No. 26--180

In the Supreme Court of the United States

EDWARD ALLYN HUDACKO,

PETITIONER,

V.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.,

RESPONDENTS.

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

BRIEF FOR *AMICI CURIAE* OUR DUTY–USA, DR. MICHAEL LAIDLAW, AND COLORADO PRINCIPLED PHYSICIANS, IN SUPPORT OF PETITIONER

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*[1]

Our Duty-USA is a secular nonprofit whose nationwide members have varied political backgrounds, ethnicities, and sexual orientations but share the experience of raising former and current trans-identified children. Our Duty members also have children who have ceased identifying as "transgender" after adopting that identity. Many have had their parental rights ignored when they tried to be involved in the medical decisions for their children and have experienced acute coercion from medical providers who wished to subject confused children to irreversible medical procedures.

Michael Laidlaw, MD is a university-trained, board-certified endocrinologist in private practice for twenty years. He has co-authored many medical publications on the topic of gender dysphoria, including the U.S. Department of Health and Human Services' peer-reviewed study of the evidence for pediatric gender-transition interventions ("the HHS Review").[2] He has served as an expert witness in

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[1] All parties were timely notified of the filing of this brief. This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amici curiae* or their counsel has made a monetary contribution toward the brief's preparation or submission.

[2] U.S. DEPT. OF HEALTH AND HUMAN SERVICES, TREATMENT FOR PEDIATRIC GENDER DYSPHORIA: REVIEW OF EVIDENCE AND BEST PRACTICES (Nov. 2025) https://opa.hhs.gov/gender-dysphoria-report.

numerous legal cases involving adolescent gender dysphoria, including *United States v. Skrmetti*, 605 U.S. 495 (2025), in which this Court upheld a state's prohibition on sex-rejecting interventions for minors, and *Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205 (11th Cir. 2023) (also captioned *Boe v. Marshall*).

Colorado Principled Physicians is a nonprofit organization whose members have varied political backgrounds. Its membership includes physicians in the state of Colorado who offer services to their patients as guided by the Hippocratic Oath: First, do no harm. They understand that this Oath requires rejecting medical interventions that damage their patients' health. Colorado Principled Physicians has a direct interest in this case as its members believe that medicalization of perfectly healthy young bodies is antithetical to the practice of medicine.

Amici have significant interest in the preservation of parental rights and in ending the promotion of a belief system that reflexively affirms any wrong-sex identification and encourages individuals to believe there can be a mismatch between their brains and bodies. Amici's goal, that children grow up accepting their immutable sex regardless of whether they conform to rigid stereotypes of that sex, is thwarted when state actors trample on parents' inalienable rights to protect their children from harmful and unnecessary medical treatment.

SUMMARY OF ARGUMENT

As this Court has recognized, our society has been grappling with "the weight of fierce scientific and policy debates about the safety, efficacy, and propriety of [gender dysphoria] treatments in an evolving field." *Skrmetti*, 605 U.S. at 525. The debate over transgenderism touches nearly every institution in American life. This case sits at its most consequential intersection—parenting itself.

At its core, this case asks whether a state actor may disregard the clear, unambiguous language of a family court order that required the consent of both parents, or a further court order, before subjecting a child to a medical intervention designed to halt that child's naturally occurring puberty. It also asks whether sophisticated state actors may, without consequence, violate one of this Nation's oldest fundamental rights: the right to direct the upbringing of one's child.

The lower court erroneously answered the question in the positive based on a misapplication of the doctrine of qualified immunity, a defense that has been stretched well beyond its origins into a near-categorical shield against all but the most egregious constitutional violation that has not been blessed by precedent squarely on point.

Justice Thomas has warned that this Court has drifted from the common law immunities that existed when the Civil Rights Act of 1871 was enacted toward a regime that treats immunity as the default. *Ziglar*

v. Abbasi, 582 U.S. 120, 159 (2017) (Thomas, J., concurring in part and concurring in the judgment) (quoting *Ashcroft v. al-Kidd,* 563 U.S. 731, 741 (2011)). Justice Sotomayor has likewise cautioned that qualified immunity should be restrained. *Kisela v. Hughes*, 584 U.S. 100, 121 (2018) (Sotomayor, J., dissenting).

