No. 25-297

IN THE

Supreme Court of the United States

JACOB P. ZORN,

Petitioner,

v.

SHELA M. LINTON,

Respondent.

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

REPLY BRIEF FOR THE PETITIONER

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This Court has been clear: before an officer may be subjected to suit for allegedly excessive force, a court must "identify a case where an officer acting under similar circumstances was held to have violated the Fourth Amendment." *District of Columbia v. Wesby*, 583 U.S. 48, 64 (2018) (citation modified). The Second Circuit did not do that here. Instead, the court relied on what it treated as a general rule against "gratuitous use of pain compliance" gleaned from its prior holding in *Amnesty America v. Town of West Hartford*, 361 F.3d 113 (2d Cir. 2004). But that case involved far more extensive and extreme allegations of misconduct than the allegations against Sgt. Zorn. And even if the facts of *Amnesty America* were on all fours here, that case merely reversed a grant of summary judgment so did not "hold" that any conduct violated the Fourth Amendment. The Second Circuit's reliance on *Amnesty America* therefore "contravened . . . settled principles" of this Court's qualified immunity jurisprudence, and its decision should be vacated. *City of Escondido, Cal. v. Emmons*, 586 U.S. 38, 43 (2019).

Respondent's efforts to bolster the Second Circuit's reasoning fall short. Respondent attempts to explain away the differences between this case and *Amnesty America*. But in so doing, Respondent merely repeats the lower court's analytical mistakes. Respondent also relies on repeated mischaracterizations of the holdings and the reasoning of this Court's qualified immunity case law, again illustrating that the outcome the lower court reached here cannot be supported under a faithful application of this Court's precedents. The Court should grant review to bring the Second Circuit's qualified immunity jurisprudence in line with the law.

I. Respondent fails to rehabilitate the Second Circuit's qualified immunity analysis.

1. *Amnesty America* did not involve "similar facts" to this case, as is necessary to overcome an officer's qualified immunity. *Kisela v. Hughes*, 584 U.S. 100, 105 (2018). Respondent characterizes *Amnesty America* as a case about wristlocks. Br. in Opp. 9-10. To be sure, *one* of the allegations in *Amnesty America* was that an officer deployed a wristlock on one of the plaintiffs. *See* 361 F.3d. at 123. But as the dissent below noted, *Amnesty America* involved additional allegations of other extreme and "unusual" conduct that make its holding irrelevant to the facts of this "routine arrest and removal."[1] App. 36-37.[2]

Respondent also wrongly suggests that the *Amnesty America* court engaged in a specific parsing of which types of force could be deemed excessive by a jury. Br. in Opp. 13. Not so. *Amnesty America* involved a claim against a municipality, not an individual officer. *See Amnesty America*, 361 F.3d at 124. Accordingly, the question before the court in that case was whether the municipality had "a policy statement, ordinance, regulation, or decision" that had resulted in the alleged unlawful conduct. *Id.* at 125. To answer that

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[1] Respondent writes that the dissent below concluded that "*Amnesty America* clearly proscribed Sergeant Zorn's conduct." Br. in Opp. 21. That is not correct. *See* App. 37-39.

[2] "[I]n addition to applying rear wristlocks, officers [in *Amnesty America*] were alleged to have [among other things] thrown a protester face-down to the ground; dragged another protester face-down by his legs, causing a second-degree burn on his chest; placed a knee on a third protester's neck in order to tighten his handcuffs while he was lying face-down; and rammed that third protester's head into a wall at a high speed." App. 36-37 (citation modified).

question, the Second Circuit assessed the entirety of the officers' alleged misconduct and concluded that the municipality was not entitled to summary judgment. *Id.* at 124. At no point did *Amnesty America* analyze which uses of force supported an excessive force claim, nor did the court otherwise purport to analyze the uses of force on a claim-by-claim basis. The lower court's reliance on *Amnesty America* therefore did not constitute the highly specific inquiry required in the qualified immunity context. *See Wesby*, 583 U.S. at 63.

