No. 26-180

IN THE

Supreme Court of the United States

EDWARD ALLYN HUDACKO,
Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA; STEPHEN ROSENTHAL, M.D.; JANET YI MAN LEE, M.D.; DIANE EHRENSAFT, PH.D.; ASAF ORR; NATHANIEL BIGGER; DANIEL HARKINS; CHRISTINE UNDERHILL,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the lower courts correctly held that respondents are entitled to qualified immunity on the facts of this case.

2. Whether this Court should grant the petition to consider, in the first instance, petitioner's arguments for overhauling "modern qualified immunity doctrine." Pet. 26.

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties:

Petitioner Edward Allyn Hudacko

Respondents The Regents of the University of California; Stephen Rosenthal, M.D.; Janet Yi Man Lee, M.D.; Diane Ehrensaft, Ph.D.; Asaf Orr; Nathaniel Bigger; Daniel Harkins; Christine Underhill.

DIRECTLY RELATED PROCEEDINGS

The following cases that were not identified in the petition are related to this proceeding under Rule 14.1(b)(iii):

Hudacko v. *Regents of the University of California*, No. 24-5654 (9th Cir.)

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BRIEF IN OPPOSITION

INTRODUCTION

This case arises from a custody dispute between petitioner Edward Hudacko and respondent Christine Underhill, which was adjudicated in state court. After extensive proceedings, the state court made Underhill the sole legal custodian of their teenage child, S.H. The court empowered Underhill to "make decisions on her own for S.H.'s health . . . without [Hudacko's] consent" and expressly allowed S.H. "to commence hormone therapy, if recommended" by physicians. Pet. App. 150a,

152a. It also provided that no "gender identity related surgery" could take place without a court order or Hudacko's written consent. *Id.* at 152a. Hudacko contends that respondents—including Underhill, physicians at the University of California, San Francisco (UCSF), and attorneys involved in the state case—violated the custody order when the physicians, with Underhill's consent, placed a small, subcutaneous implant under S.H.'s skin to deliver a medication called histrelin, which "help[s] temporarily suspend or block the physical changes of puberty." *Id.* at 51a. Hudacko alleges that this violated his federal constitutional rights.

Both courts below correctly held that the government-official respondents are entitled to qualified immunity. This Court's settled doctrine directs that public officials are entitled to qualified immunity unless they violated clearly established law. For a law to be clearly established, existing precedent must place the question beyond debate. Here, no precedent establishes (let alone clearly establishes) that Hudacko had a constitutional right to withhold consent to the particular treatment method that the sole custodial parent and S.H. chose. And it was "not clear" that the custody order—which expressly authorized "hormone therapy" without Hudacko's consent—required his consent for that particular method of delivering hormone therapy. Pet. App. 5a, 36a-39a. The lower courts' straightforward application of settled doctrine does not warrant review.

Nor has Hudacko identified any other persuasive reason for certiorari. He argues that his underlying claims implicate constitutional questions about parental rights in the context of gender-affirming care, *see* Pet. 1, 13, but the only questions before this Court have to do with the workings of the qualified immunity doctrine. As to that doctrine, he asserts that the unpublished

decision below implicates a "deep circuit split" concerning when courts may consider non-precedential sources in resolving qualified immunity questions. *Id.* at 17. In truth, however, the circuits apply a comparable approach—and the Ninth Circuit expressly authorizes courts to consider (where appropriate) the kind of extrajudicial sources that Hudacko claims the panel ignored.

Finally, Hudacko asks the Court to overhaul the modern doctrine of qualified immunity. Pet. 27-35. This Court has declined more than a dozen similar requests in recent years. Just last Term, it summarily reversed a denial of qualified immunity by applying the very framework Hudacko now asks the Court to jettison. And even if the Court were inclined to modify that framework, this would be an exceptionally poor case in which to undertake that project. Hudacko concedes that he never raised this question below, so the lower courts did not consider it. Pet. 36. What is more, any application of the novel qualified immunity framework that Hudacko proposes would be unduly complicated in this case—where Hudacko's underlying claim is entangled with unresolved state-law questions about the meaning of the terms in a state-court custody order and the actions of professionals in the field of medicine, which is principally governed by state regulation. If the Court were ever inclined to reconsider qualified immunity, it should do so in a case without these complications.