This case shows why that caution is warranted and why the Supreme Court should weigh in. The Ninth Circuit held below that Hudacko cited no clearly established law creating a parental liberty interest in this precise context, notwithstanding the panel's own acknowledgment that parents' rights of parents in the "care, custody, and control of their children" are well-established. *Hudacko v. Regents of Univ. of Cal.*, No. 24-7360, 2025 WL 2965766, at *4 (9th Cir. Oct. 21, 2025) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Setting aside the fact that a minor child's purported consent cannot lawfully override a parent's own —a principle this Court has long recognized[3] — the panel's limiting interpretation of "existing precedent" effectively immunizes any first-of-its-kind violations of established constitutional rights. This court's guidance is needed to clarify the "clearly established" standard, including whether the obviousness principle recognized in *Hope v. Pelzer*, 536 U.S. 730 (2002) extends beyond the Eighth Amendment.

The well-pled facts here demonstrate that reasonable officials in Respondents' positions would

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[3] *Parham v. J.R.*, 442 U.S. 584 (1972).

have known their conduct was unlawful. California law has long required parental consent for a minor's medical treatment. This edict is neither novel nor obscure. Respondents, moreover, were not naïve or uninformed actors. They were sophisticated professionals who possessed the governing custody order and proceeded in contravention of that order, to surgically implant a puberty-suppressing mechanism in Petitioner's son.

The last part of this brief details the medical harms associated with puberty blockers, underscoring the gravity of Respondents' neglect of the legal framework and departure from a reasonable standard of care.

ARGUMENT

I. This Case Illustrates Why the Court Should Resolve the Circuit Split Over What Materials Inform the "Clearly Established-Law" Inquiry.

This case presents the Court with a question of national significance, and one on which the circuits are deeply split, regarding the breadth of its qualified immunity jurisprudence. The district court granted Respondents' motion to dismiss Hudacko's §1983 parental rights claim on qualified immunity grounds. This, despite the fact that Hudacko clearly alleged that Respondents were aware of the custody order requiring either Hudacko's consent or a court order before performing any gender surgery on Hudacko's child, were aware that Hudacko had not consented

and that there had not been a court order, and were manifestly aware—despite the Ninth Circuit panel's assertions to the contrary—that the procedure they performed was "surgery."

The factual allegations in this case are simple. Hudacko lost almost all legal custody over one of his two sons. He was obviously a good enough parent to retain custody of his non-trans-identified son, but because his belief that sex-rejecting interventions ("SRIs") would be harmful to his other son, S.H., a family court judge deemed him unworthy to parent him.[4] Simply, bad parents are those who refuse to alter their child's body to mimic the opposite sex regardless of the medical risks. The fact that Hudacko retained power over "gender identity related surgery" was a small miracle, given that the beliefs of his judge, the minor's counsel, UCSF's attorney and the medical providers treating his trans-identified son, were contrary to his own.

Judge Hiromoto, the judge who decided Hudacko's custody case, has a trans-identified son[5] herself, a fact she publicly announced during a CLE course. Following Judge Hiromoto's resolution of Hudacko's family court matter, she participated, along with Respondents Asaf Orr and Daniel Harkins, minor's counsel, in a Contra Costa County Bar

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[4] *See* Petitioner's Appendix ("Pet. Appx.") at 147a, 150a-153a.

[5] For purposes of accuracy, amici use scientific sex-based terms; thus, the judge's "son" refers to his immutable sex, not his chosen female identity.

Association CLE program for minor's counsel, during which the presenters discussed Hudacko's case and provided the participants with access to the case documents.[6] During that program, Judge Hiromoto stated that Respondent Harkins, "went in and systematically debunked all of the studies that [she] was given by [Hudacko] in opposition," and held Harkin's report up as a model, explaining that what attracted her to it was its "objective view" grounded in "the science," and advising them that minor's counsel's own reports should likewise identify "the parent who should be given the decisions in this area."[7] Moreover, each of S.H.'s medical providers were stalwart advocates of pediatric SRIs as more fully discussed in Section II.D, below.

II. Qualified Immunity Does Not Shield Respondents' Calculated Disregard of a Known Court Order.

The judicially created doctrine of qualified immunity shields government officials from liability

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[6] *See*, recording of Contra Costa County Bar Ass'n Fam. L. Section, *Gender and Transgender Issues in Custody Matters* (Oct. 1, 2022), saved with transcription added at https://rumble.com/v44zo9i-gender-and-transgender-issues-with-large-subtitles.html?e9s=src_v1_sa%2Csrc_v3_sa_o%2Csrc_v1_upp_a Counsel for amici personally attended the program. Up until late August of 2026, the link created by the program itself was available through the course provider. Suspiciously, it was recently been taken down. However, the recording was saved to the Rumble platform.