Respondent further contends that whether an officer gives warnings and progresses through lesser degrees of force is "beside the point" for determining whether the officer is entitled to qualified immunity. Br. in Opp. 15. That is not correct. The "actions the officer took during" an encounter, "such as giving warnings or otherwise trying to control the encounter," can "carry weight" in the excessive force analysis. *Barnes v. Felix*, 605 U.S. 73, 80 (2025); *see also Crowell v. Kirkpatrick*, 400 F. App'x 592, 595 (2d Cir. 2010) (denying excessive force claim where officer gave suspects warning and opportunity to comply). And by the same token, the absence or presence of such warnings or graduated force is relevant to identifying whether two cases present "similar circumstances" for qualified immunity purposes. *Wesby*, 583 U.S. at 64. Here, it is undisputed that Sgt. Zorn provided several warnings to Ms. Linton and progressed through lesser degrees of force before deploying a rear wristlock. *See* App. 8-10; App. 46-49. *Amnesty America*, by contrast, contains no indication of similar actions by law enforcement.

Amnesty America therefore does not "squarely govern[] the specific facts at issue" in this case. *Kisela*, 584 U.S. at 104 (citation modified).

2. Relatedly, the Second Circuit defined the right at issue at too high a level of generality. The Second Circuit concluded that *Amnesty America* established that "the gratuitous use of pain compliance techniques—such as a rear wristlock—on a protestor who is passively resisting arrest constitutes excessive force." App. 24. To be sure, the court noted in an aside that the rear wristlock deployed by Sgt. Zorn is an example of a pain compliance technique. *See id.* But the adjective "gratuitous" still does all the work in the court's formulation of the constitutional right at issue. And Respondent does not dispute that "gratuitous" is a synonym for "excessive," *see* Br. in Opp. 19, rendering the Second Circuit's legal formulation a tautology.

This Court's decision in *City of Escondido v. Emmons* underscores the Second Circuit's error. In *Emmons*, the Ninth Circuit relied on its own prior holding in *Gravelet-Blondin v. Shelton*, 728 F.3d 1086 (9th Cir. 2013), as having established a right to be "free from the application of non-trivial force for engaging in mere passive resistance." *See Emmons*, 586 U.S. at 43 (quoting *Gravelet-Blondin*, 728 F.3d at 1093).[3] This Court rejected that "formulation of the clearly established right" as "far too general," while noting that the abstract framing had allowed the court of appeals to gloss over key differences in circumstances between the two cases. *Id.* Accordingly, the Court

[3] Curiously, Respondent asserts that *Gravelet-Blondin* is "on point as to the rights at issue in *Amnesty America* and this case." Br. in Opp. 17. But that case involved allegedly gratuitous use of a taser during a welfare check, *see* 728 F.3d at 1089-90—not a wristlock deployed to disperse an unlawful protest, *see* App. 4. Respondent's suggestion that *Gravelet-Blondin* is relevant to this case only illustrates how far Respondent has strayed from this Court's instruction that qualified immunity "requires a high degree of specificity." *Wesby*, 583 U.S. at 63 (citation modified).

vacated the Ninth Circuit's denial of qualified immunity as inconsistent with "the analysis required by our precedents." *Id.* at 44. This Court should do the same here.

3. Respondent appears to suggest that it is the province of the jury, not the court, to determine whether two cases are relevantly similar for qualified immunity purposes. *See* Br. in Opp. 12. That too is not correct. To be sure, a court must not resolve factual disputes on summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). But "whether the conduct of which the plaintiff complains violated clearly established law" is an "essentially legal question" that courts are competent to resolve. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).

To the extent Respondent suggests otherwise, *see* Br. in Opp. 12 (citing *Tolan v. Cotton*, 572 U.S. 650 (2014)), that argument has no support in this Court's precedents. *Tolan*, for example, simply reiterates that, at summary judgment, a prior case controls for qualified immunity purposes only if it involved similar circumstances to the facts viewed in the light most favorable to the plaintiff. *See Tolan*, 572 U.S. at 657; *id.* at 650 (concluding that the Fifth Circuit erred in failing to credit the plaintiff's version of the facts in conducting qualified immunity analysis).

