the first covered in feces from previous residents, and the second contaminated with a pool of sewage overflowing from a clogged drain. 141 S. Ct. at 52. The Fifth Circuit applied qualified immunity on the theory that, although existing circuit precedent recognized the unconstitutionality of forcing people to live in human waste, those cases involved longer periods of confinement and therefore did not clearly establish a constitutional violation under the precise circumstances presented there.

Chastising the Fifth Circuit for failing to recognize that a "general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question," *Taylor*, 141 S. Ct. at 53-54 (quoting *Hope*, 536 U.S. at 741), this Court reversed and rejected qualified immunity. Instead of comparing the case to other precedents, the Court simply ruled that "no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally

permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time." *Id.* at 53. The Court re-emphasized the rule set forth in *Lanier* that the "obvious cruelty inherent in putting [incarcerated persons] in certain wantonly degrading and dangerous situations" is itself enough to "provide[] officers with some notice that their alleged conduct violates the Eighth Amendment." *Id.* at 54 (cleaned up); *see, e.g.*, *Hope,* 536 U.S. at 742 (reversing grant of qualified immunity, warning court's decision exemplified the "danger of a rigid, overreliance on factual similarity").

The same rule applies here. No reasonable officer could believe the law permitted trapping Hamlet in an excrement-contaminated, backed-up shower and forcing him to endure a week with feces festering in his open wounds—until he, predictably, developed a life-threatening infection. As in *Taylor*, there is no evidence that the conduct was "compelled by necessity or exigency." *Taylor*, 141 S. Ct. at 54. And as in *Taylor*, the record reveals no "reason to suspect that the conditions . . . could not have been mitigated." *Id.* In fact, the record shows Officer Hoxie actively took steps to aggravate the unsanitary conditions by taking away all clothes and clean sheets that Hamlet could have used to wipe the feces out of his wounds. App. 4a. And Officer Hoxie forbidding Hamlet from further showers after he watched him attempt cleaning his wounds with toilet water, suggests that, like the defendants in *Taylor*, Officer Hoxie at least aggravated Hamlet's suffering. *Taylor*, 141 S. Ct. at 54.

Other federal appellate courts have been willing to declare gratuitous contact with feces—especially the

feces of another person—obviously unconstitutional. For example, the Sixth Circuit held that the obvious unconstitutionality of leaving the plaintiff "to lay in his own urine and feces for several hours" provided a prison official with "fair warning" that his conduct violated the Eighth Amendment. *Berkshire v. Dahl*, 928 F.3d 520, 537-38 (6th Cir. 2019). Similarly, the Ninth Circuit held in *Weathers v. Loumakis*, 742 F. App'x 332 (9th Cir. 2018), that forcing an incarcerated plaintiff to clean sewage overflow from a malfunctioning toilet with only latex gloves as protection was clearly unconstitutional, even though it had "never squarely confronted a case with facts precisely like these." *Id.* at 333-34.

The Eleventh Circuit's refusal to recognize that Officer Hoxie's conduct was obviously unconstitutional conflicts with these circuit precedents and with this Court's clear direction in *Taylor*, *Hope*, and other decisions. There was no need for the Eleventh Circuit to scour the casebooks for a specific, on-point precedent to hold that Officer Hoxie could not lawfully force Hamlet to soak his open sores in excrement and then endure a week with someone else's feces festering in his wounds. This Court should grant review to clarify and confirm the applicability of the obvious violation doctrine or otherwise summarily reverse the Eleventh Circuit's decision.

II. APPLYING QUALIFIED IMMUNITY TO OFFICER HOXIE'S CONDUCT CONTRAVENES THE TEXT AND PURPOSE OF § 1983 AND THE COMMON-LAW ROOTS OF QUALIFIED IMMUNITY

Even more fundamentally, applying qualified immunity to the conduct in this case contravenes the very foundation of the doctrine. Although § 1983's plain text creates no exemptions or immunities, the Court's original qualified immunity precedents rested on the premise that the common law recognized certain specific immunities for government officers, and that if Congress intended to override those immunities, it would have done so expressly. At common law, however, prison officials were afforded no immunity from liability for unlawful acts causing injury to persons in their custody. This Court's decision in *Procunier v. Navarette*, 434 U.S. 555 (1978), extending qualified immunity to prison officers wrongly ignores that history and should be overruled. Under a correct application of common-law immunities, Officer Hoxie is not entitled to immunity from § 1983 liability for his conduct.

