

No. 24-1067

In the Supreme Court of the United States

JOHN E. WETZEL, IN HIS PERSONAL CAPACITY, AND
LAUREL R. HARRY, IN HER OFFICIAL CAPACITY AS
PENNSYLVANIA'S SECRETARY OF CORRECTIONS,
Petitioners

v.

ROY LEE WILLIAMS,
Respondent

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

REPLY BRIEF

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REASONS FOR GRANTING THE PETITION

No precedent clearly established that former Secretary of Corrections John E. Wetzel violated the Eighth Amendment in 2011 when he continued a longstanding policy of housing death-row inmates, like Respondent Roy Lee Williams, in solitary confinement. In fact, roughly twenty-three years before Secretary Wetzel took office, the Third Circuit's decision in *Peterkin v. Jeffes*, 855 F.2d 1021, 1026-1033 (3d Cir. 1988), *confirmed* the legality of that policy even though some inmates housed on death row had already exhibited "psychological disturbances." Predicting that inmates would spend increasingly more time on death row, the Third Circuit explicitly stated back then that it was not considering the "relative brevity" (or length) of the inmates' confinement on death row "in assessing the constitutionality of the conditions under which death-sentenced prisoners [we]re confined[.]" *Id.* at 1029. This 1988 decision gave prison officials in Pennsylvania every reason to believe that the Eighth Amendment did not prohibit them from continuing to house death-row inmates in solitary confinement on a long-term basis, even if those inmates were psychologically disturbed. That should have been the end of the qualified immunity analysis for the Court of Appeals. But it was not.

Instead, the Court of Appeals attempted to fashion "binding precedent" by cobbling together inapposite caselaw with a 2014 letter from the Department of Justice (DOJ). Perhaps recognizing that the Court of Appeals' analysis is unsound, Mr. Williams attempts to divert this Court's attention by misrepresenting the record, improperly relying on evidence that pertains only to a claim not at issue, and attempting to discount the importance of the Judiciary's role in our

constitutional system. But when the relevant events are understood in their proper context and sequence, it becomes clear that Secretary Wetzel is entitled to qualified immunity. This Court should grant certiorari and summarily reverse the Court of Appeals' decision.

I. The DOJ's 2014 Letter Was Not Based on Prior Decisions that "Clearly Established" the Alleged Constitutional Right at Issue.

Mr. Williams testified that the restrictive conditions of confinement underpinning his claims ceased on December 3, 2019, and that he was not challenging any conditions of confinement imposed on him after that date. JA101-JA102.¹ The Third Circuit did not hold that "prolonged solitary confinement satisfie[d] the objective prong of the Eighth Amendment test" until September 1, 2020, when it decided *Porter v. Pennsylvania Dept. of Corrections*, 974 F.3d 431, 451 (3d Cir. 2020). Ignoring this critical fact, Mr. Williams argues that, before his 2019 release from solitary confinement, binding Third Circuit precedent "clearly established" that the Eighth Amendment prohibited the Pennsylvania Department of Corrections (DOC) from housing a death-row inmate with a serious mental illness in solitary confinement. Br. in Opp. at 9-21. But he never explains—because he cannot explain—exactly *when* before 2019 the Third Circuit "clearly established" that alleged legal principle.

The question as to *when* this alleged constitutional right became "clearly established" is critical because,

¹ All "JA" citations refer to the joint appendix filed by the parties in the Court of Appeals, which is available at 3d Cir. Dkt. ECF Nos. 18 & 19.

without fair notice of that right's existence before 2019, Secretary Wetzel is entitled to qualified immunity. *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 615-616 (2015). The Third Circuit attempted to answer that question by saying that Secretary Wetzel had "fair warning" of this right's existence in 2014, when two officials working for the DOJ sent him a copy of a letter opining that the use of solitary confinement to house mentally ill prisoners violated their constitutional rights. Pet. App. 31a. In dissent, Judge Phipps correctly pointed out that the panel majority had improperly relied on the letter "to set a date certain on which a constitutional right was clearly established" for purposes of qualified immunity, instead of choosing the date of a judicial decision. Pet. App. 113a (Phipps, J., dissenting in part). As Judge Phipps observed, the panel majority could not identify a prior judicial decision applying this alleged right to death-row inmates before 2020. Pet. App. 110a (Phipps, J., dissenting in part).