[7] *Id*. at minutes 36:02–38:21.

so long as their actions do not violate clearly established rights of which a reasonable person would have known. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). There are two prongs to the qualified immunity inquiry: (1) whether the government official's conduct violated a plaintiff's constitutional right and (2) whether that right was clearly established at the time of the alleged violation. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009). "Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions. When properly applied, it protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Ashcroft*, 563 U.S. at 743.

Because the doctrine of qualified immunity offers immunity from suit, not just a defense to liability, it serves as a complete blockade, preventing courts from delineating the specific contours of constitutional rights, such as the fundamental parental right to make medical decisions for one's child at issue in this case. *See Pearson*, 555 U.S. at 236. Thus, because courts never reach the issue of whether a constitutional right was violated, instead tossing the case out because the right was not "clearly established," under the specific fact pattern in a given case, the law is never able to develop, no new fact patterns violating established rights can ever be delineated, and plaintiffs are left completely without remedy when their rights are trampled upon.

As justices of this Court have noted, qualified immunity doctrine has strayed far from its initial roots when it was judicially created. Justice Thomas,

for example, has made clear that he believes that the qualified immunity doctrine, is "on shaky ground." *Hoggard v. Rhodes,* 141 S.Ct. 2421 (2021)(Thomas, J., statement respecting denial of certiorari). This statement follows from his broader point that qualified immunity has expanded well beyond the common-law doctrines of good faith and probable cause that originally gave rise to it. *See Ziglar*, 582 U.S. at 158–159. In light of the expansion of the doctrine, which he characterized as "representing precisely the sort of free-wheeling policy choices that the Court has previously disclaimed the power to make" and "substituting the Court's own policy preferences for the mandates of Congress," Justice Thomas asserted that the Court should "reconsider its qualified immunity jurisprudence" in the appropriate case. *Id.* at 159–160 (quotation marks and citation omitted) (cleaned up). Last year, Justice Thomas renewed his call to revisit the doctrine's proper bounds. *Medina v. Planned Parenthood S. Atl.,* 606 U.S. 357, 391 (2025) (Thomas, J., concurring). Justice Sotomayor has likewise cautioned, in dissent, that qualified immunity should not become an "absolute shield" against constitutional accountability. *See Kisela*, 584 U.S. at 109.

The state doctors and attorney for the state hospital in Hudacko's case are not the sort of officials who enjoyed common law immunity. The purported justification for shielding officials from liability through qualified immunity—giving them breathing room for error where split-second decisions need to be made, such as police officers reacting in the moment to a potentially dangerous situation—is also lacking

here. No exigent circumstances were present and Respondents had a great deal of time to consider the situation and the ramifications of their decision.

As Justice Thomas pointed out, it does not make sense for state actors like these, "who have time to make calculated choices about enacting or enforcing unconstitutional policies" to "receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting." *Hoggard*, 141 S.Ct. at 2421-2422.

This case is the perfect vehicle for the Court to bound the reach of qualified immunity while not disturbing immunity for officers making crucial split-second, life-or-death judgment calls.

A. The "Clearly Established" Inquiry Cannot be Limited to Materially Identical Prior Cases or Qualified Immunity Will Permanently Shield the First Violations of its Kind.

The lower court held that Hudacko's right to direct his minor son's medical treatment was not "clearly established" because no prior case addressed whether a hospital and its physicians violate a father's constitutional rights by performing SRIs in contravention of a court order and his objection. *Hudacko*, 2025 WL 2965766, at *4. That holding is difficult to square with the panel's own acknowledgment that "the rights of parents in the 'care, custody, and control of their children' is a well-established liberty interest under the Fourteenth Amendment." *Id.* (quoting *Troxel*, 530 U.S. at 65). The

level of specificity the Ninth Circuit required is overly granular and leads to the inevitable result that a constitutional right can never become clearly established in the context of novel fact patterns. A rule that requires precedent with nearly identical fact patterns before any violation can be "clearly established" does not calibrate immunity to reasonable mistakes of law, but manufactures a static blockade that no plaintiff, however egregiously wronged, can ever overcome the first time a particular abuse of power occurs. This self-perpetuating defect leaves the right un-clearly established for the next parent, the next child, and the next hospital that repeats the same conduct, regardless of how many plaintiffs experience a similar constitutional violation.

