

No. 25-943

**In the Supreme Court of the United
States**

ANTONIO M. SMITH,

Petitioner,

v.

JOHN KIND, ET AL.,

Respondents.

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

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

	Page
REPLY BRIEF FOR PETITIONER	1
I. The Seventh Circuit’s Rigid Application Of The “Clearly Established” Requirement Is Irreconcilable With This Court’s Precedent.....	3
II. The Circuit Split On The “Clearly Established” Standard In Conditions-of- Confinement Cases Warrants This Court’s Review.	6
III. This Case Provides An Excellent Vehicle To Answer The Question Presented, And Summary Reversal Offers An Appropriate Alternative.	7
CONCLUSION	9

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Clark v. Valletta</i> , 157 F.4th 201 (2d Cir. 2025).....	7
<i>Flores v. O'Donnell</i> , 36 Fed. Appx. 204 (7th Cir. 2002)	5
<i>Hope v. Pelzer</i> , 536 U.S. 730 (2002).....	2, 3, 5, 6, 7, 8
<i>Maryland v. Dyson</i> , 527 U.S. 465 (1999).....	8
<i>Mays v. Springborn</i> , 575 F.3d 643 (7th Cir. 2009), <i>rev'd</i> <i>and remanded</i> , 719 F.3d 631 (7th Cir. 2013).....	5
<i>Safford Unified School District No. 1 v.</i> <i>Redding</i> , 557 U.S. 364 (2009).....	3
<i>Taylor v. Riojas</i> , 592 U.S. 7 (2020).....	2, 3, 7, 8
<i>Thorpe v. Clark</i> , 37 F.4th 926 (4th Cir. 2022)	6
<i>United States v. Lanier</i> , 520 U.S. 259 (1997).....	3

TABLE OF AUTHORITIES—continued

Page(s)

Zadeh v. Robinson,
928 F.3d 457 (5th Cir. 2019) (Willett,
J., concurring in part and dissenting
in part).....6

Other Authorities

Eighth Amendment 1, 2, 3, 4, 6, 7

REPLY BRIEF FOR PETITIONER

No reasonable correctional officer would believe it proper to confine a man—who had been starving for 50 days—naked in a frigid prison cell for 23 hours. Nor would a reasonable officer then believe it proper to deny that man any protection from the frigid cold unless he ceased exercising his right to peacefully protest prison conditions. And no reasonable officer would have done either of these things after pepper spraying the man, inducing a massive asthma attack, and knowing, as the correctional officers here proclaim, that the man’s health was in a “dangerous” condition that “could lead to permanent physical impairment.” Br. in Opp. 1. Review by this Court following full briefing and argument or summary reversal is warranted.

Respondents offer no meaningful response. In fact, their opposition only underscores why certiorari should be granted.

First, Respondents contend that the Seventh Circuit’s decision was “correct and consistent” with this Court’s precedent, both because the case does not involve a “rare” or “obvious” constitutional violation, and because the Seventh Circuit was correct that the Eighth Amendment right that Petitioner asserts was not clearly established. Br. in Opp. 10, 12. Respondents are wrong on both counts. The Seventh Circuit panel unanimously found sufficient evidence for a jury to conclude that Petitioner was housed naked in a frigid “control cell” without any bedding or protection from the cold for nearly 24 hours, without any “legitimate penological purpose.” Pet. App. 2a, 18a. The Eighth Amendment violation was obvious.

And like the panel majority below, Respondents misapply the “clearly established” requirement. They repeat the Seventh Circuit’s error in demanding a prior decision involving nearly identical facts. If any condition (including the temperature, time spent in the cell, or health of the inmate) differs between existing Eighth Amendment precedent and the current case, Respondents (like the panel majority) would apply qualified immunity. That rule is impossible to square with this Court’s holdings in cases including *Hope v. Pelzer*, 536 U.S. 730 (2002), and *Taylor v. Riojas*, 592 U.S. 7 (2020).

Second, Respondents aim to sidestep the circuit split described in the petition by mischaracterizing the question as one that is highly fact-dependent. But Petitioner showed that at least one circuit universally “den[ies] qualified immunity to officials who act with deliberate indifference,” while others apply the “clearly established” doctrine with less rigidity to analogous circumstances than the Seventh Circuit does (*e.g.*, in decisions that focus on a prisoner’s right “to protection from extreme cold” and not on small differences in temperature). Pet. 12-14. In other words, the circuit split is legal, not fact-based, and adds to the need for this Court’s guidance.