STATEMENT

A. Factual Background

Hudacko and Underhill are the divorced parents of S.H., who identifies as transgender. In 2020, when S.H. was 16 years old, Hudacko and Underhill were engaged in a "high conflict" custody battle in the Contra Costa

County Superior Court. Pet. App. 11a. Among the issues in dispute were conflicts over the couple's former residence, child support, insurance coverage, the college-savings accounts for their two children, and Hudacko's opposition to "any form of 'gender affirming care'" for S.H. *Id.* at 11a, 153a-154a.

After hearing testimony and reviewing a report of interviews with Hudacko, Underhill, S.H., and S.H.'s therapist, as well as a report from S.H.'s court-appointed counsel, the court made Underhill "the sole temporary legal custodial parent" for S.H. Pet. App. 38a, 146a-147a, 150a. It authorized her to "make decisions on her own for [S.H.'s] health, education and welfare without [Hudacko's] consent." *Id.* at 11a, 150a. Although the custody order provided that S.H. could not "undergo any gender identity related surgery" as a minor "absent a written agreement by both" parents, it expressly allowed S.H. "to pursue the services provided by UCSF as to [S.H.]'s gender identity, and . . . to commence hormone therapy, if recommended by UCSF." *Id.* at 12a, 152a. The order also preserved Hudacko's right to "obtain all otherwise confidential information regarding [S.H.]'s health, education and welfare," including by contacting S.H.'s doctors directly, and required Underhill to give Hudacko a list of S.H.'s treating providers. *Id.* at 150a-151a. But it did not require Underhill to provide regular updates, and it gave Hudacko no "right" to attend S.H.'s medical appointments. *Id.* at 151a.

In February 2021, Underhill accompanied S.H. (then nearly 17 years old) to UCSF, where physicians discussed the potential use of puberty blockers, which "help temporarily suspend or block the physical changes of puberty." Pet. App. 50a-51a, 119a-120a. The physicians explained that the blockers could be administered as injections or oral tablets. *Id.* Another option was a

"subcutaneous histrelin implant," a matchstick-sized device placed just beneath the skin of the upper arm that releases the medication continuously for a year. *Id.* at 51a, 227a. S.H. and Underhill ultimately chose the implant, which was inserted during an outpatient visit in August 2021. *Id.* at 51a, 170a, 192a-195a.

A month later, Underhill wrote to Hudacko notifying him that S.H. "ha[d] begun hormone therapy," including receiving histrelin "via an implant." Pet. App. 51a-52a. Underhill explained that "[i]nsurance has paid for the vast majority of the implant procedure" and that she personally covered the balance, recognizing that Hudacko was unlikely to "pay for half given [his] disapproval of transitioning." *Id.* She emphasized that S.H. "is doing well and happy to finally begin the process." *Id.* S.H. turned 18 in the summer of 2022, and the state superior court entered final judgment in the marital dissolution proceedings in March 2023. *See id.* at 57a, 147a.

B. Procedural History

1. In September 2023, nearly two years after learning of the implant, Hudacko returned to the superior court. Pet. App. 54a. He sought an order to show cause why Underhill—as well as UCSF and the attorneys for Underhill and S.H.—should not be held in contempt for "willfully violating an order prohibiting gender identity related surgery." *Id.* About a month later, Hudacko filed this federal suit against Underhill, the family-law attorneys for Underhill and S.H., three doctors and an attorney who worked at UCSF, and The Regents of the University of California. *Id.* at 52a-53a. He brought claims under 42 U.S.C. § 1983 alleging that defendants' purported violation of the custody order violated his procedural and substantive due process rights, along with state tort claims.

Meanwhile, the state superior court indicated that it lacked jurisdiction to adjudicate the contempt proceedings Hudacko had initiated against UCSF and related parties. Pet. App. 54a. Although that court did not issue a final order disposing of any of the contempt petitions, Hudacko eventually withdrew those petitions as to each of the defendants named in the federal lawsuit. *Id.*

In the federal suit, each defendant moved to dismiss, and the district court dismissed every claim except one. As to The Regents of the University of California, the court dismissed all claims on Eleventh Amendment immunity grounds. Pet. App. 67a. As to the claims against Underhill and the two family-law attorneys, the court dismissed because the defendants were not *de facto* state actors, but it also granted leave to amend. *Id.* at 65a. As to the substantive due process claim against the UCSF doctors and attorney, however, the court reasoned that it was "premature to determine whether a violation of the custody order, if proven, would rise to the level of a violation of" Hudacko's constitutional rights. Pet. App. 69a-70a.[1]

Hudacko then filed an amended complaint, repleading his claims against the individual UCSF defendants, Underhill, and the two family-law attorneys. All seven defendants again moved to dismiss. As relevant here, the individual UCSF defendants argued that they were entitled to qualified immunity because no clearly established law holds that the alleged breach of the custody order constitutes a violation of Hudacko's due process rights. *See* Pet. App. 34a-35a. The district court agreed.

