

No. 24-1067

IN THE
Supreme Court of the United States

JOHN E. WETZEL, ET AL.,

Petitioners,

v.

ROY LEE WILLIAMS,

Respondent.

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

**BRIEF IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI**

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QUESTION PRESENTED

Did the Third Circuit correctly conclude that it was clearly established under judicial precedent that a person “with a known history of serious mental illness ha[s] a clearly established right not to be subjected to prolonged, indefinite solitary confinement—without penological justification—by an official who was aware of that history and the risks that solitary confinement pose to someone with those health conditions”? Pet. App. 36a.

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE	1
I. FACTUAL BACKGROUND.....	1
II. PROCEDURAL BACKGROUND	4
REASONS FOR DENYING THE PETITION.....	9
I. THE THIRD CIRCUIT CORRECTLY LOOKED TO JUDICIAL DECISIONS AS THE SOURCE OF CLEARLY ESTABLISHED LAW.....	9
II. THE THIRD CIRCUIT CORRECTLY INTERPRETED ITS OWN LAW	16
III. THIS ISSUE IS NOT IMPORTANT ENOUGH TO WARRANT THIS COURT'S REVIEW, AND THIS CASE IS A POOR VEHICLE.....	21
CONCLUSION	27

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Baxter v. Bracey</i> , 140 S. Ct. 1862 (2020).....	25
<i>Boyd v. McNamara</i> , 74 F.4th 662 (5th Cir. 2023), <i>cert.</i> <i>denied sub nom. Johnson v. Boyd</i> , 144 S. Ct. 562 (2024).....	26
<i>Brosseau v. Haugen</i> , 543 U.S. 194 (2004) (per curiam)	21
<i>Busanet v. Wetzel</i> , No. 2:21-cv-4286, 2023 WL 5003573 (E.D. Pa. Aug. 4, 2023).....	24
<i>Carroll v. Carman</i> , 574 U.S. 13 (2014) (per curiam)	26
<i>City of Escondido v. Emmons</i> , 586 U.S. 38 (2019) (per curiam)	27
<i>City of Houston v. Hill</i> , 482 U.S. 451 (1987).....	15
<i>City of Tahlequah v. Bond</i> , 595 U.S. 9 (2021) (per curiam)	27
<i>Clark v. Coupe</i> , 55 F.4th 167 (3d Cir. 2022).....	10, 13, 18, 21
<i>Crittindon v. LeBlanc</i> , 37 F.4th 177 (5th Cir. 2022), <i>cert.</i> <i>denied</i> , 144 S. Ct. 90 (2023).....	26

<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994)	11
<i>Green v. Thomas</i> , 734 F. Supp. 3d 532 (S.D. Miss. 2024)	25
<i>Hoggard v. Rhodes</i> , 141 S. Ct. 2421 (2021)	25
<i>Hope v. Pelzer</i> , 536 U.S. 730 (2002)	7, 12, 14
<i>Hutto v. Finney</i> , 437 U.S. 678 (1978)	20
<i>Kisela v. Hughes</i> , 584 U.S. 100 (2018)	25, 27
<i>Marbury v. Madison</i> , 1 Cranch 137 (1803)	9, 13
<i>McMurray v. Weaver</i> , ___ F.4th ___, 2025 WL 1778670 (5th Cir. 2025)	25
<i>Mullenix v. Luna</i> , 577 U.S. 7 (2015) (per curiam)	26
<i>Nelson v. Tompkins</i> , 89 F.4th 1289 (11th Cir. 2024), <i>cert.</i> <i>denied sub nom. Sellers v. Nelson</i> , 145 S. Ct. 178 (2024)	26
<i>Palakovic v. Wetzel</i> , 854 F.3d 209 (3d Cir. 2017)	10, 17, 18

<i>Paugh v. Uintah Cnty.</i> , 47 F.4th 1139 (10th Cir. 2022), <i>cert.</i> <i>denied sub nom. Anderson v. Calder</i> , 143 S. Ct. 2658 (2023).....	26
<i>People of the V.I. v. Velasquez</i> , 60 V.I. 22 (Super. Ct. 2014)	23
<i>Peterkin v. Jeffes</i> , 855 F.2d 1021 (3d Cir. 1988)	20
<i>Polanco v. Diaz</i> , 76 F.4th 918 (9th Cir. 2023), <i>cert.</i> <i>denied</i> , 144 S. Ct. 2520 (2024);.....	26
<i>Porter v. Penn. Dept. of Corr.</i> , 874 F.3d 341 (3d Cir. 2020)	19
<i>Price v. Montgomery County</i> , 144 S. Ct. 2499 (2024).....	25
<i>Smith v. Linthicum</i> , No. 21-20232, 2022 WL 7284285 (5th Cir. Oct. 12, 2022), <i>cert. denied</i> , 144 S. Ct. 70 (2023).....	26
<i>Taylor v. Barkes</i> , 575 U.S. 822 (2015).....	27
<i>Taylor v. Riojas</i> , 592 U.S. 7 (2020).....	26, 27
<i>Welters v. Minnesota Dep’t of Corr.</i> , 982 N.W.2d 457 (Minn. 2022), <i>cert.</i> <i>denied sub nom. Emily v. Welters</i> , 144 S. Ct. 74 (2023).....	26

<i>White v. Pauly</i> , 580 U.S. 73 (2017) (per curiam)	27
<i>Williams v. Secretary Penn. Dept. of Corr.</i> , 848 F.3d 549 (3d Cir. 2017)	17
<i>Young v. Quinlan</i> , 960 F.2d 351 (3d Cir. 1992)	10, 16, 20
Statutes	
Americans with Disabilities Act of 1990 Title II (ADA), 42 U.S.C. §12131	4
Other Authorities	
<i>Bell, et al. v. Penn. Dept. of Corr., et. al.</i> , No. 2:22-cv-1516, Amended Complaint, ECF 75 (W.D. Pa. Sept. 29, 2023)	23
DEATH PENALTY INFORMATION	
CENTER: STATE BY STATE	23
<i>Walker v. Harry, et al.</i> , No. 1:25-cv-50, Complaint, ECF 1 (E.D. Pa. May 29, 2024)	23