Here, construing all the facts in the light most favorable to Respondent, this case is not sufficiently similar to *Amnesty America*—or to any other relevant precedent—to have put Sgt. Zorn on notice that his conduct was unlawful. The panel majority, the dissent, and the District Court all agreed, for example, that the record uncontrovertibly demonstrates that Ms. Linton was resisting arrest. *See* App. 29. *See also* App. 38; App. 62. Similarly, no party contends that Sgt. Zorn engaged

in any conduct that was more forceful than a rear wristlock. *See generally* App. 8-10. Those facts make this case markedly different from *Amnesty America* or any other case in which an officer was held to have violated the constitutional prohibition on excessive force. That should have been the end of the lower court's analysis.

4. Respondent downplays the significance of the one case to have squarely addressed an analogous factual scenario, the Ninth Circuit's opinion in *Forrester v. City of San Diego*, 25 F.3d 804 (9th Cir. 1994). That *Forrester* arose on appeal from a jury verdict rather than on summary judgment in no way diminishes its relevance here. An appeal from a jury verdict, like a motion for summary judgment, calls on a court to resolve any legal questions underlying the factual dispute. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) (noting similarities between Rule 50 and Rule 56 motions). And in *Forrester*, the Ninth Circuit concluded as a matter of law that the use of gradual pain compliance did not constitute excessive force. 25 F.3d at 807. *Forrester* is directly on point, and it undermines the Second Circuit's conclusion that *Amnesty America* controlled.

5. Respondent wrongly contends that a prior denial or reversal of summary judgment clearly establishes the scope of a constitutional right. Br. in Opp. 22-23.

Respondent asserts that this Court's decision in *Taylor v. Riojas,* 592 U.S. 7 (2020), "relied on" the previous denial of summary judgment in *Hope v. Pelzer*, 536 U.S. 730 (2002). Br. in Opp. 22-23. Not so. *Taylor* cited *Hope* only for the proposition that some constitutional violations are so "obvious" that a "general constitutional rule" suffices to rebut a claim of qualified immunity. *Taylor*, 592 U.S. at 9 (citation

omitted). *Taylor* did not cite or analogize to *Hope*'s facts or otherwise conclude that *Hope* clearly established the scope of any right for qualified immunity purposes. *See generally id.* at 7-9. Indeed, *Taylor* did not conclude that *any* prior case had specifically put the defendant on notice that his conduct was unlawful. *Taylor*—like *Hope* before it—fell into that narrow class of cases involving such "particularly egregious facts" that a reasonable officer would not need specific case law to know that the conduct is unconstitutional.[4] *Id.* at 9. Nothing in *Taylor*, then, suggests that a denial of summary judgment can clearly establish the scope of a right.

Nor does Respondent identify a single other instance in which this Court relied on a denial or reversal of summary judgment to clearly establish the scope of a right. And for good reason. A denial of summary judgment merely recognizes the possibility that "a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 247-48. Possibility is a far cry from clarity.

Amnesty America itself drives that point home. In concluding that summary judgment was unwarranted, the *Amnesty America* court nonetheless noted that it was "entirely possible that a reasonable jury would find . . . that the police officers' use of force was objectively reasonable given the circumstances and the plaintiffs' resistance techniques." *Amnesty America*, 361 F.3d at 113. In other words, *Amnesty America* expressly did *not* place the "constitutional question beyond debate." *Mullenix v. Luna*, 577 U.S. 7, 12 (2015).

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[4] By contrast, because this case "is not an exceptional case," App. 37, the Second Circuit needed to identify a specific factual analogue that clearly proscribed Sgt. Zorn's conduct.

A reasonable officer reading *Amnesty America* would not know whether similar conduct in similar circumstances would be unlawful, and the Second Circuit therefore erred in concluding that *Amnesty America* clearly established the law. *See Wesby*, 583 U.S. at 64.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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