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[1] Hudacko attempted to appeal this order, but the Ninth Circuit dismissed the appeal for lack of jurisdiction. *Hudacko* v. *Regents of Univ. of Cal.*, No. 24-5654 (9th Cir. Dec. 16, 2024).

Given "the relative novelty of the facts at hand," the court began by addressing whether the asserted right was clearly established. Pet. App. 35a. It noted Hudacko's concession that the custody order granted Underhill medical decision-making authority over S.H. *Id.* "In essence," the court explained, Hudacko's "parental rights were limited to a right to veto a particular category of medical procedures before [S.H.] reached adulthood." *Id.* at 36a. As a result, the relevant question was "whether a parental right to veto certain medical procedures—when already deprived of general medical-decision making power—has been clearly established as a constitutional right." *Id.* Without deciding whether such a right exists, the court concluded that Hudacko's cited cases did not clearly establish that right. *Id.* It granted the individual UCSF defendants qualified immunity on that basis. *Id.*

The court also rejected Hudacko's argument that defendants violated the plain terms of the custody order. As the court explained, "[r]easonable doctors or lawyers could have believed the [histrelin] implant was part of or an adjunct to the type of hormone therapy specifically permitted by . . . the custody order." Pet. App. 38a. "While a court might conclude defendants wrongly believed the procedure was permitted without plaintiff's consent, the correct interpretation of these provisions of the custody order was not 'beyond debate.'" *Id.* at 38a-39a (quoting *Carroll* v. *Carman*, 574 U.S. 13, 16 (2014) (per curiam)).

Finally, the court held that Underhill and the two family-law attorneys were not state actors, and it dismissed the state-law claims as inadequately pleaded. Pet. App. 39a, 46a.

2. A unanimous panel of the Ninth Circuit (Thomas, Nguyen, and Bress, JJ.) affirmed in an unpublished decision. The panel noted that, "[a]lthough the rights of parents in the 'care, custody, and control of their children' is a well-established liberty interest under the Fourteenth Amendment, Hudacko's right cannot be defined that broadly because the custody order stripped him of almost all his parental rights." Pet. App. 5a (quoting *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000)). What is more, "Hudacko cite[d] no clearly established law under similar facts" establishing a constitutional violation. *Id.* And the panel rejected Hudacko's reliance on "the 'explicit language' of the custody order," reasoning that "it was not clear the implant procedure fell within [the] 'surgery' exception in the custody order." *Id.*

ARGUMENT

I. THE LOWER COURTS' APPLICATION OF SETTLED QUALIFIED IMMUNITY DOCTRINE DOES NOT WARRANT REVIEW

This Court has consistently and recently admonished lower courts not to pierce a government official's qualified immunity unless precedent addressing "'similar circumstances'" places the alleged constitutional violation beyond debate. *See, e.g.*, *Zorn* v. *Linton*, 607 U.S. 568, 572 (2026) (per curiam). A court may consider nonprecedential sources to buttress its conclusion about what the precedent clearly establishes, *see Hope* v. *Pelzer*, 536 U.S. 730, 739 (2002); *City & County of San Francisco* v. *Sheehan*, 575 U.S. 600, 616 (2015), but not as a substitute for federal judicial precedent. There is no relevant circuit conflict as to that settled framework, let alone a "split involving all the circuits." Pet. 17. And the court below actually considered the custody order—

the key nonprecedential source that the petition claims it ignored (at 18-19)—consistent with Ninth Circuit precedent expressly authorizing courts to consider such sources. This case therefore does not squarely present the argument raised by Hudacko.

A. There Is No Genuine Circuit Conflict

1. "Government officials enjoy qualified immunity from suit under § 1983 unless their conduct violates clearly established law." *Zorn*, 607 U.S. at 571. For a law to be clearly established, "'[e]xisting precedent must have placed the statutory or constitutional question beyond debate.'" Pet. App. 4a-5a (quoting *Carroll*, 574 U.S. at 16). Precedent can include "'controlling authority' or 'a robust consensus of cases of persuasive authority.'" *District of Columbia* v. *Wesby*, 583 U.S. 48, 63 (2018).