In an effort to make it appear that the Third Circuit's decision was grounded in previous decisions that were somehow incorporated within the DOJ's letter, Mr. Williams argues that the letter cited "many of the same cases" that the Third Circuit relied on below. Br. in Opp. at 11. But that is precisely why the Third Circuit's analysis was flawed. The four decisions identified by the Third Circuit—three of which were cited in the letter—did not clearly establish that the Eighth Amendment prohibited the DOC from housing a *death-row inmate* with a mental illness in solitary confinement. Pet. App. 38a, n. 147.

The DOJ's letter was not (and could not have been) based on *Palakovic v. Wetzel*, 854 F.3d 209 (3d Cir. 2017), which was decided a few years *after* the letter had already been written. This Court's decisions in

Farmer v. Brennan, 511 U.S. 825 (1994), and *Hope v. Pelzer*, 536 U.S. 730 (2002), did not involve solitary confinement. Unlike the prisoner in *Young v. Quinlan*, 960 F.2d 351, 354-355 (3d Cir. 1992), who alleged that he had been placed in a cell with no toilet or running water and denied opportunities to shower and use the prison’s restroom, Mr. Williams does not allege that he was housed in unsanitary conditions. And critically, none of the four decisions cited by the Third Circuit involved a death-row inmate. Pet. App. 38a, n. 147. Mr. Williams is, therefore, incorrect in asserting that the decisions referenced in the letter—rather than the letter itself—provided the basis for the Third Circuit’s decision. Br. in Opp. at 9-21.

The Third Circuit’s decision in *Porter*—which was issued roughly nine months *after* Mr. Williams had already been released from solitary confinement—specifically held that prison officials (including Secretary Wetzel) were shielded by qualified immunity precisely because the inmates involved in its prior cases had not been sentenced to death. *Porter*, 974 F.3d at 450. In *this* case, the Third Circuit explicitly *clarified*—for the *first* time—that “the clearly established right” recognized in *Clark v. Coupe*, 55 F.4th 167 (3d Cir. 2022), “extends to individuals on death row.” Pet. App. 38a. Because Secretary Wetzel “cannot have been ‘expected to predict the future course of constitutional law’” in the Third Circuit, he is unquestionably entitled to qualified immunity. *Wilson v. Layne*, 526 U.S. 603, 617-618 (1999) (quoting *Procunier v. Navarette*, 434 U.S. 555, 562 (1978)).

II. Mr. Williams Mischaracterizes the Record.

In a blatant mischaracterization of the record, Mr. Williams now contends that he “was not allowed to

seek discovery,” and that he was denied access to his medical records, when this case was pending before the District Court. Br. in Opp. at 3, n. 3. That is simply not true. During a deposition conducted on December 9, 2021, Mr. Williams testified that unspecified individuals would not “let [him] see [his] medical records.” JA125. But he later procured those records and submitted them to the District Court. JA292-JA295. In two separate scheduling orders, the District Court specifically advised Mr. Williams of his right to file an affidavit under Federal Rule of Civil Procedure 56(d) if he needed additional evidence to oppose the DOC defendants’ motion for summary judgment. E.D. Pa. Dkt. ECF No. 18 at 2, ¶ 6; E.D. Pa. Dkt. ECF No. 21 at 2, ¶ 3. Those orders further stated that “additional discovery” could be ordered if Mr. Williams demonstrated an inability to oppose the motion for summary judgment without further information. E.D. Pa. Dkt. ECF No. 18 at 2, ¶ 6, n. 2; E.D. Pa. Dkt. ECF No. 21 at 2, ¶ 3, n. 1. Mr. Williams did not file a Rule 56(d) affidavit. Instead, he filed a substantive response to the motion and did not indicate that additional discovery was needed. E.D. Pa. Dkt. ECF No. 27. So the District Court correctly determined that the motion was “ripe for disposition.” Pet. App. 124a, n. 6.

Importantly, the medical records submitted by Mr. Williams confirmed that he specifically told prison officials that his alleged suicide attempt in 1996 was a fake attempt designed to “manipulate the system[.]” JA294. The medical records also reflected that the DOC had no indication that Mr. Williams was suffering from a mental illness at any time after 1996. JA294. During his deposition, Mr. Williams testified that he had refused to take Prozac after the suicide attempt, that he had told an attending physician that “nothing was wrong” with him, and that he had consistently told

medical professionals that he did not need mental health treatment from that point forward. JA115-JA116, JA124.