STATEMENT OF THE CASE

I. Factual Background

The Pennsylvania Department of Corrections (DOC) held Respondent Roy Lee Williams “on death row in solitary confinement from 1993 to 2019—twenty-six years.” Pet. App. 4a. The DOC held him in near continuous solitary confinement despite his well-documented mental health history before entering DOC custody, his continuing struggles with mental illness while in DOC custody, and knowledge of these facts by Petitioner, the former DOC Secretary, sued in his personal capacity. *See* Pet. App. 4a.¹

So, for nearly half his life, Mr. Williams was held in a cell no larger than seven by twelve feet—smaller than a standard parking space. Pet. App. 10a. He was kept alone in his cell twenty-two to twenty-three hours a day, Monday through Friday,² and the full twenty-four hours on the weekends. Pet. App. 10a; Pet. 4. He ate his meals alone in his cell; he exercised alone in another cage that was, at most, twice the size of his cell; and he was prohibited from participating in educational programming, vocational training, or group religious services. Pet. App. 10a. In short, Mr.

¹ The petition is captioned as also brought by Laurel Harry, in her official capacity as Pennsylvania’s Secretary of Corrections. Pet. ii. But Harry is a defendant only as to Mr. Williams’s ADA claim, and the petition relates only to the denial of qualified immunity to Petitioner Wetzel, sued in his personal capacity, on Mr. Williams’s Eighth Amendment claim. This brief therefore refers throughout to only “Petitioner,” singular.

² Petitioner asserts that the time-in-cell for death row prisoners was twenty-two hours a day, Pet. 4, but until 2013 it was regularly twenty-three hours a day, *see* Pet. App. 60a.

Williams was kept continuously isolated for a quarter century.

This was despite his lengthy history of preexisting serious mental illness. Indeed, by the time Mr. Williams entered DOC custody in 1993, he had already amassed a significant mental health history. *See* Pet. App. 5a. Mr. Williams's father—emotionally absent and physically abusive—beat Mr. Williams's mother while she was pregnant with him, and beat him as well throughout his childhood. JA59. Mr. Williams suffered from significant brain damage as a result of both the abuse he received from his parents, and from boxing when he was young. JA51-53; JA59.

At fourteen, Mr. Williams was involuntarily committed to a psychiatric hospital for making suicidal threats. Pet. App. 5a. There, he was diagnosed with depression and suicidal ideation, Pet. App. 5a, and records show that he had been suffering from mental health issues for years before that, JA57-58. A few months later, Mr. Williams voluntarily returned to the psychiatric hospital for inpatient treatment. Pet. App. 5a n.6.

Petitioner was aware of Mr. Williams's mental health history and continued mental health struggles while in solitary. *See* Pet. App. 4a. After about three months in solitary in DOC custody, in 1994, Mr. Williams sought help from the Psychological Services Department because his mental health was deteriorating. Pet. App. 5a. He informed a DOC psychologist that he had a history of suicidal ideation and involuntary commitment as a teenager. Pet. App. 5a n.7. And a psychiatrist diagnosed Mr. Williams with a psychiatric disability and placed him on the DOC's Mental Health Roster. Pet. App. 5a.

In December 1995, Mr. Williams was referred to a DOC psychiatrist due to depression and anxiety. Pet. App. 6a. During the resulting evaluation, he again described his psychiatric history, including involuntary commitment. Pet. App. 6a.

In 1996, two outside doctors—one neuro-psychologist and one psychiatrist—evaluated Mr. Williams for his state post-conviction petition. Pet. App. 6a. “Both doctors provided information about [Mr.] Williams’ traumatic childhood and struggles with mental illness, including his psychiatric hospitalization.” Pet. App. 6a; *see also* Pet. App. 7a (detailing diagnoses and conclusions). Mr. Williams’s post-conviction attorneys shared these conclusions—including copies of the declarations—with the DOC. Pet. App. 6a & n.13; Pet. App. 7a.³

That same year, Mr. Williams reported to correctional officials that he was hearing voices telling him to kill himself and that he had fashioned a noose out of a sheet in order to commit suicide. Pet. App. 7a. DOC officials placed him in a “psychiatric observation cell,” which was like an “isolation cell where they [took] all [his] clothes.” *Id.*; JA114. He subsequently told DOC officials that he had faked his suicide attempt, but later testified under oath that he had in fact attempted suicide and only reported “faking” to

³ In the district court, Mr. Williams, then uncounseled, was not allowed to seek discovery. *See* Pet. App. 14a n.52 (“[T]he district Court permitted the defendants to depose [Mr.] Williams, but did not allow for other discovery.”). He testified in his deposition that he did not have access to his DOC medical records “to see what [he] was diagnosed with from their doctors, from the department’s doctors.” JA125. He stated that “[t]hey won’t let me see the mental health records.” *Id.*

DOC staff so that he could be released from isolation. Pet. App. 7a-8a; JA114.

Although he was released from the isolation cell after a few days, the DOC then placed Mr. Williams in disciplinary confinement for six months as punishment for manufacturing a noose. Pet. App. 8a; JA115-16. Disciplinary confinement not only entailed near-continuous solitary confinement, but also the confiscation of all Mr. Williams's personal belongings from his solitary cell. Pet. App. 8a; JA115-16. It was, as Mr. Williams described, like being “isolated on top of being isolated.” Pet. App. 8a; JA115-16. After that incident—where he was punished for an aspect of his mental illness—Mr. Williams “no longer sought assistance from the mental health staff” at the DOC. Pet. App. 8a; JA116.

Mr. Williams remained in indefinite solitary confinement until the end of 2019 when, in response to a class-action lawsuit, the DOC revised its policies and effectively ended indefinite, mandatory solitary confinement for death-sentenced prisoners not under an active death warrant. Pet. App. 9a.