Third, Respondents insist that a decision by this Court would only affect Petitioner. But the legal question presented—whether qualified immunity shields an obvious constitutional violation, even without precedent finding a violation on nearly identical facts—would affect cases nationwide. And because the Seventh Circuit held that Respondents’ conduct lacked any penological purpose and violated the Eighth Amendment, Pet. App. 2a, and given the extreme

nature of the misconduct, this case presents an ideal vehicle to answer that question.

Finally, Respondents offer little answer to Petitioner’s alternative request for summary reversal.

For the reasons stated herein and in the Petition, the Court should grant review and reverse the Seventh Circuit’s judgment below.

I. The Seventh Circuit’s Rigid Application Of The “Clearly Established” Requirement Is Irreconcilable With This Court’s Precedent.

The Seventh Circuit’s decision violated this Court’s precedent. *Hope v. Pelzer, United States v. Lanier*, 520 U.S. 259 (1997), *Safford Unified School District No. 1 v. Redding*, 557 U.S. 364 (2009), and *Taylor v. Riojas* hold that officials are on notice that their conduct violates the Constitution if the violation is obvious, even without a prior decision finding a violation on analogous facts. “[O]utrageous conduct obviously will be unconstitutional,” and this is precisely “the reason * * * that ‘the easiest cases don’t even arise.’” *Safford Unified Sch. Dist.*, 557 U.S. at 377-378 (citation omitted). Respondents acknowledge that “obvious” constitutional violations are actionable, Br. in Opp. 14, but they say little about this standard before pivoting to contend that no prior case addressed the exact facts at issue here.¹

¹ In an effort to downplay the obvious nature of their Eighth Amendment violations, Respondents also repeatedly mischaracterize the relevant facts and ignore that, on summary judgment, all factual inferences must be drawn in favor of the party opposing summary judgment, here Petitioner. Rather than follow this standard, as the Seventh Circuit did in reciting the facts that reasonable jurors could find on this record, Respondents cherry-pick facts and construe them in the light most favorable to them.

Specifically, Respondents argue that

there is no authoritative decision on applying the Eighth Amendment to an inmate in Smith’s situation, where [1] he was housed naked in a cell [2] for 23-hours [3] after the use of chemical agents was required, [4] he refused medical attention and [5] a shower, and [6] he later refused protective clothing to mitigate the cold.²

Br. in Opp. 3.

Respondents contend that because no precedent “has addressed this issue with similar facts, nor is there a robust consensus of authority,” this Court’s precedent “requires” that qualified immunity apply. Br. in Opp. 3. By squeezing all of these factual details

For example, Respondents say they used pepper spray on Petitioner because: “Smith informed staff that he would not be as cooperative for the next cell extraction.” Br. in Opp. 6. But the Seventh Circuit was “puzzled as to what prompted Van Lanen to discontinue a successful extraction method in favor of one that he knew could cause complications for Smith’s health.” Pet. App. 12a. The court concluded that a “reasonable jury” could “find that Van Lanen’s use of pepper spray was unnecessary.” Pet. App. 14a.

² This factual recitation further demonstrates Respondents’ attempt to rewrite the facts to avoid the conclusion that the constitutional violation was obvious to any reasonable correctional officer. Again, on this record, use of chemical agents was *not* required—as the Seventh Circuit panel concluded when viewing the facts, in the light most favorable to Petitioner as the party opposing summary judgment. Pet. App. 15a-16a. Nor did Petitioner simply refuse protective clothing to mitigate the cold; rather, correctional officers wrongly withheld protective clothing from him unless he ceased exercising his right to peacefully protest prison conditions, as the Seventh Circuit also found. Pet. App. 5a, 21a.

into the “clearly established” requirement, however, Respondents would not allow any right to be clearly established, for there will always be some fact that distinguishes the next case. Again, this reasoning, like the Seventh Circuit’s, relies on precisely the “rigid gloss on the qualified immunity standard” that “is not consistent with [this Court’s] cases.” *Hope*, 536 U.S. at 739.

