No. 25-1200

IN THE

Supreme Court of the United States

BETHLEHEM MANOR VILLAGE, LLC,

Petitioner,

v.

ROBERT J. DONCHEZ, FORMER MAYOR OF THE CITY OF BETHLEHEM, PENNSYLVANIA,

Respondent.

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

PETITIONER'S REPLY BRIEF

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REPLY BRIEF

Petitioner asks this Court to revisit qualified immunity because it conflicts with the text and history of Section 1983. Pet. for Cert. at 8–16. Respondent fails to engage with this argument and instead offers only tangential reasons for denying review. None are persuasive. For instance, Respondent fails to explain why the lack of a circuit split makes this case different from any other case in which petitioners ask this Court to revisit *its own* precedent. Nor is the decision below any more "fact-bound" than any other qualified immunity decision this Court has resolved simply because this case—like those ones—involves an application of law to facts. Opp. at 9. Finally, that this case arises in the context of a land use dispute makes it a *better* vehicle for this Court's review. After all, the Court has never offered satisfactory explanation for why public officials like Respondent—who engaged in a deliberate campaign to deprive Petitioner of his constitutional rights—should receive the same immunity as police officers who are forced to make split-second decisions. Pet. for Cert. at 20.

At a minimum, this Court should summarily reverse the decision below, which put Petitioner to the unnecessary task of identifying a precedent with similar facts—even where the constitutional violation was obvious. Pet. for Cert. at 16–18. Respondent *agrees* that a plaintiff need not find a precedent with similar facts to overcome qualified immunity. Opp. at 16. But the decision below required just that. Pet. App. 5a. This Court should summarily reverse the panel's error, which contravenes this Court's precedent and resulted in the dismissal of Petitioner's claim against Respondent below.

COUNTERSTATEMENT OF FACTS

Respondent now tries to shortchange his involvement. Opp. at 4. But as both the district court and the court of appeals noted, Respondent took many steps to block Petitioner from opening a psychiatric hospital. Pet. App. 5a, 29a, 33a. Respondent proclaimed that he did not want "those people" in his city, and "instructed City officials to take all steps necessary to prevent the psychiatric hospital from opening." Pet. App. 5a (citation omitted). Then the dominoes fell. Respondent "influenced zoning officials who would have granted [relevant permits] but for the direction by the Mayor." Pet. App. 5a (citation omitted). A zoning official who had initially said the hospital was a permitted use changed course and "refused to process" Petitioner's renewed request for the same determination. Pet. App. 9a–10a. The consequences were devastating. Petitioner lost out on millions of dollars of expected profits from the lawful use of its property. Pet. App. 12a. The city's residents lost out on a hospital that would have filled a critical gap in psychiatric care.

The district court held that Respondent was not entitled to qualified immunity because the allegations established a violation of Petitioner's clearly established due process rights. Pet. App. 27a–33a. The Third Circuit reversed based only on its view that Respondent did not violate a right that was clearly established. Pet. App. 6a. Put differently, qualified immunity was dispositive.

ARGUMENT

I. This Case Presents an Ideal Opportunity to Reconsider Qualified Immunity

A. This Court Should Revisit Qualified Immunity because it is Inconsistent with the History and Text of Section 1983

Respondent does not contest the fact that qualified immunity is incompatible with the text and history of Section 1983. That is because this Court's "qualified immunity precedents" are rooted not in text or history, but in "the sort of freewheeling policy choice[s] that [the Court] ha[s] previously disclaimed the power to make." *Ziglar v. Abbasi*, 582 U.S. 120, 159–60 (2017) (Thomas, J. concurring) (citation omitted); *see also Baxter v. Bracey*, 140 S. Ct. 1862, 1862 (2020) (Thomas, J., dissenting from denial of certiorari) (explaining qualified immunity should be reconsidered because it is inconsistent with Section 1983's text); *N.S., only child of decedent Stokes v. Kansas City Bd. of Police Commissioners*, 143 S. Ct. 2422, 2424 (2023) (Sotomayor, J., dissenting from denial of certiorari) ("It is time to restore some reason to a doctrine that is becoming increasingly unreasonable . . . or reexamine its judge-made doctrine of qualified immunity writ large.").

Because it is this Court that needs to revisit its own precedent, it is hardly surprising that there is no circuit split. *But see* Opp. at 5. Lower courts must follow this Court's precedents whether they like them or not. *See Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 851 F.3d 746, 747 (7th Cir. 2017), *rev'd and remanded*, 585 U.S. 878 (2018) (only this Court may overrule its precedent).

Nor can Respondent minimize calls to revisit qualified immunity merely because they arise in different factual contexts. The reasoning of those critiques applies with equal force here. After all, the text of Section 1983 "ma[kes] no mention of defenses or immunities." *Baxter*, 140 S. Ct. at 1862 (Thomas, J., dissenting from denial of certiorari) (citation omitted). And that's as true in this context as in any others. *See id.* at 1862–63 (Thomas, J., dissenting from denial of certiorari) (Section 1983 "applies *categorically* to the deprivation of constitutional rights under color of state law") (emphasis added).

