No. ___

IN THE SUPREME COURT OF THE UNITED STATES

State of Oregon; Colette S. Peters, aka C, Peters; Heidi Steward, Acting Director; Mike Gower; Mark Nooth; Rob Persson; Joe Bugher; Garry Russell,
Applicants,

v.

Paul Maney; Gary Clift; Theron Hall; David Hart; Sheryl Lynn Sublet; Felishia Ramirez; Micah Rhodes; George Nulph,
Respondents.

UNOPPOSED APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Under Supreme Court Rule 13.5, petitioners—the State of Oregon and seven high-level state officials—move for an extension of time of 60 days, to and including February 2, 2026, to file a petition for a writ of certiorari. Without an extension, the deadline for filing the petition will be December 4, 2025.

1. The United States Court of Appeals for the Ninth Circuit issued its decision on June 30, 2025 (Exhibit A), and denied a timely petition for rehearing on September 5, 2025 (Exhibit B). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case concerns the State of Oregon's efforts to combat and respond to the COVID-19 pandemic across 14 different prison facilities over the first 2 ½ years of the pandemic. The petition will present novel, substantial questions of law about the scope of rights under the Eighth Amendment in the context of a global pandemic and the concomitant need for case law to clearly establish those rights for purposes of qualified immunity.

Respondents represent a class of more than 5,000 adults in custody ("AICs") who tested positive for COVID-19 in a state prison between March 8, 2020, and May 31, 2022. They contend that their contraction of COVID-19, standing alone, is a constitutional injury that constitutes cruel and unusual punishment in violation of the Eighth Amendment. Under 42 U.S.C. § 1983, they seek damages from seven leaders of the Oregon Department of Corrections. Broadly, they contend that petitioners could have done more throughout the pandemic to limit the spread of the virus across the state prison system, from releasing AICs en masse to installing and upgrading prison HVAC systems with MERV-13 filtration. The district court denied petitioners' motion for summary judgment on the basis of qualified immunity, ruling that caselaw put petitioners on notice that they had to respond reasonably to the pandemic and, therefore, a jury should adjudge whether the state's overall pandemic response—statewide over 2 ½ years—was reasonable.

The Ninth Circuit affirmed the denial of qualified immunity in an unpublished opinion. Exhibit A, at 1–7. First, the court held that respondents had alleged a violation of the Eighth Amendment under the requisite objective and subjective prongs. Exhibit A, at 7. Objectively, the court reasoned that failing to protect respondents "from *heightened* exposure to COVID-19" over the course of the pandemic would constitute an objectively, sufficiently serious deprivation. Exhibit A, at 2, 5 (emphasis added). Subjectively, the court held that deliberate indifference was the state of mind required and, further, that respondents' allegations amounted to deliberate indifference, where respondents challenged the effectiveness of statewide policies on masking, mixing, testing symptomatic AICs, testing asymptomatic AICs, quarantining, and social distancing. Exhibit A, at 6. The court thus concluded that a jury would have to resolve the dispute of fact over the overall reasonableness of the state's pandemic response. Exhibit A, at 6–7.

Second, the panel held that the requisite contours of respondents' asserted right were clearly established at the time of the conduct at issue to put petitioners on notice that the amalgam of the challenged conduct—from masking to social distancing—would violate the Constitution. Exhibit A, at 6. The panel reasoned, in toto, that "'all reasonable prison officials would have been on notice in 2020 that they could be held liable for exposing inmates to a serious disease, including a serious communicable disease,' like COVID-19." Op. 6–7 (quoting *Hampton v.*

California, 83 F.4th 754, 770 (9th Cir. 2023)). The full Ninth Circuit then denied rehearing en banc. Exhibit B.

3. Petitioners request an extension of time because competing deadlines in other time-sensitive matters have prevented counsel from having sufficient time to prepare a petition for certiorari. Undersigned counsel has been handling appeals in this matter personally since March 2022 and also serves as the Attorney-in-Charge of Civil and Administrative Appeals for the Oregon Department of Justice, managing and overseeing the civil docket for the Department's roughly 40-lawyer Appellate Division. In addition, undersigned counsel recently argued in the Oregon Supreme Court in *Arnold v. Kotek*, No. S071885 (Or.), which concerns the facial constitutionality of a significant, voter-enacted, firearm-safety initiative. Moreover, undersigned counsel has been providing substantial strategic and briefing support in *State of Oregon v. Trump*, Nos. 25-6268 & 25-7194 (9th Cir.), which challenges the federal government's efforts to federalize and deploy the Oregon National Guard under 10 U.S.C. § 12406.

4. Undersigned counsel contacted counsel for respondents, who do not object to this application for an extension of time.