Materials other than federal judicial decisions do not ordinarily satisfy that threshold requirement for "*precedent*." *Sheehan*, 575 U.S. at 616. "Even if an officer acts contrary to her training," for example, "that does not itself negate qualified immunity where it would otherwise be warranted." *Id.* In other words, "[o]fficials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision." *Davis* v. *Scherer*, 468 U.S. 183, 194 (1984). Instead, "courts generally 'need to identify a case where an officer acting under similar circumstances[] was held to have violated' the Constitution." *Zorn*, 607 U.S. at 572 (quoting *City of Escondido* v. *Emmons*, 586 U.S. 38, 43 (2019) (per curiam)). "The relevant precedent must define the right with a 'high degree of specificity,' so that 'every reasonable official would interpret it to establish the particular rule

the plaintiff seeks to apply.'" *Id.* (quoting *Wesby*, 583 U.S. at 63).

The only exception to the requirement for relevant precedent applies in extreme situations where an official's conduct is so egregious that it obviously violates the Constitution. *See Hope*, 536 U.S. at 745. Those exceptional cases typically feature officials who acted with "obvious cruelty" that was "antithetical to human dignity," such that no further notice of an Eighth Amendment violation was needed. *Id.*; *see also Wesby*, 583 U.S. at 64. One example is the "'obvious cruelty inherent'" in housing prisoners in "cells teeming with human waste." *Taylor v. Riojas*, 592 U.S. 7, 7-9 (2020) (per curiam) (quoting *Hope*, 536 U.S. at 745). Hudacko does not invoke this exception, *see* Pet. 17-25, nor could he.

Outside the "obvious cruelty" cases, the requirement to identify "relevant precedent" ensures that officials are held liable only where they "could have 'read' the relevant precedent beforehand and 'know[n]' that it proscribed their specific conduct." *Zorn*, 607 U.S. at 572 (alteration in *Zorn*) (quoting *Sheehan*, 575 U.S. at 616). This "exacting standard" ensures "'fair notice'" to the official and "'gives government officials breathing room to make reasonable but mistaken judgments.'" *Sheehan*, 575 U.S. at 611, 616; *see also Hope*, 536 U.S. at 739.

Non-precedential sources factor into the analysis only if the court also identifies relevant precedent. For instance, in "novel factual circumstances"—where precedent applies but might not place the unconstitutionality of the defendant's precise conduct beyond debate—courts may look to non-precedential sources to determine whether officers received "fair warning" of the violation. *Hope*, 536 U.S. at 741. This Court encountered that scenario in *Hope*. In considering whether tying a

prisoner to a hitching post for hours at a time violated a right clearly established by the Eighth Amendment, the Court first identified "binding precedent" barring "'handcuffing inmates to the fence.'" *Id.* at 742. It then examined a prison regulation restricting the same conduct and a federal regulatory advisory warning of its "unconstitutionality," which "buttressed" the conclusion that the precedent "provided fair warning" of the violation. *Id.* at 742-745. Elsewhere, the Court "refer[red]" to an agency "guideline" to "underscore" a violation "well established by [its] cases." *Groh* v. *Ramirez*, 540 U.S. 551, 564 & n.7 (2004). But it did "not suggest that an official is deprived of qualified immunity whenever he violates an internal guideline." *Id.* at 564 n.7. In sum, apart from cases involving obvious cruelty, the Court has never relied on non-precedential sources alone—which are "no match for the Circuit precedents." *Hope*, 536 U.S. at 747.

2. Hudacko alleges a "deep circuit split on what materials are relevant to determining clearly established law," Pet. 17, but the cases he invokes follow the settled framework. Outside of the rare cases applying the obviousness exception, no circuit allows plaintiffs to use non-precedential materials to circumvent the requirement for relevant precedent.

a. Hudacko contends that seven circuits "broadly define the universe of materials that may be examined to determine if clearly established law was violated." Pet. 21. But none of those circuits has held that a non-precedential source may substitute for a precedential case involving similar factual circumstances.