A. The Common-Law Immunities Underpinning Qualified Immunity Did Not Extend To Prison Officials

Section 1983 "on its face admits of no immunities." *Malley v. Briggs*, 475 U.S. 335, 339-40 (1986). Starting with *Pierson v. Ray*, 386 U.S. 547 (1967), however, the Court began reading a qualified immunity defense into the statute, on the specific ground that "[c]ertain immunities were so well established in 1871" that it was appropriate to "presume that Congress would

have specifically so provided had it wished to abolish" them.[5] *Buckley v. Fitzsimmons*, 509 U.S. 259, 268 (1993); *see Pierson*, 386 U.S. at 554-55 (because common-law "immunity of judges for acts within the judicial role" was "well established," the Court could "presume that Congress would have specifically so provided had it wished to abolish the doctrine"). In early qualified-immunity cases, then, the doctrine was considered consistent with the statute *only* when the "official claiming immunity under § 1983 [could] point to a common-law counterpart to the privilege he assert[ed]." *Malley*, 475 U.S. at 339-40.

At common law, there was no "one-size-fits-all doctrine" of immunity that applied broadly "to officers who exercise a wide range of responsibilities and

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[5] As originally enacted, the text of section one of chapter twenty of the Ku Klux Klan Act of 1871, later codified at 42 U.S.C. § 1983, explicitly instructed that its protections were to be applied "notwithstanding" state laws, "custom, or usage" that might be invoked as a shield from liability. Ku Klux Klan Act, Pub. L. No. 42-22, ch. 22, § 1, 17 Stat. 13 (1871). But without Congress's authorization, the Reviser of Federal Statutes omitted that "Notwithstanding Clause" in publishing the first version of the Revised Statues. Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Cal. L. Rev. 201, 235 (2023). The Notwithstanding Clause's "implications are unambiguous: state law immunity doctrine, however framed, has no place in Section 1983." *Id.* at 236. As Fifth Circuit Judge Willett recently observed, the clause "eras[es] any need for unwritten, gap-filling implications, importations, or incorporations. Rights-violating state actors are liable—period—*notwithstanding* any state law to the contrary." *Rogers v. Jarrett*, 63 F.4th 971, 980 (5th Cir. 2023) (Willett, J., concurring). It is up to this Court to "definitively grapple with § 1983's enacted text and decide whether it means what it says—and what, if anything, that means for § 1983 immunity jurisprudence." *Id.* at 981.

functions." *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2421-22 (2021) (Thomas, J., respecting denial of writ of certiorari). Rather, courts analyzed the specific "nature of the duty" a defendant was performing when deciding whether to confer immunity from suit. Thomas M. Cooley, *Treatise on the Law of Torts or the Wrongs Which Arise Independent of Contract* 381 (1880). In other words, it was "not the title of his office" that gave rise to an officer's immunity, but "the *duties* with which the particular officer" is concerned. *Barr v. Matteo*, 360 U.S. 564, 573 (1959).

Accordingly, to determine whether a given state official would receive immunity from analogous liability at common law, the Court's early qualified-immunity cases required a "considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." *Imbler v. Pachtman*, 424 U.S. 409, 421 (1976). For example, the Court recognized qualified immunity for state executive officers in *Scheuer v. Rhodes*, 416 U.S. 232 (1974), and school officials in *Wood v. Strickland*, 420 U.S. 308 (1975), only after examining "the considerations underlying the nature of the immunity of the respective officials in suits at common law." *Imbler*, 424 U.S. at 419. By contrast, the Court denied qualified immunity to private prison guards in *Richardson v. McKnight*, 521 U.S. 399 (1997), because "[h]istory does not reveal a 'firmly rooted' tradition of immunity applicable to privately employed prison guards." *Id.* at 404 (emphasis added).

Exactly the same is true for publicly-employed prison guards, too. In fact, suits against sheriffs and other public prison officials were widely *allowed* at

common law. *See, e.g.*, *Commonwealth v. Stockton*, 21 Ky. (5 T.B. Mon.) 192, 193 (1827) ("[F]or any illegal abuse of the process of law, the person injured, whether party to the process or a stranger, is at liberty to sue the sheriff."); *Perkins v. Reed*, 14 Ala. 536, 537-38 (1848) ("It has been so long and often held, as to become an established rule, that the sheriff is liable *civiliter*, for the acts of his deputies, which are done in the performance of their official duties."); *Knowlton v. Bartlett*, 18 Mass. (1 Pick.) 271, 280 (1822) (same); *Matthis v. Pollard*, 3 Ga. 1, 3 (1847) (same); *see also Cooley on Torts* at 392-98 (highlighting various actions for which sheriffs or jailers were found civilly liable, including for escapees).