B. Stare Decisis Does Not Bar Reconsideration of Qualified Immunity

Stare decisis does not prevent this Court from reconsidering qualified immunity. Respondents contend that there is no intervening development to support this Court's reconsideration of qualified immunity. Opp. at 10. But as Petitioner has already explained, recent scholarship supports the conclusion that qualified immunity conflicts with the history and text of Section 1983. Pet. for Cert. at 10–12; *Zadeh v. Robinson*, 928 F.3d 457, 480 & nn.61–62 (5th Cir. 2019) (Willett, J., concurring in part, dissenting in part) (cataloging the "growing, cross-ideological chorus of jurists and scholars urging recalibration of contemporary immunity jurisprudence"). And it is increasingly apparent qualified immunity is unworkable. Despite the Court deciding 18 qualified immunity cases between 2001 and 2015, the doctrine's precise contours remain elusive. Pet. for Cert. at 14–15. The Court's Sisyphean struggle shows no sign of ending while qualified immunity remains. *See*,

e.g., *Zorn v. Linton*, 146 S. Ct. 926 (2026) (per curiam) (summary reversal with Justices Sotomayor, Kagan, and Jackson dissenting).

Respondent fails to address the other relevant stare decisis factors. As Petitioners have explained, qualified immunity is poorly reasoned, unworkable, and insufficiently supported by any tangible reliance interest. *See* Pet. for Cert. at 13–16. It should be overruled.

C. This is an Excellent Vehicle for Review

There is no merit to Respondent's suggestion that review is unwarranted because the panel below chose not to publish its decision. That a decision is "unpublished carries no weight in [the Court's] decision to review the case." *Comm'r of Internal Revenue v. McCoy*, 484 U.S. 3, 7 (1987). This Court has granted review in multiple cases involving unpublished decisions it heard this Term or will hear in the next one. *See Younge v. Fulton Jud. Cir. Dist. Attorney's Off., Georgia*, No. 25-352; *Beaird v. United States*, No. 25-5343; *The GEO Group v. Menocal*, No. 24-758; *First Choice Women's Resource Centers v. Platkin*, No. 24-781; *Berk v. Choy*, No. 24-440; *Olivier v. City of Brandon, Mississippi*, No. 24-993. If it were otherwise, lower courts could insulate decisions from this Court's review merely by choosing not to publish them.

Respondent's contention that the decision below presents a poor vehicle for review because it deals with a motion to dismiss is similarly unpersuasive. It was Respondent that sought appellate review of the denial of his qualified immunity claim. Pet. App. 2a. As Respondent then argued, determination of the relevant issue was

"based solely on discrete issues of law." Reply Brief of Respondent-Appellant at 5, *Bethlehem Manor Vill., LLC v. City of Bethlehem*, No. 24-2925 (3rd Cir. May 1, 2025), ECF No. 33; *see also* Pet. App. 3a n.1 (agreeing that the district court's qualified immunity ruling was immediately appealable because it turned on an issue of law). The issue is not suddenly fact-bound merely because Respondent is now opposing review.

That this case is at the pleadings stage is a point in favor of review. Because Petitioner's allegations are taken as true, there are no factual disputes that would impede this Court's review. If this case came on summary judgment, focus could be diverted to "utterly routine" questions like the proper evaluation of evidence. *See, e.g.*, *Tolan v. Cotton*, 572 U.S. 650, 661 (2014) (Alito, J., concurring). Since this case turns solely on issues of law, the Court can get right to the heart of the matter.

Nor is there any merit to Respondent's contention that the question presented is fact bound. Every qualified immunity decision involves an application of law to the facts. "[T]he result depends very much on the facts" in excessive force cases, for instance, where the line between a constitutional violation and an acceptable action is difficult to define. *Brosseau v. Haugen*, 543 U.S. 194, 201 (2004). This has not prevented the Court from reviewing cases in that context many times. *See, e.g.*, *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021); *City of Tahlequah, Oklahoma v. Bond*, 595 U.S. 9 (2021); *Mullenix v. Luna*, 577 U.S. 7 (2015). There is no compelling reason this case—which is *less* fact-dependent than those ones—is not also readily susceptible to review.

That this case involves local land use determinations is also not a persuasive reason to deny certiorari. Local conduct is a common feature of qualified immunity cases. *Kisela v. Hughes* centered on the conduct of a local police officer in Tucson, Arizona. 584 U.S. 100, 101 (2018). *Taylor v. Riojas* concerned the treatment of a single inmate in the custody of the Texas Department of Criminal Justice. 592 U.S. 7, 7 (2020). The actions may be local, but the case implicates principles of the U.S. Constitution.

This case also presents an ideal vehicle for review because Respondent had the time and opportunity to take calculated action. Thus, even assuming that policy arguments for qualified immunity were somehow relevant in this Court's analysis, those arguments carry no weight here. When public officials can deliberate before acting, "[i]t is not immediately obvious what purpose qualified immunity should serve." *Villarreal v. City of Laredo*, 134 F.4th 273, 283 (5th Cir. 2025) (en banc) (Oldham, J., concurring). Unlike perhaps a police officer who is forced to act on the spot, officials that have "sufficient time to make calculated choices . . . cannot complain that they were compelled to take action which . . . turn[ed] out to be founded on a mistake." *Id.* (citations omitted).