Indeed, one of the cited decisions expressly rejected an invitation to make that kind of substitution; the court granted qualified immunity because no relevant

precedent prohibited an officer's conduct even though it "violate[d] a departmental policy." *Latits* v. *Phillips*, 878 F.3d 541, 553 (6th Cir. 2017). Each of the other cited decisions considered whether binding precedent (or a consensus of non-binding circuit precedent) established the unconstitutionality of the alleged conduct. *See Cintron* v. *Bibeault*, 148 F.4th 37, 52 (1st Cir. 2025); *Irish* v. *Fowler*, 979 F.3d 65, 77-78 (1st Cir. 2020); *Okin* v. *Village of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 433-434 (2d Cir. 2009); *Williams* v. *Secretary Pa. Dep't of Corr.*, 117 F.4th 503, 515, 517 (3d Cir. 2024), *cert. denied sub nom. Wetzel* v. *Williams*, 146 S. Ct. 91 (2025); *Iko* v. *Shreve*, 535 F.3d 225, 243 n.12 (4th Cir. 2008); *Latits*, 878 F.3d at 552-553; *Barker* v. *Goodrich*, 649 F.3d 428, 435 (6th Cir. 2011); *New* v. *Denver*, 787 F.3d 895, 901-902 (8th Cir. 2015); *Nelson* v. *Correctional Med. Servs.*, 583 F.3d 522, 531 (8th Cir. 2009) (en banc); *Adams* v. *Poag*, 61 F.3d 1537, 1543-1544 (11th Cir. 1995).[2]

Consistent with this Court's framework, some of these decisions "*also* consider[ed]" whether "certain non-case-law sources" buttressed the court's precedent-based conclusions. *Cintron*, 148 F.4th at 51-53 (emphasis added).[3] Other decisions considered such sources because the merits of the underlying constitutional claim

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[2] One of Hudacko's cited cases does not involve qualified immunity. *See United States* v. *McKenzie-Gude*, 671 F.3d 452, 461 (4th Cir. 2011). Another never considers whether a right was clearly established. *See Kruse* v. *Williams*, 592 F. App'x 848, 859 (11th Cir. 2014) (per curiam).

[3] *See also, e.g.*, *Nelson*, 583 F.3d at 531, 534 (describing "'[p]rison regulations'" as "'also relevant'"); *Okin*, 577 F.3d at 433-434 (considering other sources only "in conjunction with prevailing circuit or Supreme Court law"); *Williams*, 117 F.4th at 525 (describing non-precedential source that "buttress[ed]" a rule "*controlling precedent* clearly established").

called for an additional, fact-intensive inquiry. For example, some decisions assessed policies or medical standards—in addition to relevant precedent—to evaluate whether an officer violated the deliberate indifference standard in a particular case. *See, e.g.*, *Iko*, 535 F.3d at 241-243; *Adams*, 61 F.3d at 1543. Another decision considered non-precedential sources in the "unusual" case where "the existence of probable cause turned on" them. *New*, 787 F.3d at 900-901.

b. Hudacko attempts to place the court below and five other circuits in the minority of his asserted conflict, describing them as purportedly following a rule that "non-legal materials" may not "be examined for the clearly established-law inquiry." Pet. 21. In truth, the circuits in the "minority" either affirmatively allow the consideration of non-precedential material or are silent as to its relevance. Indeed, the circuit below expressly allows for the consideration of non-precedential materials. *See Vazquez* v. *County of Kern*, 949 F.3d 1153, 1164-1165 (9th Cir. 2020); *see also infra* Part I.B.1. So do the Fifth, Tenth, and D.C. Circuits.

The Fifth Circuit "find[s]" non-precedential sources "relevant, but not dispositive," and has denied qualified immunity where an officer's "alleged conduct appear[ed] to have violated Fort Worth Police Department policies." *Darden* v. *City of Fort Worth*, 880 F.3d 722, 732 n.8 (5th Cir. 2018). Hudacko cites a different Fifth Circuit decision, which explains that non-precedential opinions cannot be the "'source'" of clearly established law. *Salazar* v. *Molina*, 37 F.4th 278, 286 (5th Cir. 2022). But that decision does not otherwise discuss the relevance of non-precedential sources, and it does not remotely "prohibit[] looking to non-precedential opinions." Pet. 19-20.

The Tenth Circuit has considered a non-precedential source—state law—to "buttress[] the conclusion" that individuals did not violate clearly established law. *Marin* v. *King*, 720 F. App'x 923, 940 (10th Cir. 2018). To the extent that the Tenth Circuit once suggested that non-precedential sources were "irrelevant" (Pet. 19) in *Frasier* v. *Evans*, 992 F.3d 1003, 1015, 1019 (10th Cir. 2021), this Court saw no need to correct that decision and instead denied certiorari, *see infra* Part I.B.2.