For the above reasons, petitioners request that they be granted an extension of time to file a petition for a writ of certiorari to and including February 2, 2026.

DATED: November 24, 2025

Respectfully submitted,

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EXHIBIT A

NOT FOR PUBLICATION

FILED

JUN 30 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAUL MANEY; GARY CLIFT; THERON HALL; DAVID HART; SHERYL LYNN SUBLET; FELISHIA RAMIREZ; MICAH RHODES; GEORGE NULPH,

Plaintiffs - Appellees,

v.

STATE OF OREGON; COLETTE S. PETERS, AKA C. Peters; HEIDI STEWARD, Acting Director; MIKE GOWER; MARK NOOTH; ROB PERSSON; JOE BUGHER; GARRY RUSSELL,

Defendants - Appellants.

No. 24-2715

D.C. No. 6:20-cv-00570-SB

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Stacie F. Beckerman, Magistrate Judge, Presiding

Argued and Submitted June 11, 2025
Portland, Oregon

Before: SCHROEDER, TALLMAN, and OWENS, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

This interlocutory appeal arises from a class action brought by adults in custody (AIC) at Oregon Department of Corrections (ODOC) institutions (collectively Plaintiffs) against various high-level ODOC officials (collectively Defendants) based on their response to the COVID-19 pandemic. Plaintiffs allege that Defendants violated their Eighth Amendment rights by failing to protect them from heightened exposure to COVID-19. They now seek money damages for contracting COVID-19 in ODOC facilities during the first two years of the pandemic.

The district court denied Defendants' motion for summary judgment on qualified immunity grounds because it found that there were genuine issues of material fact about the constitutionality of ODOC's COVID-19 response. Following the district court's decision, Defendants filed this interlocutory appeal, arguing that they are entitled to qualified immunity as a matter of law. We construe the facts in favor of the non-moving party in reviewing summary judgment rulings. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987). We review the denial of qualified immunity de novo. *Rice v. Morehouse*, 989 F.3d 1112, 1120 (9th Cir. 2021).

We typically do not have jurisdiction to review denials of summary judgment as they are not final orders. *Isayeva v. Sacramento Sheriff's Dep't*, 872 F.3d 938, 944 (9th Cir. 2017). However, under the collateral order exception to the finality

doctrine, we may review summary judgment orders denying qualified immunity. *Plumhoff v. Rickard*, 572 U.S. 765, 771–73 (2014). "[T]he scope of our review over the appeal [in this context] is circumscribed," and we only have jurisdiction to review "whether or not certain given facts showed a violation of 'clearly established law.'" *Foster v. City of Indio*, 908 F.3d 1204, 1210 (9th Cir. 2018) (per curiam) (citations omitted). At this stage, we cannot review the district court's determination that there are genuine issues of material fact underlying the Eighth Amendment analysis. *Eng v. Cooley*, 552 F.3d 1062, 1067 (9th Cir. 2009). Instead, we can only consider whether Defendants "would be entitled to qualified immunity as a matter of law, assuming all factual disputes are resolved, and all reasonable inferences are drawn, in plaintiff's favor." *Ballou v. McElvain*, 29 F.4th 413, 421 (9th Cir. 2022) (quoting *Estate of Anderson v. Marsh*, 985 F.3d 726, 731 (9th Cir. 2021)). Thus, we have jurisdiction to hear this interlocutory appeal of the district court's denial of qualified immunity for Defendants, and we affirm.[1]

[1] Defendants also argue that Plaintiffs lack standing to bring the Eighth Amendment damages claims that the underlying suit is based upon. However, we lack jurisdiction to consider these arguments at this stage. *See Eng*, 552 F.3d at 1068 n.2 (noting that "any ruling on [standing] issues will generally be independent of the qualified immunity inquiry itself and cannot be raised on interlocutory appeal," and "we may address such matters only on appeals from final judgments"). Nor is the standing analysis "inextricably intertwined" with the qualified immunity analysis such that we may exercise our pendant appellate jurisdiction to reach the merits of the standing issues to "'ensure meaningful review of' the order properly before us on interlocutory appeal." *Melendres v. Arpaio*, 695 F.3d 990, 996 (9th Cir. 2012)

1. The district court did not err by denying Defendants' motion for summary judgment because, at this stage of the case, they are not entitled to qualified immunity as a matter of law. "The doctrine of qualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). "We must affirm the district court's denial of qualified immunity if, resolving all factual disputes and drawing all inferences in [Plaintiffs'] favor, [Defendants'] conduct (1) violated a constitutional right that (2) was clearly established at the time of the violation." *Ballou*, 29 F.4th at 421.

