No.

In the Supreme Court of the United States

SHANNON KING, ET AL.,
INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES,
PETITIONERS,

v.

DR. LANA FOSTER,
RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

42 U.S.C. § 1981 protects the right "to make and enforce contracts" from "impairment by nongovernmental discrimination and impairment under color of State law." In *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476-78 (2006), this Court recognized that contractual privity is the "*sine qua non* of a § 1981 claim," meaning that only parties with rights under a contract may bring such claims. However, the Court did not decide whether the contractual-privity principles underlying section 1981 also require the defendants to be contracting parties. This open question has divided the circuits.

Independently, the circuits are at odds over how to analyze the clearly established prong of the qualified-immunity test. Although all courts recognize that the wrongfulness of an official's conduct must be clearly established, the circuits are divided over whether an official's personal liability must be clearly established at the time too.

The questions presented are:

1. Whether a plaintiff may bring a claim under 42 U.S.C. § 1981 premised on the "impairment" of the right "to make and enforce contracts" against a non-contracting defendant.

2. Whether, to overcome qualified immunity, a plaintiff must show that the official's personal liability was clearly established at the time of the alleged misconduct.

PARTIES TO THE PROCEEDING

Petitioners, Shannon King, Vincent N. Hamm, Rocky Crosby, Bo Corbett, Patricia Gray, Chad Pafford, and Mitchell Church, were defendants in the district court and appellants in the Eleventh Circuit.

Respondent, Dr. Lana Foster, was the plaintiff in the district court and appellee in the Eleventh Circuit.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Foster v. Echols Cnty. Sch. Dist.*, No. 24-12144 (11th Cir. May 22, 2026) (denying petition for rehearing and petition for rehearing en banc)
- *Foster v. Echols Cnty. Sch. Dist.*, No. 24-12144 (11th Cir. Mar. 18, 2026) (affirming district court)
- *Foster v. Echols Cnty. Sch. Dist.*, No. 7:23-cv-89 (M.D. Ga. June 13, 2024) (granting in part and denying in part defendants' motion to dismiss the complaint)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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Petitioners Shannon King, et al., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 169 F.4th 1291 (11th Cir. 2026). Pet.App.3a-19a. The opinion of the district court is unreported but available at 2024 WL 2979543 (M.D. Ga. June 13, 2024). Pet.App.20a-56a.

JURISDICTION

The judgment of the court of appeals was entered on March 18, 2026. The court of appeals denied rehearing on May 22, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1981 provides:

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT

This case offers the Court the opportunity to resolve two entrenched, frequently recurring, and outcome-determinative circuit splits over civil-rights claims brought under two important and ubiquitously invoked federal statutes, 42 U.S.C. §§ 1981 and 1983.

First, the courts of appeals are divided over whether plaintiffs may assert contract-impairment claims under section 1981 against defendants who are not parties to the allegedly impaired contracts. This Court held in *Domino's Pizza, Inc. v. McDonald* that only plaintiffs with rights under the contract may *bring* section 1981 claims, describing contractual privity as the "*sine qua non* of a § 1981 claim." 546 U.S. 470, 478-80 (2006). This Court has not yet decided, however, whether section 1981 claims may be brought *against* non-contracting parties.

The circuits have charted divergent approaches in the wake of this Court's silence. The D.C. Circuit has disallowed third-party-impairment claims altogether, including with respect to agents of contracting parties. The Fifth Circuit only allows third-party-impairment claims against a small category of defendants who are alter egos of a contracting entity. In the Third Circuit, section 1981 claims may be brought against a contract signatory's officers and agents if they were directly involved in the alleged impairment. The Fourth and Tenth Circuits, meanwhile, authorize claims against third parties who possessed and exercised sufficient authority to interfere with the plaintiff's contract. But in addition to the Eleventh Circuit's decision below, the Sixth and Seventh Circuits recognize section 1981 claims against third parties irrespective of their relationship to the at-issue contract or contracting parties.