II. Procedural Background

Mr. Williams filed a *pro se* complaint against DOC Secretary John Wetzel, in his individual and official capacities, based on Mr. Williams's twenty-six-year continued placement in solitary confinement despite his previous and ongoing history of serious mental illness. Pet. 6; Pet. App. 14a. He raised claims under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131 *et seq.*, and an Eighth Amendment claim under 42 U.S.C. § 1983, and

requested nominal, compensatory, and punitive damages. *Id.*⁴

At summary judgment, as to the ADA claim, the district court concluded that, although there was a factual dispute as to whether Mr. Williams had a disability under the ADA, he was unable to establish intentional discrimination for damages. Pet. App. 14a-15a. As for Mr. Williams's Eighth Amendment claim, Petitioner did not move for summary judgment on the merits, and only raised issues of administrative exhaustion, the statute of limitations, and qualified immunity. Pet. App. 125a. The district court held that Petitioner did not meet his burden of showing Mr. Williams failed to exhaust his administrative remedies, Pet. App. 131a, and that there were genuine factual disputes regarding the timing of the changes made by the DOC to the solitary conditions for death-sentenced prisoners, Pet. App. 134a. But ultimately the district court granted summary judgment to Petitioner, holding that it was not clearly established that a death-row prisoner had an Eighth Amendment right not to be held in solitary confinement and the Secretary was therefore entitled to qualified immunity. Pet. App. 136a.

The Third Circuit disagreed. In addressing the Secretary's claimed entitlement to qualified immunity on Mr. Williams's Eighth Amendment claim, the court of appeals first concluded that, for the purposes of the qualified immunity analysis, the district court had framed the right at too high a level of generality, which this Court has cautioned against. Pet. App. 20a. The Third Circuit noted that the district court had

⁴ Mr. Williams also brought a claim under the Fourteenth Amendment, which is not at issue here. Pet. 6 nn. 2-3.

“defined the right at issue here as a death row prisoner’s Eighth Amendment right not to be held in solitary confinement,” and in so doing “ignored the relevance of Williams’ preexisting serious mental illness and the Secretary’s knowledge of it, along with the lack of penological justification for placing and continuing to hold Williams in solitary confinement.” Pet. App. 20a. The court pointed to the evidence in the record that Mr. Williams had been diagnosed with depression and suicidal ideation before entry into the DOC; that he had communicated to a DOC psychiatrist this diagnosis as well as his history of suicidal ideation and prior involuntary commitment to a psychiatric hospital; that he had been scored by DOC’s own psychologists as “requiring psychiatric treatment”; and that his own doctors’ written conclusions as to his mental health had been provided directly to DOC mental health staff. *Id.* Therefore, the court of appeals held, the more appropriate question was whether it was clearly established that “a death row prisoner, with a known preexisting serious mental illness” had an Eighth Amendment right “not to be placed and held in prolonged solitary confinement—without penological justification.” Pet. App. 21a. And the Third Circuit concluded that it was. *Id.*

In doing so, the court of appeals noted that its “own precedents leave no room for doubt that individuals with a known history of serious mental illness have a clearly established right not to be subjected to prolonged solitary confinement without penological justification, regardless of their sentence.” Pet. App. 22a.

The court of appeals reached that conclusion by relying principally on its own relevant caselaw, *see*

Pet. App. 21a-26a (citing *Young v. Quinlan*, 960 F.2d 351 (3d Cir. 1992); *Palakovic v. Wetzel*, 854 F.3d 209 (3d Cir. 2017); *Clark v. Coupe*, 55 F.4th 167 (3d Cir. 2022)). For example, the court of appeals noted that in *Clark*, analyzing constitutional violations that began in January 2016, it had recognized that the same constitutional right was “*long protected by Eighth Amendment jurisprudence.*” Pet. App. 25a (emphasis in original) (quoting *Clark*, 55 F.4th at 181).

Further, the Third Circuit noted, this conclusion was “buttressed”—just as the Supreme Court’s holding in *Hope v. Pelzer*, 536 U.S. 730 (2002), had been—by a report prepared by the Department of Justice. Pet. App. 26a. This report, sent to the Secretary in 2014, directly “warned [Petitioner] that the DOC’s practices of knowingly holding seriously mentally ill prisoners in solitary confinement for extended periods of time was cruel and unusual,” Pet. App. 26a, under then-existing “controlling precedent,” Pet. App. 29a.

Ultimately, the court of appeals held that “individuals with a known history of serious mental illness have a clearly established right not to be subjected to prolonged, *indefinite* solitary confinement—*without penological justification—by an official who was aware of that history and the risks that solitary confinement pose to someone with those serious health conditions.*” Pet. App. 37a. That holding, the Third Circuit further noted, was “nearly identical” to the court’s holding in *Clark v. Coupe* and was “hardly a novel or surprising position.” Pet. App. 37a-38a.

The court of appeals also explained that “the dissent’s criticisms about [its] use of the 2014 DOJ

report”—reasserted by Petitioner before this Court—“have little force.” Pet. App. 38a. The dissent “misse[d] the point” when “disparaging the relevance of the DOJ report to [the panel’s] analysis.” Pet. App. 38a. The report “is not important because it had the force of legal precedent.” Pet. App. 38a. Indeed, the panel “agree[d] that it obviously did not and could not have had th[at] force.” Pet. App. 38a-39a. Instead, the Third Circuit explained, “it is important because” it served as “personal notice” to Secretary Wetzel “of the constitutional violation” under “binding precedent.” Pet. App. 39a. “And that personal notice simply buttresse[d]” the court of appeals’ “conclusion that *controlling precedent* clearly established that the conditions of [Mr.] Williams’s confinement violated the Eighth Amendment.” Pet. App. 39a. This use of the DOJ report, the Third Circuit explained, simply bolstered its conclusion that “a reasonable person” in the Secretary’s position “would have known” of the Eighth Amendment violation. Pet. App. 39a.

The court of appeals also vacated the district court’s grant of summary judgment on Mr. Williams’s ADA claim (on which Petitioner does not seek certiorari). Pet. App. 43a. Viewing the facts in the light most favorable to Mr. Williams, the Third Circuit explained that it was required to assume the Secretary *was* aware of Mr. Williams’s mental health struggles. Pet. App. 43a. As a result, the DOC “had an obligation to modify its practices to ameliorate the harms of prolonged solitary confinement on [Mr.] Williams.” Pet. App. 46a. The DOC could avoid this responsibility if doing so would require a fundamental alteration of its services, programs, or activities, but “[t]he record is devoid of [such] evidence.” Pet. App. 46a.

