

No. 25-1348

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IN THE  
**Supreme Court of the United States**

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PATRICK HARRINGTON AND JASON BISS,  
*Petitioners,*

v.

RANDALL MARTIN,  
*Respondent.*

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**On Petition for Writ of Certiorari  
to the United States Court of Appeals for  
the Seventh Circuit**

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**REPLY FOR PETITIONERS**

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## REPLY FOR PETITIONERS

No one disputes what facts must be taken as true for present purposes: When facing allegations of excessive force, deputy sheriff Martin resigned in exchange for a promise from Sheriff “Goldsmith to withdraw the disciplinary charges and provide a neutral employment reference,” and prosecutors Harrington and Biss “shared [*Brady/Giglio*] disclosures with the Town of Flora” reporting the allegations against Martin. Br. in Opp. 6, 12; *see* Pet. i, 1–3. The question is whether any case establishes that an “officer acting under similar circumstances” as the prosecutors “violated the Constitution.” *Zorn v. Linton*, 607 U.S. 568, 572 (2026) (per curiam) (quoting *Escondido v. Emmons*, 586 U.S. 38, 43 (2019) (per curiam)). None does. As Martin conceded below, the circumstances of this case are “novel.” Pet. App. 38a (citation omitted).

For the first time, Martin argues that *Spreen v. Brey*, 961 F.2d 109 (7th Cir. 1992), put the constitutionality of the prosecutors’ conduct beyond debate. But the Seventh Circuit’s decision in this case never suggests that *Spreen* addressed similar facts; it describes *Spreen* as merely establishing the general proposition that there is a “right not to be induced into resigning from public employment through material misrepresentations.” Pet. App. 22a. And even Martin does not contend that *Spreen* addresses resignations governed by written agreements or the duties of non-employers. He describes *Spreen* as generically as the Seventh Circuit. As the district court aptly summarized, “[t]here is simply no caselaw holding that the disclosures in this case violate a police officer’s clearly established constitutional right.” Pet. App. 38a.

The Seventh Circuit’s error is especially egregious because Martin never argued below that *Spreen* or any other case clearly established that the prosecutors’ conduct violates the Constitution. His briefs did not cite *Spreen* once. Martin does not dispute that point. He instead argues the mere fact of his appeal empowered the Seventh Circuit to reverse for any reason it saw fit—an argument that disregards *Margolin v. National Association of Immigration Judges*, 608 U.S. 339 (2026). This Court should summarily reverse the judgment below, or at a minimum, grant the petition, vacate the judgment, and remand for further consideration in view of *Zorn* and *Margolin*.

**I. This Court Can—and Should—Resolve the Qualified-Immunity Question Before Prosecutors Are Subjected to Discovery and Trial**

Martin argues that this Court should not address any qualified-immunity issue because this case is at the pleadings stage. Br. in Opp. 4–8. The posture of this case is no barrier to review. One of the principal purposes of qualified immunity is to avoid “subjecting government officials either to the costs of trial or the burdens of broad-reaching discovery.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (citation modified). “For that reason,” this Court has “emphasized that qualified immunity questions should be resolved at the earliest possible stage of a litigation.” *Anderson v. Creighton*, 483 U.S. 635, 464 n.6 (1987). And for the same reason, this Court has repeatedly intervened at the pleadings stage to ensure that lower courts do not wrongly deprive officials of the doctrine’s protections. See, e.g., *Ziglar v. Abbasi*, 582 U.S. 120, 150 (2017);

*Wood v. Moss*, 572 U.S. 744, 764 (2014) (per curiam); *Ashcroft v. Iqbal*, 556 U.S. 662, 670 (2009).

Nor is Martin correct that the petition takes issue with well-pleaded factual allegations in his complaint. Br. in Opp. 6–7. The petition does not argue that prosecutors Harrington and Biss are entitled to qualified immunity because “only Sheriff Goldsmith—and not the prosecutors—shared the [Brady/Giglio] disclosures with the Town of Flora.” Br. in Opp. 6. Nor does the petition dispute that the prosecutors “circulated the unsigned [Brady/Giglio] disclosure to the Tippecanoe County Bar Association and contacted Martin’s employer in Dayton.” Br. in Opp. 16. The petition takes as true Martin’s allegations that the prosecutors circulated the disclosures to the towns of Dayton and Flora. Pet. 1–3, 8. It simply argues that the prosecutors are entitled to qualified immunity nevertheless because “no clearly established *law* holds that the prosecutors violated Martin’s right to due process.” Pet. 13; *see* Pet. 8–12.