Second, the courts of appeals have fractured 3-2-1 over whether officials are entitled to qualified immunity when the existence of personal liability for allegedly wrongful conduct is not clearly established. The Eleventh Circuit, along with the Seventh and Tenth Circuits, hold that only the wrongfulness of the challenged conduct must be clearly established, making the issue of whether the official knew he could be personally liable beside the point. By contrast, the Fifth and Eighth Circuits grant qualified immunity where an official could not have known that he or she faced personal-damages liability at the time of the alleged wrongdoing, and the Sixth Circuit has done so in some but not all contexts.

These issues are exceedingly important and call for this Court's review to set a uniform rule. Section 1981 applies to both public and private entities, and it provides none of the safeguards for defendants under other civil-rights statutes, including damages caps, administrative-exhaustion requirements, or comparatively short statutes of limitations. The Eleventh Circuit's approach therefore subjects a nearly unbounded universe of defendants to substantial liability regardless of how tenuous their connection to the allegedly impaired contract may be. And the Eleventh Circuit's approach to qualified immunity—which imposes liability on officials in their personal capacities even when they had no notice they could be held liable—undermines the purposes of qualified immunity and threatens to chill officials from taking decisive action in the course of their public duties.

This case provides an ideal vehicle to decide these questions. Each question was outcome-determinative; had this dispute originated in the Fifth Circuit, for instance, petitioners' non-alter-ego status, and the uncertainty of whether section 1981 claims are cognizable against individual government officials, would have prompted dismissal. The Eleventh Circuit also rejected petitioners' qualified-immunity defense at the motion-to-dismiss stage. This Court therefore need not resolve disputed factual issues to address both questions presented.

The decision below got both issues wrong. The Eleventh Circuit's sanctioning of third-party-impairment claims cannot be squared with the text of section 1981—which requires the existence of a "contractual relationship"—or with *Domino's Pizza*—which recognized section 1981's focus on contractual obligations and privity. And under this Court's precedents, officials must have fair warning of their potential personal damages liability. The Court should grant certiorari and reverse.

A. Factual Background

Echols County School District is located in Statenville, an unincorporated community in rural southern Georgia. *In the Beginning*, Echols Cnty. Schs., https://tinyurl.com/4kzhrmt8; Elizabeth B. Cooksey, *Echols County*, New Ga. Encyclopedia (June 28, 2022), https://tinyurl.com/48ty9bs6. Echols County serves 917 students across two schools, a K-8 school and a high school. *In the Beginning*, *supra*; *Search for Public School Districts*, Nat'l Ctr. for Educ. Stat., https://tinyurl.com/yfvs797m.

Respondent Dr. Lana Foster "is a 62-year-old African American woman and resident of Echols County," who taught in Echols County for three decades. D. Ct. Dkt. 22 ¶¶ 1, 10 (Am. Compl.). Over the past fifteen years, respondent filed multiple lawsuits against the District. She first sued the District in 2009 after being transferred from a regular teaching position to an alternative-school position in the 2008-2009 school year and after losing a club leadership position. Pet.App.21a; Am. Compl. ¶¶ 93-95. The parties reached a $40,000 settlement in 2011. Pet.App.21a; D. Ct. Dkt. 22-6 at 4.

The U.S. Department of Education Office of Civil Rights also filed a complaint against the District, culminating in a 2012 Resolution Agreement. Pet.App.22a. The Resolution Agreement required the District to "develop a recruitment plan for increasing the number of qualified black applicants," create a hiring policy, and conduct anti-discrimination training. D. Ct. Dkt. 22-3 at 2-4; Pet.App.22a.

In 2018, the District terminated respondent's employment. Am. Compl. ¶¶ 99-101. Respondent then brought two lawsuits against the District: one for race discrimination and retaliation, and another for violations of the Open Records Act. *Id.* Respondent then filed charges with the Equal Employment Opportunity Commission (EEOC), alleging racial discrimination and retaliation. *Id.* ¶ 103.