Such authorized suits included those challenging harmful conditions of confinement, like the conditions Hamlet challenges here. *See*, *e.g.*, *Dabney v. Taliaferro*, 25 Va. (4 Rand.) 256, 261, 263 (1826) (affirming judgment against sheriff that created conditions of confinement, which led to frost-bite and disease); *Perrine v. Planchard*, 15 La. Ann 133, 134-35 (1860) (allowing civil damages against keeper of police jail who "under color of his authority . . . caused [plaintiff] to be forcibly" whipped, noting that whoever causes damage to another must "repair it"); *Peters v. White*, 53 S.W. 726, 726 (Tenn. 1899) (allowing civil damages against superintendent of county workhouse facility who whipped an inmate when authority was not granted by state workhouse commission, noting an incarcerated person "does not lose all his rights of protection for his person"); *Asher v. Cabell,* 50 F. 818, 827 (5th Cir. 1892) ("That a United States marshal may take prisoners into his custody, permit them

to be disarmed and shackled, and then negligently and knowingly deliver them over to incompetent deputies and the known hostility of mobs, without liability for his neglect of duty, is a proposition which we think cannot be sanctioned.").[6]

In short, any "considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it," *Imbler*, 424 U.S. at 421, precludes the extension of qualified immunity under § 1983 to prison guards like Officer Hoxie, who were not exempt at common law from liability for conduct causing harm to persons in their custody.

B. This Court's Decision In *Procunier* Ignores The Controlling Common-Law Rules And Should Be Overruled

Despite the clear historical record just discussed, this Court extended qualified immunity to public prison officials in *Procunier v. Navarette*, 434 U.S.

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[6] The absence of common-law precedents recognizing immunity for prison guards reflects the "well settled" common-law rule that no immunity was available for "ministerial act[s]." *Amy v. Desmoines Cnty. Supervisors*, 78 U.S. (11 Wall.) 136, 138 (1870). As this Court observed in 1870, there was at that time "an unbroken current of authorities" holding that "where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from his conduct." *Id.* And it was understood that a sheriff acted "[i]n his ministerial capacity" when he was "keeper of the county jail, and answerable for the safe-keeping of prisoners." *South v. State of Maryland*, 59 U.S. (18 How.) 396, 402 (1855). As such, the "history of the law for centuries" reveals that "[a]ctions against the sheriff for a breach of his ministerial duties . . . are to be found in almost every book of reports." *Id.* at 403.

555, 561-562 (1978). *Procunier* cites no precedents showing that at common law, sheriffs and other jail officials were immune from liability analogous to the Eighth Amendment claims asserted here. The Court's justification instead was that "prison guards may have enjoyed a kind of immunity defense arising out of their *status as public employees* at common law." *Richardson*, 521 U.S. at 405 (emphasis added).

That rationale has no grounding whatsoever in the original basis for qualified immunity set forth in this Court's precedents. None of the Court's early decisions suggested that all "public employees" were entitled to immunity at common law, and Hamlet is aware of no common-law precedent supporting such a categorical rule. As Justice Stevens observed in dissent in *Procunier*, early qualified immunity cases "insist[ed] that a considered inquiry into the common law was an essential precondition to the recognition of the proper immunity for any official," but those "limits" were "abandoned" by the majority's decision. 434 U.S. at 568 (Stevens, J., dissenting). Justice Scalia was subsequently more critical: "The truth to tell, *Procunier v. Navarette*, which established § 1983 immunity for state prison guards, did not trouble itself with history," but instead "simply set forth a policy prescription." *Richardson*, 521 U.S. at 415-16 (Scalia, J., dissenting).

By departing from the common-law basis for qualified immunity, *Procunier* unmoored the doctrine from any grounding in § 1983 itself. Absent any historical evidence that prison officials were considered immune from legal liability for harming incarcerated persons in their care, it is impossible to presume that

Congress intended to incorporate such immunity into § 1983 *sub silentio*. In other words, extending qualified immunity to prison officers not only derogates historical tradition, but the text and purpose of § 1983 itself. *See Ziglar*, 582 U.S. at 159 (Thomas, J. concurring) ("Because our analysis is no longer grounded in the common-law backdrop against which Congress enacted the 1871 Act, we are no longer engaged in interpreting the intent of Congress in enacting the Act." (cleaned up)).