Nor do either of the Seventh Circuit decisions on which Respondents rely, see Br. in Opp. 16—*Mays v. Springborn* and *Flores v. O’Donnell*—somehow bring the decision below in line with this Court’s precedent. In *Mays*, the Seventh Circuit affirmed the district court’s grant of summary judgment because the “undisputed evidence showed Mays had been provided with sufficient clothes (a winter coat, boots, and a winter hat).” *Mays v. Springborn*, 575 F.3d 643, 646 (7th Cir. 2009), *rev’d and remanded*, 719 F.3d 631 (7th Cir. 2013). The Seventh Circuit here reached the opposite conclusion, holding that the evidence showed that Petitioner had no clothes, not even the smock that Respondents would usually provide. And in *Flores*, the Seventh Circuit held that prison officials were not deliberately indifferent because they offered the prisoner clothing within three hours. *Flores v. O’Donnell*, 36 Fed. Appx. 204, 207 (7th Cir. 2002). Here, Respondents offered nothing for the first twelve hours (despite Petitioner’s request) and ultimately offered only a smock in exchange for Petitioner’s agreement to submit to future medical evaluations. Pet. App. 20a. These decisions do nothing to change the fact that the panel majority violated this Court’s rulings on obvious constitutional violations and its bar on courts’ “rigid gloss on the qualified immunity standard.” *Hope*, 536 U.S. at 739; see Pet. App. 36a-37a (Hamilton, J., concurring in part and dissenting in part).

II. The Circuit Split On The “Clearly Established” Standard In Conditions-of-Confinement Cases Warrants This Court’s Review.

Respondents insist that the question presented implicates no split in authority. Br. in Opp. 17-19. They also contend that any split that does exist “only affirms the application of qualified immunity” because “when the federal circuit courts are split on the issue, the law cannot be said to be clearly established.” *Ibid.* (citation omitted). These contentions fail.

First, “courts of appeals are divided—intractably—over precisely what degree of factual similarity must exist” to find that a constitutional violation is clearly established. *Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part). Respondents fail to acknowledge this recognized division among the courts of appeals. They also try to distinguish the Fifth and Eleventh Circuit decisions cited in the Petition (at 12-13) through a detailed, fact-by-fact comparison, Br. in Opp. 18, but that approach relies on the same “rigid gloss on the qualified immunity standard” that the Seventh Circuit applied below, and this Court prohibits. *Hope*, 536 U.S. at 739.

Further, there is an acknowledged split over “whether a finding of deliberate indifference—required to find an Eighth Amendment violation—alone defeats any claim to qualified immunity.” Pet. 13. As the Petition explained, the Fourth Circuit holds that where “plaintiffs have made a showing sufficient to demonstrate an intentional violation of the Eighth Amendment, they have also made a showing sufficient to overcome any claim to qualified immunity.” *Thorpe v. Clark*, 37 F.4th 926, 933-934 (4th Cir. 2022) (citation modified). The Second Circuit, in contrast,

expressly rejects this approach and acknowledges the split. *Clark v. Valletta*, 157 F.4th 201, 218 n.15 (2d Cir. 2025). Respondents contend that the Fourth Circuit’s position is “erroneous,” Br. in Opp. 20, but they do not dispute that the acknowledged split exists. Nor do they deny that the difference is dispositive here—Petitioner would have prevailed as a matter of law in the Fourth Circuit.

Nor is there anything to Respondents’ claim that the very presence of these splits entitles them to qualified immunity. Courts are split over the application of the clearly established element of qualified immunity, not over whether what Respondents did here was constitutional.

III. This Case Provides An Excellent Vehicle To Answer The Question Presented, And Summary Reversal Offers An Appropriate Alternative.

As explained in the Petition, this case is an ideal vehicle to resolve the question presented. The Seventh Circuit elected to decide the constitutional question before proceeding to the second element of qualified immunity, and the court found that Respondents violated the Eighth Amendment by acting with deliberate indifference to Petitioner’s health and without any “legitimate penological purpose.” Pet. 15.

Respondents dispute none of that. Instead, they insist that a decision in this case would affect no one but Petitioner, and that the sole consequence of a ruling in his favor would be “to make money damages available to him.” Br. in Opp. 22. But that is simply untrue. As in *Hope* and *Taylor*, this case asks the Court to ensure that lower courts are applying the proper legal standard in assessing an official’s

claimed entitlement to qualified immunity—that courts are not placing a “rigid gloss on the qualified immunity standard,” *Hope*, 536 U.S. at 739, and thereby immunizing the most egregious misconduct.

Nor do Respondents offer any meaningful reason why this case does not warrant summary reversal, at a minimum. Respondents note that the “standard for summary reversal is * * * high.” Br. in Opp. 23. But summary treatment is proper where, as here, the decision below is “squarely contrary to [this Court’s] holdings.” *Maryland v. Dyson*, 527 U.S. 465, 467 (1999). The Seventh Circuit’s qualified immunity analysis adopted precisely the hyper-factual, case-specific approach that *Hope* condemned and *Taylor* corrected. This error is clear, and the facts on summary judgment are straightforward. In the alternative, therefore, the Court should summarily reverse the Seventh Circuit’s precedential decision, which shields the most egregious constitutional violations by requiring prior decisions involving near-identical facts, contrary to this Court’s precedent.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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