The Court has never offered a satisfactory explanation for why police officers making split-second decisions in dangerous circumstances should receive the same immunity as public officials—like Respondent—who deliberately deprive Americans of their constitutional rights. *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2422 (2021) (statement of Thomas, J., respecting the denial of certiorari). This Court should reconsider that approach here.

II. Summary Reversal is Warranted Because the Third Circuit Contravened this Court's Precedents

1. The decision below contravenes this Court's rule that factually similar precedent is unnecessary to show that a right is clearly established when "a general constitutional rule already identified in the decisional law . . . appl[ies] with obvious clarity to the specific conduct in question." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (citation omitted); *see* Pet. for Cert. at 16–18. Respondent agrees this is an established qualified immunity principle. Opp. at 16. The panel erred by failing to apply it.

Respondent misunderstands the decision below. According to Respondent, the panel did not require precedent with "fundamentally similar facts" or a case "directly on point." Opp. at 16. Take it from the panel itself: "we must analyze whether the violative nature of [Respondent's] *particular* conduct is clearly established by *existing precedent*." Pet. App. 5a (citation omitted) (second emphasis added). And the panel's decision turned on the fact that "[n]either the District Court nor [Petitioner] identified any prior decisions from this Circuit finding a due process violation based on similar facts." Pet. App. 5a. The panel undeniably required precedent based on similar facts, contravening this Court's precedent that "officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Hope*, 536 U.S. at 741.

In *Taylor*, the Court found an Eighth Amendment violation without pointing to factually similar precedent. 592 U.S. at 8–9. The Court relied on the egregious facts at issue, the obviousness principle from *Hope*, and the Eighth

Amendment principle that "'obvious cruelty inherent' in putting inmates in certain wantonly 'degrading and dangerous' situations provides officers 'with some notice that their alleged conduct violate[s]' the Eighth Amendment." *Id.* at 8–9 (quoting *Hope*, 536 U.S. at 745). Given these principles, the circumstances of a prison inmate being "confined in a pair of shockingly unsanitary cells" for six days established an obvious constitutional violation. *Id.* at 7–9.[1]

Like *Taylor*, this case involves an obvious constitutional violation established by the application of straightforward constitutional principles to egregious facts. Americans have the "right to be free of arbitrary or irrational zoning actions," *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 263 (1977), and a public official can violate a person's due process rights by committing "an arbitrary and capricious act" depriving him "of a protected property interest." *Cnty. Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 165 (3d Cir. 2006) (citation omitted).

Those principles establish an obvious constitutional violation when applied to the egregious facts here. Respondent "connived" to block Petitioner from building a psychiatric hospital as part of a discriminatory citywide effort to "exclude psychiatric patients." Pet. App. 2a, 12a. Respondent left no doubt that he did not "want those people" in his city, Pet. App. 5a, and instructed city officials to "take all steps necessary to prevent the

1. Federal circuit courts have applied *Hope* in other contexts, such as to First Amendment violations. *See, e.g.*, *Nagle v. Marron*, 663 F.3d 100, 115–16 (2d Cir. 2011); *McGreevy v. Stroup*, 413 F.3d 359, 366 (3d Cir. 2005).

psychiatric hospital from opening." *Id.* His plan worked. The city denied permits it would have otherwise granted and changed the law "to exclude standalone psychiatric hospitals as a permitted use." Pet. App. 5a, 10a. That the Pennsylvania Commonwealth Court later reversed the permit denial provided vindication but little solace. Pet. App. 12a. Petitioner had already been denied the lawful use of its property for several years and lost the opportunity to build a viable hospital forever. Brief of Plaintiff-Appellee at 8, *Bethlehem Manor Vill.*, No. 24-2925 (3rd Cir. Apr. 11, 2025), ECF No. 30.

The panel below did not recognize this obvious constitutional violation because it failed to conduct the relevant analysis. It instead determined Petitioner's right was not clearly established merely because it was not faced with precedent featuring similar conduct. Pet. App. 5a.

2. Respondent's contention that this case does not warrant summary reversal is wrong by the very standard Respondent cites. This is "the rare circumstance where a lower court has clearly departed from controlling precedent." Opp. at 19. The summary reversals Respondent cites cut against the notion that this case is unworthy of such action.

In *Tolan*, for instance, this Court summarily vacated a judgment even though the appellate court applied the correct summary judgment standard. 572 U.S. at 661 (Alito, J., concurring). The only issue was the "utterly routine" matter of whether the evidence was sufficient to support a judgment when viewed most favorably to the nonmoving party. *Id.* The decision below deals with a far more grievous error—the panel's failure to apply

a significant element of the Court's qualified immunity jurisprudence. Thus, even if this Court chooses not to revisit its qualified immunity jurisprudence in total, it should summarily reverse the decision below.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED: June 2026

Respectfully submitted,

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