Petitioner filed a petition for panel rehearing or rehearing en banc, which the court of appeals denied without any written dissents. Pet. App. 143a-144a. Petitioner now seeks certiorari.

REASONS FOR DENYING THE PETITION

The petition does not—and cannot—attempt to draw this Court’s attention to a circuit split, since this case simply represents a question of how to interpret Third Circuit law. So, instead, the petition takes another tack, and dramatically alleges that the decision below threatens to undermine none other than *Marbury v. Madison*, as if the Third Circuit somehow eschewed its “emphatic[] . . . duty . . . to say what the law is.” 1 Cranch 137, 177 (1803). It did nothing of the sort. The Third Circuit applied its own precedent—not the DOJ report—to determine that the applicable law was clearly established. And it did so faithfully—and correctly.

The Court should deny the petition.

I. The Third Circuit correctly looked to judicial decisions as the source of clearly established law.

Petitioner requests that this Court “clarify” that “only the judiciary can clearly establish the law” for qualified immunity purposes. Pet. 8. But no clarification is necessary. As the decision below amply illustrates, the Third Circuit understands that judicial precedent is required to clearly establish the law.

1. When the Third Circuit asked whether the right in question was clearly established, it looked to binding precedent. *See, e.g.*, Pet. App. 4a (referencing “[o]ur prior precedents and the record before us”); Pet.

App. 22a (concluding “Supreme Court and Third Circuit cases gave [Petitioner] fair notice”); *id.* (“Our precedents leave no room for doubt . . .”); Pet. App. 33a (“Our precedents have made clear . . .”); Pet. App. 36a-37a (“To hold otherwise would fail in the face of Eighth Amendment jurisprudence.”); Pet. App. 38a (“Relying on much of the same binding precedent *Clark* did . . .”).

Indeed, the Third Circuit devoted several Federal Reporter pages to discussing its own decisions which “leave no room for doubt that individuals with a known history of serious mental illness have a clearly established right not to be subjected to prolonged solitary confinement without penological justification, regardless of their sentence.” Pet. App. 22a. These cases include *Young v. Quinlan*, 960 F.2d 351, 364-65 (3d Cir. 1992), in which the court of appeals reversed a grant of summary judgment on an Eighth Amendment conditions of confinement claim, holding that prisons may not punish “in a manner that threatens the physical and mental health of prisoners,” and *Palakovic v. Wetzel*, 854 F.3d 209, 225 (3d Cir. 2017), holding that the parents of an individual who died by suicide in solitary confinement sufficiently stated an Eighth Amendment claim, acknowledging the “robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement.”

The Third Circuit also looked to its decision in *Clark v. Coupe*, 55 F.4th 167, 181 (3d Cir. 2022), in which it denied qualified immunity to prison officials and held that “someone with a known preexisting serious mental illness has a clearly established right since at least 2016 not to be held in prolonged solitary

confinement.” Pet. App. 23a. The court of appeals in *Clark* described the right at issue as already “long protected by Eighth Amendment jurisprudence,” including *Young* and *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). See Pet. App. 25a-26a.

The court of appeals below noted it was “rely[ing] on much of the same law” as *Clark* to “determine that the Secretary had fair notice that [Mr.] Williams’s conditions of confinement violated the Eighth Amendment because controlling precedent clearly established the right of a death row prisoner with a known preexisting serious mental illness not to be held in prolonged solitary confinement without penological justification.” Pet. App. 26a.

2. After examining the relevant judicial precedent, the Third Circuit turned to a 2014 DOJ report that “warned [Petitioner Wetzel] that the DOC’s practices of knowingly holding seriously mentally ill prisoners in solitary confinement for extended periods of time was cruel and unusual.” Pet. App. 26a. The report, citing many of the same cases the Third Circuit relied on below, “easily buttressed” the court’s conclusion that the right was clearly established. Pet. App. 26a; see also Pet. App. 32a (DOJ report “buttresse[d]” holding that “a reasonable person in [Petitioner Wetzel’s] shoes would have known that [the conditions of Mr. Williams’s confinement] clearly violated basic principles of Eighth Amendment law”); Pet. App. 39a (report “simply buttresse[d] . . . conclusion that *controlling precedent* clearly established that the conditions of [Mr.] Williams’s confinement violated the Eighth Amendment”).

Referencing a DOJ report in this manner—in *addition* to binding precedent—is exactly what this

Court did in *Hope*. Examining a 1994 DOJ report, this Court taught in *Hope* that “DOJ reports like this one *should not be ignored* when determining whether officials had fair notice that they were violating clearly established law.” Pet. App. 27a (citing 536 U.S. at 744-46) (emphasis added). As the Third Circuit noted, this Court in *Hope* held that prison officials violated a clearly established right “in light of binding Eleventh Circuit precedent, an Alabama Department of Corrections (ADOC) regulation, *and a DOJ report informing the ADOC of the constitutional infirmity.*” *Id.* at 741-42 (emphasis added). The court of appeals recognized that the 2014 DOJ report “serves the same function and provides the same notice as [the 1994 report] did in *Hope*.” Pet. App. 29a.⁵

And the concept of citing to a DOJ report, alongside relevant precedent, was not even questioned by the dissent in *Hope* on separation-of-powers terms. *See generally Hope*, 536 U.S. at 759-64 (Thomas, J., dissenting). In fact, the dissent’s main concern regarding the report was that it “was [n]ever communicated to respondents.” *Id.* at 759. Here, of course, there is no such objection. *See, e.g.*, Pet. App. 31a (“The significance of the 2014 DOJ report simply cannot be ignored. The Secretary was directly informed. . . .”).