To be sure, the Seventh Circuit did not categorically foreclose a finding of qualified immunity at a later date. Br. in Opp. 7. But postponing resolution of the issue will hardly be costless. Pet. 14–15. Continuing this litigation will “distract[]” the prosecutors from their core responsibility of enforcing the State’s criminal laws. *Mitchell*, 472 U.S. at 526 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982)). They will have to divert their limited time to discovery and, quite possibly, to trial preparation. This litigation also could “deter[]” other prosecutors from disclosing pertinent information about possible police misconduct to law-enforcement agencies. *Id.* And still other

public officials may now worry about which actions could subject them to liability under the Seventh Circuit’s expansive view of what constitutes coercion.

This Court should not allow the Seventh Circuit’s departure from binding precedent go uncorrected.

## **II. The Seventh Circuit Failed To Define the Right with a High Degree of Specificity**

With respect to the qualified-immunity issue, Martin provides little defense of the Seventh Circuit. This Court has “repeatedly told courts . . . not to define clearly established law at a high level of generality.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). “Principles stated generally, such as that ‘an officer may not use unreasonable and excessive force,’ do not suffice.” *Zorn*, 607 U.S. at 572 (quoting *Kisela v. Hughes*, 584 U.S. 100, 105 (2018)). Here, however, the Seventh Circuit cited only the principle that there is a “right not to be induced into resigning from public employment through material misrepresentations.” Pet. 8 (quoting Pet. App. 22a). The court identified no case holding that “an officer acting under similar circumstances” as the prosecutors “violated the Constitution.” *Zorn*, 607 U.S. at 572 (quoting *Escondido v. Emmons*, 586 U.S. 38, 43 (2019) (per curiam)).

Martin defends the Seventh Circuit’s decision by invoking *Spreen v. Brey*, 961 F.2d 109 (7th Cir. 1992). Br. in Opp. 13, 15–16. But the Seventh Circuit never contended, as Martin does now, that *Spreen* involved “materially similar conduct” to this case. Br. in Opp. 15. The Seventh Circuit described *Spreen* as standing for the generic proposition that “the right not to be induced into resigning from public employment

through material misrepresentations was clearly established”—a description that largely mirrors Martin’s own. Pet. App. 22a; *see* Pet. App. 20a. He, too, reduces *Spreen* to the high-level principle that due process is violated when “government officials’ material misrepresentations cause[]” a person “to resign” from public employment. Br. in Opp. 16. But a principle stated so abstractly does not enable the prosecutors to “‘read’ the relevant precedent beforehand and ‘know[]’ that it proscribed their specific conduct.” *Zorn*, 607 U.S. at 572 (quoting *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 616 (2015)).

Martin, moreover, is wrong that the sole difference between this case and *Spreen* is one of when disclosures were made—though that is certainly a difference. Br. in Opp. 16. As the petition observed, *Spreen* held that a plaintiff could pursue a claim against her former employer for “mislead[ing] [the] Plaintiff into resigning her employment” by stating that she must choose between resigning or being fired and losing her benefits. 961 F.2d at 111–112. *Spreen*, however, did not address whether a *third-party* to the employment relationship can violate an employee’s right. Pet. 10.

Nor did *Spreen* suggest that all choices or misstatements are fodder for a constitutional claim. Pet. 10–11. In *Spreen*, the court deemed it critical that the former employee was threatened with termination, told she would lose benefits unless she resigned, and was “*not* given sufficient *opportunity* to deliberate the choice posed.” 961 F.2d at 112 (emphasis in original). Here, however, Martin was not asked to choose between termination or resignation on the spot. He chose resignation in lieu of a hearing and only after

retaining counsel and negotiating a written resignation agreement. *See* Pet. 2–3.

And lastly, it is undisputed that the agreement Martin’s counsel negotiated provided only that “[t]he Sheriff” would “withdraw[] the charges” and “provide a neutral reference to prospective employers.” Pet. 11 (quoting D. Ct. Dkt. 1-1 at 3–4); *see* Br. in Opp. 12 (“Goldsmith[] promise[d] to withdraw the disciplinary charges and provide a neutral reference”). The agreement specifically disclaimed the existence of other promises. *Id.* That furnishes yet another reason that a reasonable official could rationally conclude the prosecutors’ disclosures did not violate due process.