In November 2020, respondent, the EEOC, and the Echols County Board of Education entered into a Negotiated Settlement Agreement. Among other things, the Agreement required the Board to pay respondent $137,500, develop a written hiring procedure, and create "a recruitment plan for increasing the number of qualified Black applicants for teacher and professional … positions." D. Ct. Dkt. 22-1 at 2-3. The District developed a hiring procedure and recruitment plan in January 2022. Am. Compl. ¶¶ 168-70.

B. Procedural History

1. In 2023, respondent filed this suit against the District, the Board, and petitioners Shannon King, Vincent

N. Hamm, Rocky Crosby, Bo Corbett, Patricia Gray, Chad Pafford, and Mitchell Church, who are current or former superintendents and Board members. *Id.* ¶¶ 2-7; Pet.App.20a-21a. Respondent claimed that the Board breached the 2020 Negotiated Settlement Agreement by failing to "*immediately*" perform "[a]ll obligations" under the Agreement and "fail[ing] to hire an African American educator" since signing the Agreement. Am. Compl. ¶¶ 12, 83, 106-13, 144-45, 181-82.

Following a motion to dismiss, respondent filed an amended complaint raising multiple claims under Title VII of the Civil Rights Act, 42 U.S.C. §§ 1981, 1983, and state law, all premised on the Board's alleged failure to fulfill the terms of the 2020 Negotiated Settlement Agreement. Pet.App.7a.

Petitioners, the District, and the Board again moved to dismiss. The district court granted the motion in part. Pet.App.20a-56a. The court dismissed all of respondent's claims save for the section 1981 claim premised on the impairment of respondent's contract rights against all defendants, including petitioners in their individual capacities, and two Title VII claims against the District and the Board. Pet.App.55a-56a. As to the section 1981 claim, which respondent raised through section 1983, Pet.App.8a n.3, the court reasoned that the amended complaint adequately alleged that petitioners had breached the EEOC Negotiated Settlement Agreement by reason of racial animus even though petitioners had not signed the Agreement, Pet.App.41a-42a. The court also rejected petitioners' qualified-immunity defense. The court concluded that it violated a clearly established right to breach "an EEOC Settlement Agreement on the basis of a former-employee's race." Pet.App.52a.

2. Petitioners filed an interlocutory appeal challenging the qualified-immunity ruling. Pet.App.8a.

Petitioners urged that they were entitled to qualified immunity because it was unclear (1) whether section 1981 claims may be brought against non-contracting parties, (2) whether individual government officials may be held personally liable under section 1981, and (3) whether section 1981 requires enforcement of an explicitly race-conscious contract. 11th Cir. Dkt. 17 at 15, 24-25, 37-43.

The Eleventh Circuit affirmed, holding that the complaint alleged a violation of clearly established law. Pet.App.3a-19a. According to the court of appeals, the amended complaint adequately alleged that petitioners had "impaired" the EEOC Negotiated Settlement Agreement by refusing to create "a revised hiring policy" due to respondent's race. Pet.App.12a. The court explained that, under its case law, plaintiffs may base section 1981 claims on third-party contract impairment. Pet.App.13a-15a. The court acknowledged that *Domino's Pizza*, 546 U.S. at 479-80, held that only contracting plaintiffs can bring section 1981 claims. But the Eleventh Circuit declined to extend *Domino's Pizza*'s reasoning to section 1981 defendants. Pet.App.14a-15a.

The Eleventh Circuit also rejected petitioners' argument that the clearly established prong turns on whether government officials knew that they could be held personally liable for the alleged misconduct. Pet.App.16a. An official's liability "is completely beside the point" in the court's eyes. Pet.App.16a (citing *Taylor v. Ways*, 999 F.3d 478, 491 (7th Cir. 2021), and *O'Connor v. Eubanks*, 83 F.4th 1018, 1025 (6th Cir. 2023) (Thapar, J., concurring)). Instead, the Eleventh Circuit reasoned, qualified immunity asks "whether the wrongfulness of an official's conduct was clearly established." Pet.App.16a.