In short, the Third Circuit’s analysis was both correct and unremarkable. Relying on *precedent* to establish the law, and referencing the DOJ report to

⁵ Indeed, the DOJ report in this case was even more powerful than the one at issue in *Hope* because it was a thorough, factually detailed, and citation-rich report, as compared to the substantially shorter letter in *Hope*. *See* Pet. App. 28a (citing and linking to 1994 DOJ letter).

bolster its conclusion just as this Court did in *Hope*, the Third Circuit narrowly held that “individuals with a known history of serious mental illness have a clearly established right not to be subjected to prolonged, indefinite solitary confinement—without penological justification—by an official who was aware of that history and the risks that solitary confinement pose to someone with those health conditions.” Pet. App. 36a. This is not a “novel or surprising proposition” given the nearly identical holding in *Clark*—the court merely clarified that *Clark* also applies to individuals on death row. Pet. App. 38a; *see Clark*, 55 F.4th at 182-83 (holding “the right of a prisoner known to be seriously mentally ill to not be placed in solitary confinement for an extended period of time by prison officials who were aware of, but disregarded, the risk of lasting harm posed by such conditions” was clearly established at least as early as 2016).

3. Petitioner’s attempt to make a mountain out of a molehill is unavailing. He grasps at the Third Circuit’s reference to the DOJ report in order to gin up a contrived argument about the separation of powers and a phantom contravention of this Court’s foundational holding in *Marbury v. Madison*. *See, e.g.*, Pet. 9. Nonsense.

Indeed, the court of appeals repeatedly dispatched these concerns, explaining that “[t]he DOJ letter addressed to Secretary Wetzel is not important because it had the force of legal precedent. *We agree that it obviously did not and could not have had the force of legal precedent.*” Pet. App. 38a-39a (emphasis added). The Third Circuit went on to emphasize that its use of the DOJ report was “no more in tension” with *Marbury* than this Court’s use of the analogous

report in *Hope*, noting that “[i]n both cases, the DOJ report buttressed[d] the conclusion that ‘a reasonable person would have known’ of the Eighth Amendment violation.” Pet. App. 39a. Again, it bears repeating that the Third Circuit did not rely on the report to *establish* the law, but merely to emphasize that the report “concisely packaged much of the relevant and binding law and delivered it to the defendant’s doorstep.” Pet. App. 38a.⁶

In addition to Petitioner’s argument being incorrect, this gambit also comes tellingly late in the game. Mr. Williams, proceeding *pro se*, raised the DOJ report in his opposition to Petitioner’s request for summary judgment on the basis of qualified immunity. Dist. Ct. ECF No. 27, at 2. Petitioner did not reply. Next, Mr. Williams explicitly raised the relevance of the DOJ report in his opening brief in the court of appeals. *See, e.g.*, Br. for Appellant 9 (“Any reasonable prison official who had read the DOJ’s letter would have understood that continuing to hold Mr. Williams in solitary confinement violated the Eighth Amendment.”); *id.* at 27 (“[T]he DOJ’s conclusions signal to prison officials the state of the law.”); *id.* at 29 (“[N]o reasonable prison official who, like Secretary Wetzell, had read the DOJ findings

⁶ Petitioner would distinguish the DOJ report here from that in *Hope*, claiming, without citation, that there the Court used the DOJ report “to illustrate that the challenged practice had *always* been cruel and unusual.” Pet. 12. But nowhere in *Hope* does the Court state, or even suggest, this theory. And it is refuted by the *Hope* Court’s discussion of binding precedent that informed the *Hope* defendants that corporal punishment “offend[s] *contemporary* concepts of decency.” *Hope*, 536 U.S. at 742 (emphasis added).

letter and was aware of Mr. Williams’s history of mental illness and suicidality could have believed keeping him in solitary confinement for twenty-six years conformed with the Eighth Amendment.”). Petitioner did not even mention the DOJ report in the qualified immunity section of his response brief, let alone raise the argument he is now asserting.⁷ It was not until his petition for rehearing that Petitioner took issue with the use of the report. Petitioner’s decision to only raise the issue once he “had lost on the merits before the panel” after his years-long acquiescence to the notion that the DOJ report is relevant to the qualified immunity inquiry meaningfully “undercut[s] the force of [his] argument” now. *City of Houston v. Hill*, 482 U.S. 451, 467 n.16 (1987).

In short, despite Petitioner’s protestations, this case raises no existential questions about the role of the judiciary, nor begs any clarification on how qualified immunity works. Following well-settled qualified immunity jurisprudence, the Third Circuit looked to *binding precedent* to establish the law. And following this Court’s own process in *Hope*, the Third Circuit *bolstered* its finding with a DOJ report that came to the same conclusion using much of the same case law. Petitioner’s attempt to paint this unremarkable analytical process as a constitutional “anomaly” is meritless. Pet. 10.

⁷ Petitioner mentioned the DOJ report exactly once, and only in the ADA section of his brief. *See* Br. for Appellee 34.

II. The Third Circuit correctly interpreted its own law.

1. Not only does this case present no split and no conflict with this Court’s precedents, but the court of appeals correctly concluded that “[its] precedents leave no room for doubt that individuals with a known history of serious mental illness have a clearly established right not to be subjected to prolonged solitary confinement without penological justification.” Pet. App. 22a.⁸

To start, the Court discussed its decision in *Young v. Quinlan*, 960 F.2d 351 (3d Cir. 1992), in which it reversed the district court’s grant of summary judgment on an Eighth Amendment claim arising out of the plaintiff’s conditions in solitary confinement. Pet. App. 22a. In *Young*, the court “clarified that when evaluating Eighth Amendment allegations concerning segregated housing units, ‘[t]he touchstone is the health of the inmate.’” Pet. App. 22a (quoting *Young*, 960 F.2d at 364). “Highly relevant to this analysis,” the Third Circuit explained, “is that prisons may not punish in a way that ‘threatens the physical and

⁸ In places, the petition appears to mischaracterize the Third Circuit’s holding as broader than it truly is. *See, e.g.*, Pet. 7 (“The Third Circuit concluded . . . it was ‘clearly established’ that the Eighth Amendment prohibited him from continuing to house mentally ill death-row inmates in solitary confinement.”); Pet. 8 (“[T]he majority failed to identify any prior judicial decision holding that mentally-ill death-row inmates could not be housed in solitary confinement on a long-term basis.”). But the holding was in fact far narrower: that individuals with a *known* history of *preexisting* serious mental illness, including those on death row, have a clearly established right not to be subjected to prolonged, *indefinite* solitary confinement—*without penological justification*. *See* Pet. App. 37a.

mental health of prisoners.” Pet. App. 22a-23a (quoting *Young*, 960 F.2d at 364). And in *Young*, the court concluded that the plaintiff’s “preexisting physical illness made his solitary confinement even more inhumane, just as [Mr.] Williams’ preexisting mental illness did here.” Pet. App. 23a (citing *Young*, 960 F.2d at 365).