This Court has held that qualified immunity does not require "a case directly on point," *Ashcroft*, 563 U.S. at 741, and that officials may be on notice their conduct is unlawful "even in novel factual circumstances," where a general constitutional rule applies with "obvious clarity." *Hope,* 536 U.S. at 741; *accord Taylor v. Riojas*, 592 U. S. 7, 8–9 (2020) (per curiam) (no closely analogous case required where "any reasonable officer should have realized" the violation); *McCoy v. Alamu*, 593 U.S. 8 (2021 (per curiam) (remanding for failure to consider *Taylor's* obviousness principle).

The demand for a materially similar prior case was, in fact, already rejected by this Court in the very decision *Hope* relied upon. In *United States v. Lanier*, 520 U.S. 259, 271 (1997) this Court held that the "clearly established" standard governing civil

qualified immunity and the "fair warning" standard governing criminal liability under 18 U.S.C. section 242 are the same test in different postures, because "the qualified immunity test is simply the adaptation of the fair warning standard" to the civil context. *Id.* at 270-271. *Lanier* directly rejected any requirement that prior decisions involve a "fundamentally similar" factual situation, holding that convictions may stand, and immunity by extension may be denied, "despite notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights." *Id.* at 269. This holding was not limited to *Lanier*'s facts.

The Court granted certiorari in *Hope* specifically to decide whether the Eleventh Circuit's demand for materially similar precedent "comport[ed] with our decision in *Lanier*," and held that it did not, because *Lanier* "makes clear that officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Hope*, 536 U.S. at 730, 741. Thus, the Ninth Circuit's demand for a materially identical prior case is contrary to *Hope*.

B. Lower Courts Remain Divided Over Whether Hope's Obviousness Principle Extends Beyond the Eighth Amendment.[8]

The confusion this Court is implored to resolve is whether the obviousness standard extends beyond Eighth Amendment cases, an inquiry Justice Thomas

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[8] Petition identifies this conflict on page 33.

has invited in *Hoggard*, 141 S.Ct. at 2421-2422. The Fifth Circuit in *Hershey v. Bossier City*, 156 F.4th 555, 559 (5th Cir. 2025) (Ho, J., concurring) limited *Hope* and *Taylor* to "the Eighth Amendment claims of incarcerated criminals", but the Tenth Circuit applied the obviousness standard to a Fourth Amendment claim. See *Rosales v. Bradshaw*, 72 F.4th 1145, 1156–59 (10th Cir. 2023).

Lower courts have not merely neglected *Hope*, but have split over its very availability outside the prison context, a division with direct consequences for Respondents, who fall squarely within the category of state actors who lack historical common-law immunity.[9] Whether *Hershey*'s categorical limitation would apply to bar Respondents from invoking *Hope*'s more lenient standard, a limitation with no counterpart in this Court's own precedent, is a question worthy of this Court's guidance.

C. A Close Factual Analogue is Not Required Because Respondents Exercised No Discretionary Judgment.

The "discretionary judgment" premise underlying qualified immunity's specificity requirement is absent from these facts so the Court need not resort to the closely analogous precedent standard. Qualified immunity's demand for particularized precedent exists to protect officials

[9] The result is a doctrine that extends its most protective standard to those in custodial or criminal settings while leaving parents and other law-abiding citizens with no comparable safeguard.

making split-second or genuinely ambiguous judgment calls, such as the officer deciding whether a fleeing suspect poses a threat, *Mullenix v. Luna*, 577 U.S. 7, 12 (2015). Respondents faced no such dilemma.

The custody order governing medical decision-making for S.H. required that Petitioner consent to "*any* gender identity related surgeries" without exception.[10] Respondents were aware of the custody agreement as of September 29, 2020, almost a year before the surgery.[11] Respondents and S.H.'s mother were considering the surgical implant as of February 2021.[12] S.H.'s mother took time to preserve her son's sperm.[13] Respondents knew that Hudacko would not consent.[14] No one made an effort to get a clarifying or overriding court order. Respondents "rolled the dice" because their desire to block S.H.'s puberty outweighed their fear that Hudacko would be able to successfully sue them for violating his parental rights.

The Ninth Circuit erroneously "put aside the custody order" in its ruling as if the order carried no legal force.[15] That is incorrect. A hospital that proceeds against the specific terms of a known court order is not exercising the kind of discretionary judgment that the clearly established inquiry was designed to protect, Instead, it is disregarding a

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[10] Pet. Appx. at 152a. Read naturally, "any" "has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997).

[11] Pet. Appx. at 157a.

[12] *Id.* at 161.

[13] *Id.* at 236a.

[14] Pet. Appx. at 170a-171a.