Procunier does not stand alone in that regard. Multiple members of this Court have acknowledged that the Court's decisions have "completely reformulated qualified immunity along principles not at all embodied in the common law." *Ziglar*, 582 U.S. at 158-159 (Thomas, J., concurring) (cleaned up).[7] Rather than apply common-law immunities—as required for any faithful adherence to presumed

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[7] Justice Thomas elaborated the point:

> Instead of asking whether the common law in 1871 would have accorded immunity to an officer for a tort analogous to the plaintiff's claim under § 1983, we instead grant immunity to any officer whose conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. . . . We apply this clearly established standard 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. . . . We have not attempted to locate that standard in the common law as it existed in 1871, however, and some evidence supports the conclusion that common-law immunity as it existed in 1871 looked quite different from our current doctrine.

Id. at 159 (cleaned up).

congressional intent—the Court's decisions "have diverged to a substantial degree from the historical standards" in favor of the Court's *own* assessment of "the special policy concerns arising from public officials' exposure to repeated suits." *Wyatt v. Cole*, 504 U.S. 158, 170-71 (1992) (Kennedy, J., concurring (cleaned up)); *see Richardson*, 521 U.S. at 415-16 (Scalia, J., dissenting).

Qualified immunity doctrine now rests almost entirely on unelected judges' efforts to "protect[] the balance between vindication of constitutional rights and government officials' effective performance of their duties." *Reichle v. Howards*, 566 U.S. 658, 664 (2012); *see Richardson*, 521 U.S. at 407-08 (listing various policy interests subject to balancing). As Justice Thomas has emphasized, however, the "Constitution assigns this kind of balancing to Congress, not the Courts." *Ziglar*, 582 U.S. at 160 (Thomas, J., concurring). This Court simply does "not have a license to establish immunities from § 1983 actions in the interests of what [it] judge[s] to be sound public policy." *Tower v. Glover*, 467 U.S. 914, 922-23 (1984).

Indeed, a doctrine that does not "trouble itself with history" and instead rests on a judge-made "policy prescription," *Richardson*, 521 U.S. at 415-16 (Scalia, J., dissenting), is precisely the kind of approach the Court has sharply denounced in other contexts, *see, e.g.*, *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126 (2022) ("To justify [a firearm] regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical

tradition of firearm regulation."); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2248 (2022) (Courts must forgo "freewheeling judicial policymaking" in favor of "respect for the teachings of history" (cleaned up)). Continued adherence to an avowedly ahistorical, policy-based qualified immunity doctrine is indefensible. Because the common-law history concerning prison officials is so clear, this case is the perfect vehicle for beginning the necessary course correction.

C. Other Statutory Developments Undermine The Judge-Made Policy Rationale For Qualified Immunity

Another reason the Court should restore its focus on common-law tradition over freewheeling policymaking is that statutory developments since *Procunier* have mitigated many of the policy concerns claimed to justify qualified immunity. In particular, Congress' enactment of the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, tit. viii, 110 Stat. 1321-66 (1996) (codified in 42 U.S.C. § 1997e), largely addressed the interest in ensuring "that 'insubstantial claims' against government officials" are "resolved prior to discovery and on summary judgment if possible." *Anderson v. Creighton*, 483 U.S. 635, 640 n.2 (1987) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818-819 (1982)); *see Saucier v. Katz*, 533 U.S. 194 (2001) (stating that when qualified immunity is sought as a defense it must be ruled on early so that "the costs and expenses of trial are avoided"). The PLRA provides prison officials special protections from suit "that should discourage prisoners from filing claims that are unlikely to succeed." *Crawford-El*

v. Britton, 523 U.S. 574, 596-97 (1998). These include provisions that require plaintiffs to exhaust administrative remedies; "authorizes the court on its own motion to dismiss 'frivolous,' 'malicious,' or meritless actions;" and "denies *in forma pauperis* status to prisoners with three or more prior 'strikes' (dismissals because a filing is frivolous, malicious, or fails to state a claim . . .) unless the prisoner is 'under imminent danger of serious physical injury.'" *Id.* (quotations omitted).