The D.C. Circuit cases cited by Hudacko also considered non-precedential sources. They examined a health "protocol," *Bernier* v. *Allen*, 38 F.4th 1145, 1158 (D.C. Cir. 2022), and a state law concerning the conduct at issue, *Youngbey* v. *March*, 676 F.3d 1114, 1117, 1126 (D.C. Cir. 2012) (per curiam), to support precedent-based conclusions that a violation was not clearly established.[4]

Finally, the academic articles invoked by Hudacko do not document any cert-worthy conflict. They instead describe varying approaches to weighing non-precedential sources rather than a square inter-circuit dispute about whether such sources are ever (or never) relevant as a general matter. *See* Fleischer, *Stating the Obvious: Departmental Policies As Clearly Established Law*, 90 U. Chi. L. Rev. 1435, 1443, 1448-1454 (2023); Preis, *Qualified Immunity & Subjective Knowledge*, 60 Wake Forest L. Rev. 627, 674-675 (2025). That hardly establishes a "deep circuit split" (Pet. 17) warranting plenary review.

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[4] Hudacko references a Seventh Circuit decision, but that decision does not address the relevance of non-precedential sources—as Hudacko tacitly acknowledges in describing it as "not mentioning the option of looking to non-case law." Pet. 20 (discussing *Reed* v. *Palmer*, 906 F.3d 540, 547 (7th Cir. 2018)).

B. This Case Is A Particularly Poor Vehicle

Even indulging Hudacko's mistaken premise that some circuits categorically bar consideration of non-precedential sources in the qualified immunity analysis, this petition presents a uniquely unsuitable candidate for the Court to review that issue. *Cf. Thomas* v. *Humboldt County*, 146 S. Ct. 27, 27 (2025) (Gorsuch, J., respecting the denial of certiorari).

1. This case does not present the qualified-immunity question that Hudacko claims it does. In Hudacko's telling, the Ninth Circuit prohibits courts from considering "any non-legal materials" in the qualified immunity analysis. Pet. 21. As noted above, however, Ninth Circuit precedent allows consideration of a range of non-precedential materials, and the court below adhered to that precedent when it considered the state custody order. Pet. App. 4a-5a.

The Ninth Circuit has long considered non-precedential sources, such as "[t]raining materials and regulations," as "relevant, although not dispositive, to determining whether reasonable officers would have been on notice that their conduct was unreasonable." *Vazquez*, 949 F.3d at 1164-1165 (citing *Hope*, 536 U.S. at 741-742, and *Drummond ex rel. Drummond* v. *City of Anaheim*, 343 F.3d 1052, 1062 (9th Cir. 2003)). In *Vazquez*, for example, the court concluded that a reasonable juvenile-hall officer would have known that precedent protecting "'bodily privacy'" applied to juvenile wards, and it buttressed that conclusion by pointing to local "policies" and "training" applying those protections to minors in an officer's custody. 949 F.3d at 1165.

Consistent with that precedent, the court below considered one of the non-precedential sources the petition faults it for ignoring. The court first explained that

Hudacko "cite[d] no clearly established law under similar facts." Pet. App. 5a. It then examined the custody order and concluded that it was "not clear" whether the "implant procedure" at issue counted as a non-surgical treatment or "fell within" the custody order's exception for "'surgery.'" *Id.* Far from holding or suggesting that the custody order was irrelevant, *see* Pet. 17, the court considered that non-precedential source and explained that it reinforced the precedent-based conclusion that respondents had not violated any clearly established right. Pet. App. 5a. Under these circumstances, there was no need to consider "California law," "medical information," Pet. 18-19, or any other non-precedential source.

2. In addition, little has changed since this Court denied review of a similar question in *Frasier* v. *Evans*, No. 21-57 (2021)—the lead case Hudacko invokes as part of his asserted circuit split, and a superior vehicle for the question in multiple respects. The petition in that case asked "[w]hether training or law enforcement policies can be relevant to whether a police officer is entitled to qualified immunity," and similarly asserted a circuit conflict. *See* Petition for a Writ of Certiorari at i, *Frasier* v. *Evans*, No. 21-57 (July 8, 2021). This Court denied the petition, 595 U.S. 1039 (2021), even though it arose from a published circuit opinion stating that "judicial decisions are the only valid interpretive source of the content of clearly established law," and even though the training materials advanced by the plaintiff addressed the precise legal right at issue far more clearly than the non-precedential materials Hudacko advanced here. *See Frasier*, 992 F.3d at 1015, 1019. Certiorari is not warranted now for the same reason it was unwarranted then: absent precedent presenting similar circumstances (or an obvious constitutional violation), it does not

"matter for purposes of qualified immunity" if non-precedential sources suggested that the defendant's conduct was unlawful. *Sheehan*, 575 U.S. at 616.