The court acknowledged that its decision on the conduct-versus-liability issue deepened a circuit split. The court observed that "at least one court" (the Fifth Circuit) "has endorsed" petitioners' argument, but the court parted ways with that circuit. Pet.App.18a (discussing *Modica v. Taylor*, 465 F.3d 174, 188 (5th Cir. 2006)). The court added that "the Tenth Circuit confronted the same issue and came out the other way" and concluded that it "agree[d]" with the Tenth Circuit's approach. Pet.App.18a (discussing *Gray v. Baker*, 399 F.3d 1241, 1245 (10th Cir. 2005)). The Eleventh Circuit also found "instructive" a Seventh Circuit case holding that personal liability is irrelevant to the clearly established prong. Pet.App.17a (discussing *Taylor*, 999 F.3d 478). Accordingly, "whether government officials can be held personally liable under § 1981" was "a question" for "the merits, not immunity," upon which the court expressed no opinion. Pet.App.16a-19a & n.8.

The Eleventh Circuit did not address petitioners' independent argument that there was no clearly established right under section 1981 to enforcement of a race-conscious agreement. *See* Pet.App.11a-19a.

The Eleventh Circuit denied rehearing en banc. Pet.App.1a-2a.

REASONS FOR GRANTING THE PETITION

This petition provides a clean vehicle for resolving two entrenched and recurring circuit splits on issues of exceptional importance for section 1981 and section 1983 plaintiffs and defendants alike.

The circuits are split over whether plaintiffs can bring section 1981 claims against non-contracting defendants. In the D.C. Circuit, claims against non-contracting defendants premised on alleged interference with a contract are not cognizable, even when the defendant is the agent of a contracting entity. The Fifth Circuit similarly disallows most third-party-impairment claims, except when the defendant is an alter ego of a contract signatory. In the Third Circuit, such claims may proceed against a contracting party's officers and agents if they were responsible for the purported interference, while in the Fourth and Tenth Circuits, contract-impairment claims can be brought against non-signatory defendants with control or authority over the contract. And the Sixth, Seventh, and Eleventh Circuits allow section 1981 claims against defendants regardless of the defendant's relationship to the contract. Only this Court can settle the intractable circuit conflict.

The circuits are likewise divided over whether the clearly established prong of the qualified-immunity analysis requires officials to know that their conduct would subject them to personal liability. The Fifth and Eighth Circuits require that an official's personal liability be clearly established, as does the Sixth Circuit in the takings context. But in the decision below, the Eleventh Circuit expressly parted ways with that approach and joined the Seventh and Tenth Circuits, which require only that the illegality of the official's *conduct* be clearly established. This circuit split will not resolve itself without this Court's guidance.

Both questions are critically important. Third-party-impairment claims subject defendants with tenuous connections to a contract to section 1981 liability. Yet section 1981 lacks many of the safeguards of other anti-discrimination statutes, making the risk of liability especially significant. In addition, requiring officials' personal liability to be clearly established ensures the functioning of the qualified-immunity defense. The defense requires officials to have fair warning of both the illegality and penalty associated with their misconduct and ensures that the fear of damages suits does not deter officials from fulfilling their duties. This case presents a clean vehicle for resolving both questions, as the Eleventh Circuit rejected qualified immunity at the motion-to-dismiss stage.

I. The Courts of Appeals Are Intractably Split over Both Questions Presented

A. The Circuits Are Sharply Divided over Section 1981's Applicability To Non-Contracting Defendants

Section 1981 guarantees to "[a]ll persons" the "same right ... to make and enforce contracts" and protects that right "against impairment." 42 U.S.C. § 1981(a), (c). In *Domino's Pizza*, this Court settled what the statute demands of plaintiffs: A section 1981 claim must "identify an impaired 'contractual relationship' ... under which the plaintiff has rights." 546 U.S. at 476 (citation omitted). But *Domino's Pizza* had no occasion to address the defendant's side of the analysis, and this Court has never decided whether section 1981 liability reaches only parties to the impaired agreement or anyone who allegedly interferes with it.