In addition to the PLRA's special protections for prison officials, "subsequent clarifications to summary-judgment law" also have "alleviated" the problem of subjecting prison officials to costly but meritless actions, "by allowing summary judgment to be entered against a nonmoving party 'who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" *Wyatt*, 504 U.S. at 171 (Thomas, J., concurring) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

These post-*Procunier* changes in the statutory scheme governing suits against prison officials undermine its premise that such officials require more protection from legal liability than common-law courts and the 1871 Congress were willing to provide. Even if it was legitimate for this Court to implement that judgment, subsequent changes in the policy balance should compel this Court to reconsider the need for continued judicial second-guessing of legislative judgments in this context.

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"Revisiting precedent is particularly appropriate where . . . a departure would not upset expectations, the precedent consists of a judge-made rule that was recently adopted to improve the operation of the courts, and experience has pointed up the precedent's shortcomings." *Pearson v. Callahan*, 555 U.S. 223, 233 (2009). That standard is satisfied here. State prison officials have no legitimate expectations about their authority to violate the Eighth Amendment; *Procunier* imposed a purely judge-made, ahistorical, judicial policymaking approach to § 1983 immunity more than a century after the statute was enacted; and the Eleventh Circuit's inability to apply the "clearly established" standard here effectively illustrates its shortcomings. It is time to overrule *Procunier* and restore § 1983 immunity to its common-law roots.

III. THIS CASE IS AN IDEAL VEHICLE FOR RECONSIDERING THE SCOPE OF QUALIFIED IMMUNITY

This case is an ideal vehicle either to clarify the current "clearly established law" approach to qualified immunity, or to reconsider that approach altogether, at least as applied to prison guards. The facts—viewed in the light most favorable to Hamlet, *see Tolan*, 572 U.S. at 657 (emphasizing "the importance of drawing inferences in favor of the nonmovant" in "qualified-immunity cases")—establish a clear violation of the Eighth Amendment.

First, as Hamlet alleged in his complaint and averred in sworn testimony, the violation was not

limited to a 30-40 minute feces exposure in the shower, but at least a week of such exposure with no ability to remedy his unsanitary and infection-prone condition because he was barred from showering to wash his wounds and denied clean linens. The court below admitted that "framing Hamlet's injury as several days with feces festering in open wounds would impact [its] analysis of whether his injury satisfied the first prong of the Eighth Amendment inquiry under clearly established law." App. 12a. Yet, those facts are just what the evidence—viewed favorably to Hamlet—establish.

Second, the evidence also shows that Officer Hoxie was at least deliberately indifferent to Hamlet's peril, even if he did not know the full extent of the harm his actions would cause. The "standard of purposeful or knowing conduct is not . . . necessary to satisfy the *mens rea* requirement of deliberate indifference for claims challenging conditions of confinement." *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). Whether a defendant possesses "subjective knowledge of the risk of serious harm is a question of fact," and a factfinder may conclude that a prison official knew of the risk "from the very fact that the risk was obvious." *Goebert v. Lee Cnty.*, 510 F.3d 1312, 1327 (11th Cir. 2007) (quoting *Farmer*, 511 U.S. at 842).

Officer Hoxie knew the risk of harm. Risks from feces contamination are obvious and there is ample evidence that Officer Hoxie knew Hamlet was exposed. Hamlet specifically "called out to the officers to be let out of the shower" because of the feces; in response, Officer Hoxie "initially opened the door to let Mr. Hamlet out, but then 'change[d] his mind and

[pushed][him] back in the shower,'" and then accused Hamlet of defecating in the shower, saying "you did it." App. 17a-18a, 4a. When he finally allowed Hamlet back to his cell, Officer Hoxie stood and *watched* Hamlet try and fail to remove feces from his open wounds, and he then *forbade* officials from allowing Hamlet to clean himself for the next week, ensuring that feces would fester in his wounds for days. ECF 142 at 9. That evidence would easily support a finding that Officer Hoxie and other Respondents knew about and disregarded the obvious risk from feces contamination.

Third, this case does not present split-second or urgent decision-making made by officers without opportunity for deliberation. Rather, Officer Hoxie intentionally shoved Hamlet in a shower with pooling feces and urine after he asked to be let out, observed him unsuccessfully try to clean his wounds of excrement, and prohibited him from shower access for the next week, even though he became sick. And Respondents have never claimed any penological rationalization for inhumane treatment of this nature.

Based on the foregoing summary judgment record, this case exemplifies the circumstances where qualified immunity should *not* apply, either because Hamlet's rights were clearly violated, or because Officer Hoxie was clearly performing duties that were never immunized from liability at common law. This case is thus an ideal vehicle for clarifying or reforming the qualified immunity doctrine.

CONCLUSION

For the foregoing reasons, the petition should be granted.

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