[15] *Hudacko*, 2025 WL 2965766, at *2.

known, particularized, ministerial command. *Cf.* Scott A. Keller, *Qualified and Absolute Immunity at Common Law*, 73 STAN. L. REV. 1337, 1347-49 (2021) (common-law immunity as of 1871 protected discretionary duties requiring judgment, not the disregard of specific legal commands). Objective reasonableness cannot include violating a court order. *See Walters v. Grossheim*, 990 F.2d 381, 384 (8th Cir. 1993) (denying qualified immunity because noncompliance with a court order "was not objectively reasonable," even where the official relied on advice of counsel); *Slone v. Herman*, 983 F.2d 107, 110 (8th Cir. 1993) (qualified immunity doctrine unavailable where officials "disagreed with a court order").

The Sixth Circuit confronted a strikingly similar dynamic in *Schulkers v. Kammer*, 955 F.3d 520 (6th Cir. 2020). There, state social workers continued to enforce a "Prevention Plan" barring a mother from being alone with her children, even after their own supervisor instructed them to lift the restriction. *Id.* at 545. The court denied qualified immunity for the parents' due process claims without pointing to any materially similar case, holding instead that the "fundamental right of parents to make decisions concerning the care, custody, and control of their children" was itself sufficient, because family integrity is "the paradigmatic example of a substantive due process" liberty interest. *Id.* at 540 (quoting *Troxel*, 530 U.S. at 66).

Critically, what defeated immunity in *Schulkers* was not a factually matched precedent but the officials' continued disregard of a specific instruction, which is precisely Respondents' posture here. If a

supervisor's internal directive was enough to place the social workers on clear notice, a standing judicial order, carrying far greater legal force, places Respondents on equal notice.

A Supprelin implant is a surgical procedure. First, the manufacturer explicitly describes the implant as a "surgical procedure."[16] Second, S.H.'s insurer calls the procedure a surgery.[17] Either Respondents fraudulently billed Hudacko's insurance, or it was a surgery. Third, Respondents cannot feign ignorance, as UCSF was a participant in the ten-million-dollar National Institutes of Health study, The Impact of Early Medical Treatment in Transgender Youth, ("NIH Study") about these very procedures.

California law independently forecloses any claim of reasonable uncertainty. California Family Code §6910 defines who may consent to a minor's medical care with section 6925 forbidding sterility-causing interventions without parental consent, and section 3083 confirms that parental authority to exercise legal control turns on legal custody as defined by the governing order. Respondents had the order, and the fact that they disregarded it and proceeded based on their own desired goals without seeking further court guidance is not sufficient to provide them immunity. Outside the transgender culture-war context, it is difficult to imagine a court permitting medical providers to rely on their own construction of a court order to proceed with a non-emergency,

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16 Pet. Appx. at 202a.

17 *Id*. at 160a.

sterilizing surgery over the express objection of a parent who held veto power over precisely that decision.[18]

The standard Respondents violated was not novel to their own institution either. UCSF's own "Toolbox" for providers from 2024 instructs staff in terms that track settled California law rather than announces anything new. Namely, it directs that when there is "disagreement between parents about treatment," "[t]reatment should not be provided until the conflict is resolved," providers must "[a]lways ask for the court documents in order to determine the legal rights of the parents" and where the parents cannot resolve the conflict and time permits, "the parents should get a court order."[19]

UCSF's articulation to its own staff of the standard of conduct a reasonable provider in Respondents' position was required to follow was based on the underlying legal standard of the California Family Code, which pre-dates Respondents' actions. An actor who deviates from settled law and his own institution's written policy on precisely the question presented has forfeited any claim to qualified immunity.

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[18] Cf. *Angeli v. Kluka*, 192 So. 3d 1209 (Fla. 1st DCA 2016)(surgeon not liable for proceeding over a father's objection where no court order specified whose consent controlled). The absence of an order is dispositive in distinguishing *Angeli* here.

[19] UCSF Health Risk Mgmt., *Toolbox for Patient Care*, at 2, https://web.archive.org/web/20240525153742/https://rm.ucsfmedicalcenter.org/sites/g/files/tkssra3726/f/wysiwyg/Child_Custody_and_Consent.pdf (last visited Sept. 4, 2026).

The Ninth Circuit completely ignored these facts. Nor did the Ninth Circuit ever answered whether state medical providers who know that consent is required for medical procedures on children through California law and their own institutions policies, has a court order that states no surgeries are to be performed without the father's consent, and who has billed for an intervention as a surgery, is merely mistaken as opposed to "plainly incompetent or knowingly violating the law." Clearly the answer is the latter.