Hudacko argues that this Court has nonetheless left "the door open to the examination of other materials" because *Zorn* qualified the "need to identify a case" with the word "'generally,'" Pet. 17 & n.7; *see id.* at 5-6, and because the Court has encouraged lower courts to consider "information possessed by" officials, *Anderson* v. *Creighton*, 483 U.S. 635, 641 (1987), and to walk "in the defendant's shoes," *Plumhof* v. *Rickard*, 572 U.S. 765, 778-779 (2014); Pet. 18; *see also id.* at 6. As *Anderson* made clear, however, considering the facts known to officials is no opening to "reintroduce into qualified immunity analysis the inquiry into officials' subjective intent that" the Court has "sought to minimize." 483 U.S. at 641. The question is always whether "a reasonable officer could have believed" the conduct "to be lawful." *Id.*; *see also Harlow* v. *Fitzgerald*, 457 U.S. 800, 815-818 (1982). Non-precedential sources may inform how an official understood precedent to apply in her case, but they cannot replace relevant precedent. *See Sheehan*, 575 U.S. at 615-616.

3. Finally, to the extent Hudacko and his amici seek to raise the "underlying merits issue" regarding parental rights as a basis for granting review, Pet. 13; *see id.* at 13-16, this is an unsuitable vehicle because the petition does not actually present that issue, *see id.* at i. And nothing in the decision below prevents courts from reaching the underlying questions about parental rights that Hudacko raises in an appropriate future case. *Cf. Pearson* v. *Callahan*, 555 U.S. 223, 231-232, 242 (2009) (addressing authority of federal courts to resolve constitutional questions even where law was not clearly established). Indeed, this Court's merits docket underscores

that there is no paucity of legal challenges concerning parental rights in this area. The Court will soon address the scope of parents' ability to challenge the provision of gender-related healthcare to their children in *International Partners for Ethical Care, Inc.* v. *Ferguson*, No. 25-840.

But *International Partners* provides no basis for granting (or holding) the petition in this case. In *International Partners*, the Court will resolve "[w]hether parents have standing to challenge" laws or policies displacing their decision-making role as to their children's gender transitions. *See* Brief of Petitioners at i, *Int'l Partners for Ethical Care, Inc.* v. *Ferguson*, No. 25-840 (Sept. 8, 2026). The decisions below in this case did not question Hudacko's standing to assert his constitutional parental rights, *see generally* Pet. App. 2a-9a, and Hudacko did not challenge the state custody order that expressly determined the scope of those rights, *see id.* at 38a n.9.

C. The Courts Below Correctly Applied The Qualified Immunity Framework

The lower courts correctly rejected Hudacko's invitation to depart from this Court's settled qualified immunity framework and pierce defendants' qualified immunity even in the absence of relevant precedent.

To this day, Hudacko has not identified any judicial authority recognizing a constitutional violation on a similar set of facts. *See* Pet. App. 5a. As he acknowledges, the state custody order was "non-precedential," Pet. 18-19, so it could not substitute for the "*precedent*" necessary to place reasonable officials on notice that their conduct is unlawful, *Sheehan*, 575 U.S. at 616. And since "[a] constitutional decision resting on an uncertain interpretation of state law is . . . of doubtful precedential

importance," *Pearson*, 555 U.S. at 238, California law and the custody order would be of doubtful assistance to a federal court.

Hudacko argues that the lower courts should have ignored the absence of relevant precedent and instead "relied on non-precedential law (California law and the custody order) and medical information possessed by the defendants" to conclude that defendants violated clearly established law. Pet. 18-19. As discussed above, however, the only circumstance in which courts may excuse the absence of relevant precedent is where a constitutional violation is so obvious that no precedent is required. Hudacko does not invoke that exception here and it could not have applied in any event. The procedure at issue was completed with the consent of S.H. and "the sole temporary legal custodial parent"—who had authority to "make decisions on her own for [S.H.]'s health, education and welfare without [Hudacko's] consent." Pet. App. 150 (emphasis omitted). It is far from obvious as a matter of federal constitutional law that a non-custodial parent retains "full veto authority" over the judgments made by the parent to whom a state court granted sole decision-making authority. Pet. 24-25 n.9.