In his brief to this Court, Mr. Williams does not refer to any evidence of a mental illness between his purported suicide attempt in 1996 and his release from solitary confinement in 2019. Br. in Opp. at 3-4. When Secretary Wetzel took office in 2011, Mr. Williams had not exhibited *any* signs of a mental illness for *more than fourteen years*. Under these circumstances, it is difficult to fathom how Mr. Williams believes—as he now attempts to argue—that his “as-applied challenge to his particular confinement” is sufficiently different from the challenges rejected in *Peterkin* to overcome Secretary Wetzel’s qualified immunity. Br. in Opp. at 20.

Relying on documentary evidence from the mid-1990s, Mr. Williams argues that Secretary Wetzel was aware of his “mental health history and continued mental health struggles” during his incarceration. Br. in Opp. at 2. Specifically, Mr. Williams calls this Court’s attention to reports that a neuropsychologist and a psychiatrist submitted in 1996 to support his petition for relief under Pennsylvania’s Post Conviction Relief Act (PCRA) [42 Pa. C.S. §§ 9541-9546]. Br. in Opp. at 3. But those reports were rebutted, discredited, and rejected during the PCRA proceedings, which concluded when the Pennsylvania Supreme Court affirmed the denial of Mr. Williams’s PCRA petition in April 2004. *Commonwealth v. Williams*, 846 A.2d 105, 113 (Pa. 2004) (“It is evident from the trial court’s opinion that it made credibility determinations as to the testimony of the mental health experts, and resolved the issue against [Mr. Williams].”). Again, Secretary Wetzel did not take office until 2011. By that time, twenty-three years had passed since the Third

Circuit's 1988 decision upholding the DOC's policy, fifteen years had passed since Mr. Williams's purported suicide attempt, and seven years had passed since the Pennsylvania Supreme Court's 2004 decision affirming the trial court's denial of Mr. Williams's PCRA petition. In light of these previous decisions upholding the DOC's policy and discrediting the two medical reports, Secretary Wetzel could not have known (or even guessed) that the Eighth Amendment somehow required him to *change* Mr. Williams's housing arrangements when he took office.

III. Mr. Williams Improperly Relies on Evidence that is Not Relevant to His Eighth Amendment Claim Against Secretary Wetzel.

Mr. Williams incorrectly argues that this case would be a bad vehicle for addressing the manner in which qualified immunity should be applied because he still has a live claim against the DOC under Title II of the Americans with Disabilities Act of 1990 (ADA) [42 U.S.C. §§ 12131-12134]. Br. in Opp. at 24. But his arguments—when coupled with his mischaracterizations of the record—illustrate precisely why this Court must clarify that qualified immunity shields Secretary Wetzel from Mr. Williams's personal-capacity claim under the Eighth Amendment, even if the official-capacity claim under the ADA can still proceed against the DOC. Like the Court of Appeals, Mr. Williams improperly relies on events predating Secretary Wetzel's tenure to overcome qualified immunity. Br. in Opp. at 2-4; Pet. App. 5a-8a, 20a-21a. But the alleged facts supporting Mr. Williams's ADA claim do not provide parallel support for his Eighth Amendment claim.

The ADA claim can only be asserted against the DOC itself, which qualifies as a “public entity” under Title II. *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 209-210 (1998). In contrast, Mr. Williams’s Eighth Amendment claim constitutes a personal-capacity claim against Secretary Wetzel. *Hafer v. Melo*, 502 U.S. 21, 25 (1991). And because Secretary Wetzel can only be sued under 42 U.S.C. § 1983 for his “own individual actions”—and not for actions taken by other DOC officials before he arrived in 2011—Mr. Williams’s reliance on events that allegedly occurred in 1994, 1995, and 1996 only serves to highlight the Third Circuit’s distortion of the qualified immunity standard in this case. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009); Br. in Opp. at 2-4.

Mr. Williams faults the DOC defendants for objecting to his reliance on the DOJ’s 2014 letter only in the portion of their Third Circuit brief relating to his ADA claim, and not in the portion of the brief addressing his Eighth Amendment claim. Br. in Opp. at 14-15. But that argument is unavailing for two distinct reasons.