D. Respondents Were Not Disinterested Actors Confronting a Novel Question in Good Faith with Neutrality.

Respondents' claim for qualified immunity depends on the premise that reasonable officials in their position could have believed that they could proceed with the surgery without Hudacko's consent. That premise assumes the Respondents were neutral and disinterested professionals applying settled medical consensus, not architects of the medical interventions they performed on S.H.

1. Respondents' Records Reflect the Lack of Good-Faith Decision-Making and Potential Fraudulent Billing.

The Respondents were laser-focused on subjecting S.H. to SRIs. On June 8, 2021, Respondent

Rosenthal documented that S.H. would receive estrogen and a puberty blocker.[20] That progress note failed to reflect a diagnosis of gender dysphoria. Instead, it states only that a gender "checklist" had been completed.[21]

On August 4, 2021, a Supprelin puberty-blocker was surgically implanted into S.H. at a hefty cost of $209,820.34.[22] By February of 2022, per Dr. Laidlaw's review of S.H.'s records, Dr. Rosenthal's progress note reflects a new diagnosis of "Endocrine Disorder." This designation is now known to be used to hide from insurance carriers that the treatments are related to SRIs. Just as billing for a procedure as surgery and then denying that the procedure was surgery is likely insurance fraud, this change in diagnosis raises an insurance fraud question—the type of fraudulent billing practices that are being investigated by the U.S. Department of Justice.[23]

HHS's recent report on billing practices in pediatric gender medicine identifies this exact pattern—an endocrine-disorder code substituted for a gender-related diagnosis—as a nationwide practice generating over $40 million in puberty-blocker billings, and findings that pediatric gender clinics

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[20] Pet. Appx. at 169a-171a.

[21] *Id.*

[22] Pet. Appx. at 239a.

[23] *See* Press Release, U.S. Dep't of Justice, Office of Pub. Affairs, *Justice Department Secures Agreement with Mount Sinai to End Pediatric "Gender-Affirming Care"* (Sept. 4, 2026), https://www.justice.gov/opa/pr/justice-department-secures-agreement-mount-sinai-end-pediatric-gender-affirming-care.

"functioned as a revenue booster" for hospital systems.[24]

2. Respondents Placed SRIs Above Petitioner's Parental Rights.

Respondents were neither disinterested nor inexperienced actors confronting an unsettled question in good faith. UCSF built a culture of sidelining parents. UCSF's own institutional materials confirm how it views parental rights. A UCSF Child and Adolescent Gender Center (CAGC) transition policy document provided to S.H. dated February 20, 2022, and reviewed by Amici Laidlaw states that "starting at age 16 years," the clinic will "spend time during visits without your parent/guardian present."

In addition, each of the Respondents was personally invested in SRIs for minors. Dr. Rosenthal was the co-founder of the CAGC, a co-author of WPATH's Standards of Care," Version 8 ("SOC 8"), who now serves as its treasurer, and one of the principal investigators for the NIH Study.[25]

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[24] U.S. Dep't of Health & Human Servs., *Wolves in White Coats: How Doctors and Hospitals Pushed and Profited from the Fraud of "Gender Medicine"*, at 9, 15, 17 (Aug. 13, 2026).

[25] UCSF Child & Adolescent Gender Ctr., *Pioneering UCSF Clinic Helps Transgender Youth Be Themselves (Nov. 23, 2015)* https://www.ucsf.edu/news/2015/11/284401/pioneering-ucsf-clinic-helps-transgender-youth-be-themselves; World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8: Full Contributor List* (updated July 26, 2021), https://www.wpath.org/wp-content/uploads/2024/11/SOC8-Full-

Respondent Diane Ehrensaft was also a co-founder of CAGC, contributor to SOC 8, and along with Dr. Lee, a co-investigator on the NIH Study.[26]

Respondent Rosenthal and Dr. Johanna Olson-Kennedy who led the NIH Study, have coauthored at least sixteen studies since 2016 relating to that study or to pediatric SRIs generally. Several of those publications raise questions relevant to the bias of Rosenthal. One examined the same category of puberty-blocker implant S.H. received and stated its purpose in part was to inform "decisions about insurance coverage of Supprelin and/or Vantas for youth with gender dysphoria," while collecting no safety data, reserving that for an unspecified future study.[27] What is more, Rosenthal served on the Advisory Board for Endo Pharmaceuticals, the manufacturer of Supprelin.[28]

A related arm of the NIH study was designed to track bone density in puberty-blocker recipients, a

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Contributor-List-FINAL-UPDATED-09232021.pdf; WPATH, Executive Committee and Board of Directors, https://wpath.org/about/EC-BOD/ (last visited Sept. 3, 2026); Johanna Olson-Kennedy et al., *Impact of Early Medical Treatment for Transgender Youth: Protocol for the Longitudinal, Observational Trans Youth Care Study*, 8 JMIR Rsch. Protocols e14434 (2019).