And despite the absence of relevant precedent, at Hudacko's urging, the lower courts *did* consider the custody order. That order—which petitioner did not challenge in federal court—allowed S.H. to pursue "the services provided by UCSF as to [S.H.]'s gender identity," including "hormone therapy, if recommended by UCSF." Pet. App. 152a; *see also id.* at 38a n.9. The provision allowing for "hormone therapy" did not define or limit the mechanism (oral, injection, or implant) by which hormone therapy may be administered. *Id.* at 152a. And "it was not clear [that] the implant procedure fell within" the provision requiring "written agreement

by both" parents or court order for "gender identity related surgery." *Id.* at 5a, 152a.

II. THE COURT SHOULD DECLINE TO OVERHAUL QUALIFIED IMMUNITY DOCTRINE

Hudacko also asks this Court to grant review for the purpose of overhauling its long-settled qualified immunity framework. *See* Pet. i. (asking whether qualified immunity "applies to all government officials," or whether courts should first make a threshold inquiry into "whether immunity was historically accorded the relevant official in an analogous situation at common law.").

This Court has recently and repeatedly denied similar petitions asking it to narrow or eliminate the doctrine of qualified immunity. *See, e.g.*, *Villarreal* v. *Alaniz*, No. 25-29; *NRA* v. *Vullo*, No. 25-479; *Grashorn* v. *Love*, No. 25-216; *Molina* v. *Book*, No. 23-227; *Rogers* v. *Jarrett*, No. 23-93; *Novak* v. *City of Parma*, No. 22-293; *Anderson v. City of Minneapolis*, No. 19-656; *Zadeh* v. *Robinson*, No. 19-676; *Corbitt* v. *Vickers*, No. 19-679; *West* v. *Winfield*, No. 19-899; *Kelsay* v. *Ernst*, No. 19-682; *Jessop* v. *City of Fresno*, No. 19-1021. It has done so even in the face of the separate writings by individual Justices highlighted in the petition. *See, e.g.*, *Hoggard* v. *Rhodes*, 594 U.S. 962, 962 (2021) (Thomas, J., statement respecting the denial of certiorari); *Baxter* v. *Bracey*, 590 U.S. 1011, 1011 (2020) (Thomas, J., dissenting from denial of certiorari). Hudacko offers no reason for a different outcome here. Nothing has changed since those denials that would warrant review now. Indeed, just last Term, the Court summarily reversed a denial of qualified immunity by applying the same framework that Hudacko wants the Court to jettison. *See Zorn*, 607 U.S. 568.

This case would also be an exceptionally poor vehicle for reconsidering qualified immunity. As Hudacko

concedes (at 36), he never made this argument below, and consequently neither of the courts below considered or addressed it. Hudacko argues that it would have been futile to do so. *See id.* But advancing the argument could at least have preserved the option for a judge to discuss the issue in a separate opinion. *Cf. Rogers* v. *Jarrett*, 63 F.4th 971, 979-981 (5th Cir. 2023) (Willett, J., concurring).

Even setting that failure aside, the qualified immunity question here is entangled with two areas traditionally governed by state law. First, Hudacko concedes that a state-court custody order required his consent only for "gender identity related surgery." Pet. App. 35a, 152a. Whether the implant fell within that veto is a question of state law. The courts below left this question unaddressed, holding only that the answer was not clear. *Id.* at 5a, 38a-39a. And Hudacko abandoned the contempt proceeding in which the state court that issued the custody order could have answered that question. *Id.* at 54a. Any ruling on qualified immunity would therefore require a federal court to construe a state-court custody order in the first instance, a task for which federal courts are ill-equipped. *See Ankenbrandt* v. *Richards*, 504 U.S. 689, 704 (1992) ("[S]tate courts are more eminently suited to work of this type than are federal courts, which lack the close association with state and local government organizations dedicated to handling issues that arise out of conflicts over divorce, alimony, and child custody decrees.").

Second, the conduct at issue falls within the States' traditional authority to regulate the practice of medicine. *See Hillsborough County* v. *Automated Med. Lab'ys, Inc.*, 471 U.S. 707, 719 (1985) ("[T]he regulation of health and safety matters is primarily, and historically, a matter of local concern."). Hudacko asks this

Court to adopt, as a "threshold question," whether "immunity was historically accorded the relevant official in an analogous situation at common law." Pet. i (citation omitted). Any answer would depend on unresolved state-law questions about what the custody order allowed and what state law required of the clinicians. If this Court is ever inclined to consider revisiting the doctrine of qualified immunity, it should choose a case in which the federal question is not entangled in state-law questions about the meaning of a family-court decree and the propriety of a state-regulated medical decision.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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