The constitutional right Plaintiffs allege Defendants violated was "[t]he Eighth Amendment's prohibition against 'cruel and unusual punishments'" which "imposes duties on prison officials to provide 'humane conditions of confinement.'" *Hampton v. California*, 83 F.4th 754, 765 (9th Cir. 2023), *cert. denied sub nom. Diaz v. Polanco*, 144 S. Ct. 2520 (2024) (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)). The Eighth "Amendment's protections extend to 'condition[s] of confinement that [are] sure or very likely to cause serious illness and needless suffering' in the future" like exposure to "infectious maladies." *Id.* at 766

(quoting *Meredith v. Oregon*, 321 F.3d 807, 813 (9th Cir. 2003), *as amended* 326 F.3d 1030 (9th Cir. 2003)).

(alterations in original) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993)). To establish their Eighth Amendment conditions of confinement claim, Plaintiffs must demonstrate (1) an "objectively, 'sufficiently serious'" deprivation, and (2) that Defendants acted "subjectively, with 'deliberate indifference'" to this deprivation. *Id.* (citation omitted).

We have previously held that involuntarily exposing inmates to COVID-19 satisfies the Eighth Amendment's objective prong. *See id.* Defendants argue that the right Plaintiffs assert is not a conditions of confinement claim, but rather the right to "an overall 'reasonable' pandemic response in the aggregate," which is not protected by the Eighth Amendment. However, we reject this argument as Plaintiffs are class members who are each alleging that they were involuntarily exposed to COVID-19 in their correctional facilities at the height of the pandemic. Thus, they are asserting the same conditions of confinement claim that we have already found satisfies the Eighth Amendment's objective prong. *See id.*

The subjective component of a conditions of confinement claim based on exposure to a hazard "requires a plaintiff to allege that officials 'kn[ew] of and disregard[ed] an excessive risk to inmate health or safety.'" *Id.* at 767 (alteration in original) (quoting *Farmer*, 511 U.S. at 837). The district court found that there were genuine issues of material fact regarding whether Defendants consciously disregarded the substantial risk of harm COVID-19 posed to Plaintiffs. Specifically,

it found that genuine issues of material fact remained as to whether Defendants (1) implemented and enforced a masking policy and whether that policy was consistent with then-current public health guidance; (2) adopted housing policies to minimize mixing of AICs from different housing units; (3) implemented a policy of testing symptomatic AICs and symptomatic close contacts of confirmed COVID-19 cases; (4) adopted a policy of testing asymptomatic close contacts; (5) enforced a quarantine policy; or (6) considered using empty facilities or spaces to improve social distancing.

We are bound by the district court's determination that, as a matter of law, genuine issues of material fact exist to preclude a declaration of liability now. *See Eng*, 552 F.3d at 1067. And construing the genuine issues of material fact identified by the district court in Plaintiffs' favor would satisfy the subjective prong of their Eighth Amendment claim, as it would show that Defendants acted with deliberate indifference. Thus, at this stage, we cannot decide as a matter of law that Defendants did not violate Plaintiffs' Eighth Amendment rights.

2. The right Plaintiffs assert was also clearly established at the time of Defendants' conduct. "[A]n inmate's right to be free from exposure to a serious disease . . . has been clearly established since at least 1993, when the Supreme Court decided *Helling v. McKinney*, 509 U.S. 25 (1993)." *Hampton*, 83 F.4th at 769–70 (collecting cases). Thus, we have previously held that that "all reasonable prison

officials would have been on notice in 2020 that they could be held liable for exposing inmates to a serious disease, including a serious communicable disease," like COVID-19. *Id.* at 770.

Defendants cannot prove that they are entitled to qualified immunity as a matter of law at this stage. The district court identified genuine issues of material fact underlying whether Defendants acted with deliberate indifference. If a reasonable jury resolves these questions in Plaintiffs' favor, then it could find that Defendants violated Plaintiffs' clearly established Eighth Amendment rights. But that requires the fact finder to determine what we cannot at this stage of the litigation.

AFFIRMED.

EXHIBIT B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 5 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PAUL MANEY; et al.,

Plaintiffs - Appellees,

v.

STATE OF OREGON; et al.,

Defendants - Appellants.

No. 24-2715

D.C. No.
6:20-cv-00570-SB
District of Oregon,
Eugene

ORDER DENYING PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Before: SCHROEDER, TALLMAN, and OWENS, Circuit Judges.

Defendants-Appellants have filed petitions for panel rehearing and rehearing en banc (Dkt. 52). The panel has unanimously voted to deny the petition for panel rehearing. Judge Owens voted to deny the petition for rehearing en banc; Judges Schroeder and Tallman so recommended. The full court has been advised of the petition for rehearing en banc and no judge of the Court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

Defendants-Appellants' petitions for panel rehearing and petition for rehearing en banc (Dkt. 52) are DENIED.

IT IS SO ORDERED.