[26] *See* notes 25, 27 and 28.

[27] Johanna Olson-Kennedy et al., *Histrelin Implants for Suppression of Puberty in Youth with Gender Dysphoria: A Comparison of 50 mcg/Day (Vantas) and 65 mcg/Day (Supprelin LA)*, 6 TRANSGENDER HEALTH 36 (2021).

[28] *See also, SUPPRELIN LA (histrelin acetate) Prescribing Information*, Endo USA, Inc., https://www.accessdata.fda.gov/drugsatfda_docs/label/2012/022058s009lbl.pdf (last visited Sept. 7, 2026).

population-level concern given the risk described in Part III below. Baseline results were published in 2020,[29] but to the amici's knowledge, the final results have never been published. When asked by the New York Times in 2024 why the data had not been released, Dr. Olson-Kennedy stated she feared the results would be "weaponized" politically.[30]

A separate published arm of the same study followed 315 adolescents aged twelve to twenty who, like S.H., were taking high-dose cross-sex hormones. Two of the 315 subjects died by suicide during the study period, and the authors identified suicidal ideation, present in eleven subjects, as the most common adverse event reported.[31]

3. WPATH's Own Standards Are Neither Neutral Nor Settled Science.

WPATH's own conduct reveals an organization that tolerates no genuine dissent internally, while insisting publicly that its guidance is settled science, until that guidance was challenged in court. Facing suit by the Federal Trade Commission and four

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[29] Janet Y. Lee et al., *Low Bone Mineral Density in Early Pubertal Transgender/Gender Diverse Youth: Findings From the Trans Youth Care Study*, 4 J. Endocrine Soc'y bvaa065 (2020).

[30] Azeen Ghorayshi, *U.S. Study on Puberty Blockers Goes Unpublished Because of Politics, Doctor Says,* N.Y. Times (Oct. 23, 2024).

[31] Dan Chen et al., *Psychosocial Functioning in Transgender Youth after 2 Years of Hormones*, N. ENGL. J. MED. (2023).

states[32] over the same Standards of Care two Respondents helped author, WPATH has now disclaimed SOC-8's authority entirely, arguing in its motion to dismiss that the document is merely "opinion" addressing an area of "medical and scientific uncertainty," not a trustworthy clinical standard.[33]

Historically, WPATH has enforced a culture of intolerance for dissent for years. When longtime member Dr. Kenneth Zucker, cited fifteen times in the Standards of Care version 7, reported that most young children referred to his clinic stopped identifying as transgender by adulthood, protestors disrupted his presentation at a USPATH conference. WPATH's response was to cancel his next lecture.[34] Zucker was the psychologist whom Hudacko asked Judge Hiromoto to assess S.H. She declined the request.[35]

The ill-repute of WPATH was publicly displayed in *Eknes-Tucker,* where its internal communications

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[32] In June 2026, the Federal Trade Commission and four states sued WPATH, alleging that the organization provided medical providers the means to make false and unsubstantiated claims to parents in order to sell pediatric gender-transition services. Press Release, *Fed. Trade Comm'n, FTC, States Sue World Professional Association for Transgender Health Over Deceptive Claims Regarding the Treatment of Children* (June 17, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/06/ftc-states-sue-world-professional-association-transgender-health-over-deceptive-claims-regarding-treatment-children.

[33] Leor Sapir, *WPATH: It's Just Our Opinion, Judge*, City J. (Aug. 27, 2026), https://www.city-journal.org/article/wpath-ftc-lawsuit-gender-medicine.

[34] Emily Bazelon, *The Battle Over Gender Therapy*, N.Y. TIMES (June 15, 2022).