Martin attempts to downplay these differences by reasserting his contention that the prosecutors worked “in concert” with Sheriff Goldsmith. Br. in Opp. 12, 18. But the problem remains that no decision extends *Spreen*’s specific holding—which concerned an employee afforded insufficient opportunity to deliberate and claims against a direct employer—to strangers to the employment relationship. Nor does any decision hold that an employee is “coerced” into resigning if his attorney bargains for one thing in a written agreement—like a neutral employment reference from Sheriff Goldsmith—but a stranger to the agreement later makes a disclosure that the agreement does not specifically prohibit but that the employee believes to negate the benefit of the bargain. Simply put, without “relevant precedent” that “define[s] the right with a ‘high degree of specificity,’” Martin’s allegations do not show the violation of a clearly established right. *Zorn*, 607 U.S. at 572.

Martin also argues that a party need not identify a case with the exact same facts to defeat qualified immunity. Br. in Opp. 16. That general principle, however, does not excuse a plaintiff from pointing to existing precedent that establishes the right asserted with “a high degree of specificity.” *Zorn*, 607 U.S. at 572 (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018)). “[I]n light of pre-existing law,’ the unlawfulness of the officer’s conduct ‘must be apparent.”” *Ziglar*, 582 U.S. at 151 (quoting *Anderson*, 483 U.S. at 640). An officer must be able to “‘read’ the relevant precedent beforehand and ‘know[]’ that it proscribed their specific conduct.” *Zorn*, 607 U.S. at 572 (quoting *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 616 (2015)). But no factually similar case comes close to putting a reasonable prosecutor on notice that the Constitution prohibits him from disclosing alleged police misconduct if an officer employed by a separate agency agrees to resign in exchange for the withdrawal of charges and a neutral reference from his employer.

Indeed, the absence of any similar case explains why the Seventh Circuit provided next-to-no analysis of the prosecutors’ conduct. It did not explain why it was obvious that the prosecutors’ conduct violated a general principle against coerced resignations. Instead, the court stated that “a reasonable official in Sheriff Goldsmith’s position would be on notice that making misrepresentations to induce Martin to voluntarily resign is a procedural due process violation” and simply asserted that the prosecutors could be held liable for making disclosures “despite Sheriff Goldsmith’s representations.” Pet. App. 21a–22a.

Even as a generally stated principle, the Seventh Circuit’s rule does not reach Martin’s allegations against the prosecutors. Nothing in it tells non-employers that their conduct may also deprive a public employee of any procedural due process owed by their employer.

At bottom, the Seventh Circuit denied the prosecutors qualified immunity by relying on “[p]rinciples stated generally” rather than precedent defining the right with a “high degree of specificity.” *Zorn*, 607 U.S. at 572. This Court should correct that error.

### **III. The Seventh Circuit Disregarded the Party-Presentation Principle**

The party-presentation principle furnishes another reason to reverse. That principle constrains courts to the “rule that points not argued will not be considered.” *Margolin v. National Association of Immigration Judges*, 608 U.S. 339, 342 (2026) (quoting *United States v. Burke*, 504 U.S. 229, 246 (1992) (Scalia, J., concurring)). But the Seventh Circuit disregarded it here. It is undisputed that, before the district court and the Seventh Circuit, the only argument Martin advanced was that it was premature to grant qualified immunity because his claims were “novel.” Pet. 13 (quoting Pet. App. 38a). His briefs did not cite the case—*Spreen v. Brey*, 961 F.2d 109 (7th Cir. 1992)—that Martin now contends (at 15) clearly establishes the prosecutors are liable. The Seventh Circuit developed its rationale sua sponte, without allowing the prosecutors to respond.

Seeking to excuse the Seventh Circuit, Martin invokes the facts that he “appealed th[e] dismissal” of his claims and that the dismissal was subject to “*de*

*novo* review.” Br. in Opp. 20. But neither fact empowers a court to reverse on grounds the appellant never raised. As this Court has repeatedly explained, a court of appeals should address the “claim that [the appellant] asserted.” *Clark v. Sweeney*, 607 U.S. 7, 10 (2025) (per curiam); see *United States v. Sineneng-Smith*, 590 U.S. 371, 375-80 (2020). A court of appeals should not reverse on a theory that the court developed *sua sponte*, without giving either “side a chance to address its theory.” *Margolin*, 608 U.S. at 343. But that is just what the Seventh Circuit did. The court converted a high-level prohibition against coerced resignations into a new, ill-defined duty that forbids prosecutors from making certain disclosures about an officer who resigns from a third-party’s employ, even when a resignation agreement reciting all the promises made to the officer does not forbid the disclosures. This significant departure from the party-presentation principle warrants correction as well.

### CONCLUSION

The Court should grant the petition and reverse the denial of qualified immunity to the prosecutors or, in the alternative, vacate the decision below and remand for further consideration in light of *Zorn* and *Margolin*.

Respectfully submitted,

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