Next, in *Palakovic v. Wetzel*, 854 F.3d 209 (3d Cir. 2017), the Third Circuit held that the district court erred in dismissing claims arising out of the 2011 placement in solitary confinement of a suicidal prisoner with a number of known serious mental disorders. *Id.* at 226. The court of appeals concluded that the defendants knew that the conditions there “were inhumane for [the prisoner-decedent] in light of his mental illness,” Pet. App. 25a (quoting *Palakovic*, 854 F.3d at 225), in part due to “the robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement,” *Palakovic*, 854 F.3d at 225. The *Palakovic* court explained that in *Williams v. Secretary Pennsylvania Department of Corrections*, 848 F.3d 549 (3d Cir. 2017), a procedural due process case, it had “observed a growing consensus—with roots going back a century—” that solitary confinement “can cause severe and traumatic psychological damage.” *Palakovic*, 854 F.3d at 225.⁹ So the court of appeals in *Palakovic* had no problem holding that the plaintiffs

⁹ The Third Circuit below observed that its “precedents have made clear that solitary confinement can ‘cause cognitive disturbances’ after ‘even a few days.’” Pet. App. 33a (quoting *Williams*, 848 F.3d at 562).

stated a claim related to the decedent's "multiple 30-day stints in solitary confinement." *Id.* at 217.

Following *Young* and *Palakovic*, the Third Circuit in *Clark v. Coupe*, 55 F.4th 167 (3d Cir. 2022), addressed qualified immunity in a case very similar to this one. In *Clark*, the court of appeals held "that someone with a known preexisting serious mental illness has a clearly established right" by 2016, when the events in that case occurred, "not to be held in prolonged solitary confinement." Pet. App. 23a (citing *Clark*, 55 F.4th at 179, 181-82, 184-85). Drawing on prior Third Circuit and Supreme Court precedent, the court in *Clark* concluded that the constitutional right in question was "long protected by Eighth Amendment jurisprudence." Pet. App. 25a (quoting *Clark*, 55 F.4th at 181). Notably, the plaintiff in *Clark* spent seven months in solitary, as compared to Mr. Williams's twenty-six years. Pet. App. 23a-24a (citing *Clark*, 55 F.4th at 180-81).

These same decisions were among those that the DOJ report used to conclude that subjecting prisoners with serious mental illness to prolonged periods of solitary confinement "exposes them to an excessive and obvious risk of serious harm" in violation of the Eighth Amendment. Pet. App. 29a (quoting DOJ report). Through that report, "[t]he Secretary was directly informed that under *binding precedent*, placing someone with a known history of serious mental illness in solitary confinement for a prolonged period of time without penological justification clearly was unlawful." Pet. App. 31a.

After cataloging all of these sources of notice, the Third Circuit correctly concluded that Petitioner Wetzel was not entitled to qualified immunity because

Mr. “Williams’s conditions of confinement clearly violated basic principles of [the] Eighth Amendment established by controlling precedent.” Pet. App. 31a. This conclusion was “buttressed[d]” by the fact that the Secretary received “personal notice” of this conclusion, with doctrinal support. Pet. App. 31a-32a. This holding, the court of appeals explained, “merely clarifies that the clearly established right in *Clark* extends to individuals on death row.” Pet. App. 38a.

2. The petition asserts that Third Circuit law was *not* clearly established, but its attempts to poke holes in earlier circuit precedent are unavailing.

Petitioner’s central argument is that any Third Circuit precedent that *does* involve solitary confinement but *does not* involve a death-row plaintiff is somehow irrelevant to the clearly-established inquiry. Pet. 16-18. This, conveniently, describes *Young*, *Palakovic*, and *Clark*. *See id.* But the Third Circuit already rejected this view of its own caselaw. *See* Pet. App. 32a. In the court of appeals, as here, Petitioner argued that *Porter v. Pennsylvania Department of Corrections*, 874 F.3d 341 (3d Cir. 2020), meant that this death-row/non-death-row distinction entitled him to qualified immunity. Pet. App. 32a. “[T]hat argument fail[ed]” because *Porter* “only concerned people of sound mind when first placed in solitary confinement” and the *Porter* court explicitly “distinguishe[d] *Palakovic* from *Porter*’s case” on that basis. Pet. App. 32a; *see also Porter*, 974 F.3d at 450 (noting *Palakovic* “had specific known mental health issues pre-assignment to solitary confinement”). And *Porter* did not purport to overrule prior circuit precedent that “the health of the inmate,” not his sentence, is the touchstone of the Eighth Amendment

inquiry. Pet. App. 33a (quoting *Young*, 960 F.2d at 364).

In a similar vein, Petitioner says *Peterkin v. Jeffes*, 855 F.2d 1021 (3d Cir. 1988), “provided Secretary Wetzel with valid reasons to believe that the general principles articulated in” prior decisions, including *Young*, *Palakovic*, *Farmer*, and *Hope*, “did not apply with equal force . . . to inmates on death row.” Pet. 17. But *Peterkin* does no such thing—for several reasons. First, *Peterkin* was a class action bringing a facial challenge to death-row conditions generally, whereas Mr. Williams’s claim is an as-applied challenge to his particular confinement. *Peterkin*, 855 F.2d at 1022. Second, unlike Mr. Williams’s claim, the claim in *Peterkin* was not based on prisoners’ preexisting mental illness or other vulnerabilities to the harms of solitary confinement. *See Peterkin*, 855 F.2d at 1022-23. Third, Mr. Williams spent much more time in solitary confinement than the plaintiffs in *Peterkin*—26 years versus 4, at most. *Id.* at 1029. And duration is a crucial factor in determining whether solitary confinement withstands Eighth Amendment scrutiny. *See Young*, 960 F.2d at 364; *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)). Indeed, the *Peterkin* Court acknowledged the death-row conditions under review there might “become cruel and unusual” if they continued to be imposed for “an inordinate” amount of time. *Peterkin*, 855 F.2d at 1033.¹⁰ What’s more, Petitioner’s argument—on its face, just a dispute as to the proper interpretation of Third Circuit law—was rejected by the Third Circuit in denying Petitioner’s

¹⁰ For all these reasons, Petitioner’s claim that the court of appeals somehow overrode *Peterkin* via the DOJ report rings hollow. Pet. 19.

rehearing petition premised on this issue, without any written dissent. Pet. App. 143a-144a.