First, the DOC defendants did not discuss the DOJ’s letter in the portion of their Third Circuit brief addressing qualified immunity because they had no reason to believe or anticipate that the letter had any bearing on whether Secretary Wetzel was immune from suit. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (“We do not require a case directly on point, but *existing precedent* must have placed the statutory or constitutional question beyond debate.”) (emphasis added). Under Third Circuit precedent, a plaintiff bringing a disability-based discrimination claim under Title II of the ADA can sometimes recover damages by showing that a public entity failed to adequately respond to a pattern of past injuries that are similar to

the ones he or she now alleges. *Haberle v. Borough of Nazareth*, 936 F.3d 138, 141 (3d Cir. 2019). So the DOC defendants explained why the DOJ's 2014 letter—which “expressed general concerns about the use of solitary confinement to house mentally ill prisoners” without specifically focusing on policies that applied to death-row inmates—did not support Mr. Williams's contention that the DOC had been “deliberately indifferent” to whether the conditions of *his* confinement violated the ADA. 3d Cir. Dkt. ECF No. 22 at 42. But the DOC defendants had no reason to address the letter in relation to Mr. Williams's Eighth Amendment claim because, for the reasons explained by Judge Phipps, it was simply not relevant to whether Secretary Wetzel was shielded by qualified immunity. Pet. App. 111a-114a (Phipps, J., dissenting in part).

Second, Secretary Wetzel's arguments in this Court are not limited to the precise arguments that he raised below. *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). When the DOC defendants filed their brief in the Third Circuit, they aggressively argued that Secretary Wetzel was shielded by qualified immunity. 3d Cir. Dkt. ECF No. 22 at 27-37. Having presented that defense to the Third Circuit, Secretary Wetzel is free to raise “a new argument to support what has been his consistent claim” (*i.e.*, that he is entitled to qualified immunity). *LeBron v. National Railroad Passenger Corp.*, 513 U.S. 374, 379 (1995). Because the Third Circuit unexpectedly (and inexplicably) relied on the DOJ's letter for an improper purpose, Secretary Wetzel may challenge that decision by petitioning this Court for a writ of certiorari. *United States v. Williams*, 504 U.S. 36, 41 (1992).

IV. The Issue Raised in Secretary Wetzel’s Certiorari Petition is Critically Important to the Federal Judiciary’s Role in Our Constitutional System.

Mr. Williams contends that this Court should not resolve this issue because Delaware, New Jersey, and the Virgin Islands do not sentence prisoners to death, and because Pennsylvania has already stopped housing death-row inmates in solitary confinement. Br. in Opp. at 23. But Secretary Wetzel is not asking this Court to decide whether the Eighth Amendment permits Pennsylvania to house death-row inmates in solitary confinement. Instead, Secretary Wetzel asks whether the DOJ’s letter clearly established the law for purposes of defeating qualified immunity. *That* issue—which could arise in any of a number of different settings involving state officials—is critically important.

The judicial power vested in federal courts cannot be shared with the Executive Branch. *United States v. Nixon*, 418 U.S. 683, 704 (1974). Although views expressed by the Executive Branch can sometimes “inform the judgment of the Judiciary,” they *cannot* “supersede it.” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024). By impermissibly relying on the DOJ’s letter to effectively displace its prior decisions in *Peterkin* and *Porter*, the Third Circuit crossed that line. Pet. App. 31a. For this reason, the Third Circuit’s decision in this case cannot be permitted to stand.

* * *

Qualified immunity “protects all but the plainly incompetent or those who knowingly violate the law.”

al-Kidd, 563 U.S. at 743 (cleaned up). It certainly protects a competent state official like Secretary Wetzel—who merely *continued* the same policy the Third Circuit had long ago upheld—from being inhibited in the discharge of his duties by fears of personal liability and harassing litigation. *Ziglar v. Abbasi*, 582 U.S. 120, 150 (2017). If competent officials can lose qualified immunity for failing to comply with a letter from the DOJ, fear of lawsuits will deter them from discharging their duties in the manner expected under this Court’s decisions.

A few weeks ago, this Court summarily reversed a decision that, if left uncorrected, would have produced “negative consequences for prison officials and the ‘inordinately difficult undertaking’ of running a prison.” *Goldey v. Fields*, 606 U.S. 942, 944 (2025) (*per curiam*) (quoting *Turner v. Safley*, 482 U.S. 78, 84-85 (1987)). If left uncorrected, the Third Circuit’s decision denying qualified immunity to Secretary Wetzel will inevitably produce the same negative consequences here. This Court should reverse the Third Circuit’s egregious decision in this case.

CONCLUSION

The Court should grant Secretary Wetzel's certiorari petition and summarily reverse the Third Circuit's decision holding that qualified immunity does not shield him from Mr. Williams's Eighth Amendment claim. Alternatively, the Court should grant the petition, exercise plenary review, and resolve the question presented.

Respectfully submitted,

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