[35] Pet. Appx. at 153a.

produced in discovery included admissions that its authors failed to properly apply the GRADE evidentiary framework and suppressed an unfavorable systematic review from Johns Hopkins; omitted any chapter addressing the ethics of the interventions it recommends; used the term "recommend" for interventions its own authors acknowledged lacked supporting literature; aimed its guidance toward securing insurance coverage and litigation protection; and removed age minimums for SRIs for political reasons, over the objection of its own experts.[36]

4. Respondent Orr's Advocacy Confirms an Institutional Interest in the Outcome, Not Neutral Administration.

Respondent Orr, attorney for UCSF, was also involved in the NIH Study.[37] In his self-authored LinkedIn summary, Orr describes his work as including efforts to "expand access to transition-related care for Medicaid recipients, including puberty-delaying medications and facial feminization surgery," and to support "attorneys representing affirming parents in custody disputes around the

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[36] 2d Supp. Expert Report of Michael K. Laidlaw, M.D. at 6-40, *Eknes-Tucker v. Governor of Ala.*, No. 2:22-cv-184-LCB (M.D. Ala.).

[37] Brief of Our Duty-USA as Amicus Curiae Supporting Appellant/Petitioner for Rehearing, *Hudacko v. Regents of Univ. of Cal.,* No. 24-7360 (9th Cir. Mar. 3, 2025), ECF No. 13.2.

country."[38] By his own account, Orr's professional mission includes advocating for the parent who favors transition-related treatment in the very type of custody dispute presented here — not the neutral administration of legal interests. Orr is also one of the authors of *Schools in Transition,* the guide that counsels that granting custody to the "affirming parent" is in the best interest of the child and contains exemplars for schools to create social transition plans without parental knowledge.[39]

This is the backdrop against which this Court needs to decide if qualified immunity protects these Respondents. Were they just mistaken government officials or purposeful advocates of these controversial treatments?

III. The Well-Documented Medical Harms in the Record Underscore the Egregiousness of Respondents' Conduct.

Gonadotropin-releasing hormone agonists, commonly called puberty blockers, act on the pituitary gland to halt the signaling that triggers puberty. They do not carry an FDA-approved indication for treating

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[38] Asaf Orr, LinkedIn Profile, https://www.linkedin.com/in/asaforresq/ (archived and last visited on Sept. 5, 2026).

[39] Asaf Orr *et al.*, *Schools in Transition: A Guide to Supporting Transgender Students in K-12 Schools* (Aug.3, 2015) at pages 33, 51 – 59. https://assets.aclu.org/live/uploads/publications/schools_in_transition_6.3.16.pdf (last visited on Sept. 5, 2026.

gender dysphoria.[40] They are, however, being administered off-label to children who are beginning or proceeding through normal pubertal development, halting that healthy development and, in males, sharply lowering testosterone and suppressing sperm production. [41]

The medical literature documents several serious, and, in some respects, irreversible, consequences of this off-label use. First, infertility and sexual dysfunction: the addition of cross-sex hormones such as estrogen may cause permanent testicular damage and sterility.[42] Second, impaired bone development: puberty is the period in which peak bone density is established, and suppressing puberty can prevent a patient from ever attaining that peak, exposing him to a lifelong elevated risk of serious bone fractures.[43] Third, effects on brain development: the suppression of puberty has been shown to affect brain structure and the development of social and cognitive function, with effects that are complex and often sex-specific.[44] Fourth, high-dose cross-sex estrogen, used off-label to alter secondary sex characteristics in natal males, produces abnormally elevated estrogen levels associated with an increased risk of thromboembolism,[45] a 46-fold increased incidence of breast cancer relative to males not undergoing SRIs,

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40 Pet. Appx. at 162a and 166a.

41 HHS Review, *supra* n. 2 at 116.

42 *Id.* at 125.

43 *Id.* at 116-117.

44 Sallie Baxendale, *The Impact of Suppressing Puberty on Neuropsychological Function: A Review*, 113 ACTA PAEDIATRICA 1156 (2024).

45 HHS Review, *supra* note 2 at 126-27.

though the absolute risk remains lower than that of females,[46] brain neoplasms including meningiomas and prolactin-secreting tumors,[47] and sexual dysfunction including decreased libido and erectile dysfunction.[48]

CONCLUSION

For the aforementioned reasons, Amici Curiae respectfully ask this Court to grant the petition for certiorari.

September 9, 2026

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46 Christel J.M. de Blok et al., *Breast Cancer Risk in Transgender People Receiving Hormone Treatment: Nationwide Cohort Study in the Netherlands*, 365 BMJ l1652 (2019).

47 Lourdes Villa-Zapata & Andrea Gomez-Lumbreras, *Reply: Exploring Safety in Gender-Affirming Hormonal Treatments,* 59 ANNALS OF PHARMACOTHERAPY 493 (2025).

48 HHS Review, *supra* note 2 at 128.