Finally, as to *Clark*, Petitioner points out that decision was issued after the events in question here. Pet. 17. That’s accurate, but irrelevant. The Third Circuit did not conclude that *Clark* itself (*i.e.*, its constitutional ruling, from 2022) provided the requisite notice to Petitioner. Rather, the Third Circuit looked to *Clark* because it was a precedential opinion that spoke to what in-circuit precedent had “long protected” by January 2016, when Clark’s “months-long placement in solitary confinement” began. *Clark*, 55 F.4th at 181; Pet. App. 25a-26a.¹¹

III. This issue is not important enough to warrant this Court’s review, and this case is a poor vehicle.

In addition to not presenting a circuit split or conflict with this Court’s precedent—or indeed any error at all—the issue in this case does not warrant this Court’s attention, and this is a poor vehicle.

1. This case is relatively unimportant—it presents no question as to the proper interpretation of this Court’s precedent. It involves only a question of the court of appeals’ proper interpretation *of its own caselaw*—which the Third Circuit definitively

¹¹ The footnote in *Brosseau v. Haugen*, 543 U.S. 194, 200 n.4 (2004) (*per curiam*), cited by Petitioner, Pet. 17, is not to the contrary. None of the decisions the Court characterized as “of no use in the clearly established inquiry” held the law to be clearly established by the time of the events in *Brosseau*.

resolved when it denied Petitioner's request for rehearing en banc. Pet. App. 143a.¹²

Nor does this case raise questions about the proper interpretation of constitutional law under Third Circuit precedent. That is because Petitioner conceded the merits, and “d[id] not dispute that [Mr.] Williams’ Eighth Amendment right to be free from cruel and unusual punishment was violated.” Pet. App. 17a; *see also* Pet. 13 n.5 (acknowledging “the DOC defendants did not specifically argue that [Mr.] Williams’ Eighth Amendment claim failed on the merits”). In other words, the petition on its face only relates to the narrow question of whether the law was *clearly established* at a particular moment in time. *See* Pet. i (Question Presented). What’s more, the petition doesn’t even relate to the question of whether it is *now* clearly established that keeping someone with preexisting mental health issues in solitary confinement for years on end without penological justification is an Eighth Amendment problem; *Clark* held that this was clearly established as of 2016. *See* Pet. App. 23a (panel describing *Clark* as identifying the clearly established right “since at least 2016”); Pet. 17 (describing ruling in *Clark*).¹³

This case’s relevance is limited even further due to its narrow scope and the facts on the ground. Recall,

¹² Only two judges dissented from this denial of rehearing, and neither felt called to write a dissent from this decision. Pet. App. 143a. And the judge who dissented at the panel stage did not call for en banc review or review by this Court. *See generally* Pet. App. 107a-115a.

¹³ Petitioner has never contested that this is *Clark*’s holding; he has only ever taken issue with whether *Clark*’s holding could extend to the death-row context. *See, e.g.*, Pet. 17.

all the Third Circuit did is “merely clarif[y] that the clearly established right in *Clark* extends to individuals on death row.” Pet. App. 38a. But Pennsylvania no longer houses death row prisoners without active death warrants in solitary confinement indefinitely; the Commonwealth abandoned that practice in 2019, pursuant to a settlement agreement, Pet. App. 9a; Pet. 5, and the two-year statute of limitations means there are no additional timely claims not yet filed, *see* Pet. App. 132a (noting two-year limitations period). And within the Third Circuit, Pennsylvania is the only jurisdiction with the death penalty.¹⁴ So, notwithstanding the sky-is-falling rhetoric in the petition, the number of individuals who can possibly be impacted by this ruling is small and finite, and the corresponding utility of any guidance on this issue is low.¹⁵

Indeed, were this issue truly mission-critical to the Commonwealth, one would have expected an

¹⁴ *See* DEATH PENALTY INFORMATION CENTER: STATE BY STATE, <https://deathpenaltyinfo.org/states-landing> (last visited July 17, 2025) (showing that New Jersey and Delaware do not have the death penalty); *People of the V.I. v. Velasquez*, 60 V.I. 22, 37 (Super. Ct. 2014) (same, regarding the U.S. Virgin Islands).

¹⁵ Petitioner’s claim that “[a]dditional inmates have begun using the DOJ letter” is misleading. Pet. 19. This petition is all about the clearly-established prong of the qualified immunity inquiry, and in neither of the cited cases has the DOJ report been invoked in that context. *See Bell, et al. v. Penn. Dept. of Corr., et al.*, No. 2:22-cv-1516, ECF 75 at 12 (W.D. Pa. Sept. 29, 2023) (citation of report in Complaint, as evidence of the harmfulness of solitary confinement for individuals with mental illness and defendants’ awareness thereof); *Walker v. Harry, et al.*, No. 1:25-cv-50, ECF 1 at 10 (E.D. Pa. May 29, 2024) (same, in Complaint alleging procedural due process violations).

interlocutory appeal to the Third Circuit in the lead case on this issue—or at least a request for a stay pending the outcome of the Third Circuit appeal in the present case—when Secretary Wetzel was similarly denied qualified immunity there. *See Busanet v. Wetzel*, No. 2:21-cv-4286, 2023 WL 5003573 (E.D. Pa. Aug. 4, 2023); *see also* Pet. App. 32a n.126 (court of appeals below noting this decision). But that did not occur.

2. Additionally, even if the petition presented an issue theoretically worthy of this Court’s review (and it does not), this would be a bad vehicle for addressing it. To start, the denial of qualified immunity is not make-or-break in this case; Mr. Williams has a live ADA claim against the DOC (to which qualified immunity does not apply) separate and apart from any constitutional claim. *See* Pet. 7 n.4 (noting court of appeals “held that Mr. Williams’ Title II claim could proceed” and noting “that claim is not at issue here”); Pet. App. 4a (summarizing opinion and noting vacatur of district court’s grant of summary judgment on Mr. Williams’s ADA claim). And even as to the constitutional claim specifically, it is not clear that Petitioner will ultimately need qualified immunity to defeat liability; there are material disputes of fact regarding whether Mr. Williams’s claims were timely filed. *See* Pet. 125a (district court noting defendants moved for summary judgment on statute-of-limitations grounds); *id.* at 131a-134a (analyzing issue and declining to grant summary judgment because “there is a question of fact as to the date of the last act evidencing a continuing practice”).

It also bears mentioning that the qualified immunity question here arises in the context of Petitioner’s *considered decision* to house Mr. Williams

in solitary confinement for twenty-six years, Pet. i (noting policy); Pet. App. 9a (same), not a “split-second judgment[]” in a “tense, uncertain, and rapidly-evolving” situation, where “specificity is especially important,” *Kisela v. Hughes*, 584 U.S. 100, 103, 104 (2018). Putting aside the soundness of the doctrine as a whole,¹⁶ officials should be *least* entitled to qualified immunity in a situation like this one—where Petitioner had the luxury of time and deliberation and *still* chose to house Mr. Williams in solitary confinement for over a quarter century without penological justification, despite knowing about his preexisting mental health issues. *See, e.g., Hoggard v. Rhodes*, 141 S. Ct. 2421, 2422 (2021) (Thomas, J., respecting denial of certiorari) (“[W]hy should university officers, who have time to make calculated choices about enacting or enforcing unconstitutional policies, receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting?”); *McMurray v. Weaver*, __ F.4th __, 2025 WL 1778670, *9-10 (5th Cir. 2025) (Ho, J., concurring) (observing “[i]t’s one thing to grant

¹⁶ *See, e.g., Baxter v. Bracey*, 140 S. Ct. 1862, 1865 (2020) (Thomas, J., dissenting from denial of certiorari) (“I continue to have strong doubts about our § 1983 qualified immunity doctrine.”); *Price v. Montgomery County*, 144 S. Ct. 2499, 2500 n.2 (2024) (Sotomayor, J., respecting denial of certiorari) (citing “recent scholarship [that] details that the 1871 Civil Rights Act included language abrogating common-law immunities that was, for unknown reasons, omitted from the first compilation of federal law” that “reinforces why, at a minimum, this immunity doctrine should be employed sparingly”); *Green v. Thomas*, 734 F. Supp. 3d 532, 543-48 (S.D. Miss. 2024) (compiling judicial and scholarly critiques of qualified immunity and outlining the textual, democratic, and policy problems with the doctrine), *aff’d in part, rev’d in part* 129 F.4th 877 (5th Cir. 2023).

qualified immunity when it comes to police officers who are forced to make split-second judgment calls in life-and-death situations. It's quite another thing to immunize public officials who make a deliberate and calculated decision to violate one's constitutional right," and noting that "six members of [the Fifth Circuit] embraced these principles" in earlier writings); *see also Taylor v. Riojas*, 592 U.S. 7, 9 (2020) (reversing grant of qualified immunity, where there was "no evidence that the conditions of [plaintiff]'s confinement were compelled by necessity or exigency").

3. This Court has often and recently denied petitions for certiorari brought by correctional officials who were denied qualified immunity in cases arising in prisons and jails.¹⁷ And, likewise, although this Court receives dozens of requests annually for summary reversals, it exercises this power only in the rarest of cases.¹⁸ This is not one of them. In fact, in

¹⁷ *See Nelson v. Tompkins*, 89 F.4th 1289 (11th Cir. 2024), *cert. denied sub nom. Sellers v. Nelson*, 145 S. Ct. 178 (2024); *Polanco v. Diaz*, 76 F.4th 918 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 2520 (2024); *Boyd v. McNamara*, 74 F.4th 662 (5th Cir. 2023), *cert. denied sub nom. Johnson v. Boyd*, 144 S. Ct. 562 (2024); *Crittendon v. LeBlanc*, 37 F.4th 177 (5th Cir. 2022), *cert. denied*, 144 S. Ct. 90 (2023); *Welters v. Minnesota Dep't of Corr.*, 982 N.W.2d 457 (Minn. 2022), *cert. denied sub nom. Emily v. Welters*, 144 S. Ct. 74 (2023); *Smith v. Linthicum*, No. 21-20232, 2022 WL 7284285, (5th Cir. Oct. 12, 2022), *cert. denied*, 144 S. Ct. 70 (2023); *Paugh v. Uintah Cnty.*, 47 F.4th 1139 (10th Cir. 2022), *cert. denied sub nom. Anderson v. Calder*, 143 S. Ct. 2658 (2023).

¹⁸ Petitioner cites not a single Eighth Amendment conditions of confinement summary reversal in favor of qualified immunity. Pet. 21. The bulk of the summary reversals provided by Petitioner arise in the Fourth Amendment context, and involve

recent years when this Court has summarily reversed on qualified immunity issues in the prison context, it has been to *remove* an officer's entitlement to immunity, not impose it. *See, e.g., Taylor v. Riojas*, 592 U.S. 7 (2020). Simply put, this case would not be a worthy extension of this Court's limited resources.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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the split-second judgments of police officers in the field. *See Carroll v. Carman*, 574 U.S. 13 (2014) (*per curiam*); *Mullenix v. Luna*, 577 U.S. 7 (2015) (*per curiam*); *White v. Pauly*, 580 U.S. 73 (2017) (*per curiam*); *Kisela v. Hughes*, 584 U.S. 100 (2018) (*per curiam*); *City of Escondido v. Emmons*, 586 U.S. 38 (2019) (*per curiam*); *City of Tahlequah v. Bond*, 595 U.S. 9 (2021) (*per curiam*). The one Eighth Amendment case Petitioner cites is a decade-old case involving a deliberate indifference claim against supervisors for their failure to properly implement adequate suicide prevention protocols—a distinguishable claim both legally and factually. *Taylor v. Barkes*, 575 U.S. 822, 825 (2015).