That question has fallen to the lower courts. Below, the Eleventh Circuit held that section 1981 reaches non-contracting defendants, joining the Sixth and Seventh Circuits—and deepening an entrenched conflict with the D.C. and Fifth Circuits. Three other circuits—the Third, Fourth, and Tenth—have taken a middle-path, allowing third-party claims in limited circumstances. The split is stark and has persisted even after *Domino's Pizza*.

1. Two circuits—the D.C. and Fifth Circuits—understand *Domino's Pizza* to limit section 1981 claims against non-contracting defendants, though to slightly different extents.

The D.C. Circuit, for its part, does not allow third-party claims against non-contracting defendants—full stop. The court rejected a section 1981 claim against a foundation's chief executive arising from a severance agreement that the executive had signed on behalf of the foundation. The D.C. Circuit disallowed the claim against the executive because the former-employee plaintiff could not sue the executive "individually." *Wright v. Eugene & Agnes E. Meyer Found.*, 68 F.4th 612, 624 (D.C. Cir. 2023). The parties "did not have a contractual relationship," so section 1981 did not apply. *Id.* (citing *Domino's Pizza*, 546 U.S. at 476). By contrast, the plaintiff's claim against the foundation could proceed, because the foundation was a party to the severance agreement. *See id.* at 618, 623-24.

The Fifth Circuit also severely limits section 1981's reach. The court allows third-party claims when the defendant is an alter ego of a contract signatory. *Perry v. VHS San Antonio Partners, LLC*, 990 F.3d 918 (5th Cir. 2021), shows the circuit's rule at work. Dr. Melvin Perry, a Black physician, staffed a hospital's intensive-care unit under a contract between the hospital and his physician group. The hospital demanded his removal; the group complied; and Perry sued the hospital under section 1981. *Id.* at 924-25. The Fifth Circuit rejected Perry's claim at the threshold. Because the hospital was not a party to the agreement it allegedly impaired, it could face liability only if it and the physician group were "essentially one and the same." *Id.* at 933. They were not, so section 1981 provided no relief.

In so doing, *Perry* distinguished *Faraca v. Clements*, 506 F.2d 956 (5th Cir. 1975). That case involved a state facility's refusal to hire the plaintiff because he was in a mixed-race marriage. *Id.* at 958. The plaintiff sued the hiring director under section 1981; his claim succeeded "despite the fact that the [d]irector was, strictly speaking, a third party." *Perry*, 990 F.3d at 932. The reason? The director "was only nominally a third party" and was "essentially one and the same" as the State. *Id.* at 932-33 (citation omitted).

In *Perry*, the Fifth Circuit disclaimed "a true third-party-interference theory of § 1981 liability," *id.* at 933, and held that claims against non-contracting parties can succeed only if the defendant and the contract signatory meet the strict one-and-the-same standard articulated in *Faraca*. And unless that standard is met, according to the Fifth Circuit, *Domino's Pizza* forecloses third-party claims. *See id.* at 931 ("[A] plausible § 1981 claim" requires "an 'impaired contractual relationship with [the defendant] under which [the plaintiff] had rights.'" (cleaned up) (quoting *Domino's Pizza*, 546 U.S. at 476)).[1]

2. The Third, Fourth, and Tenth Circuits occupy a middle ground, permitting third-party-impairment claims against a larger (yet still limited) universe of defendants. The Third Circuit has said that section 1981 "is in the nature of a tort remedy" under which the corporate officers and agents of a contracting party "may be liable for injuries suffered by third parties because of [their] torts." *Al-Khazraji v. St. Francis Coll.*, 784 F.2d 505, 518 (3d Cir. 1986), *aff'd*, 481 U.S. 604 (1987). In the Fourth and Tenth Circuits, a non-contracting party may be sued, but only if he or she "possessed sufficient authority to significantly interfere with the individual's ability to … contract[] with third parties" and "actually exercised that authority" to the plaintiff's detriment. *Harris v. Allstate Ins. Co.*, 300 F.3d 1183, 1197 (10th Cir. 2002); *accord Painter's Mill Grille, LLC v. Brown*, 716 F.3d 342, 351 (4th Cir. 2013).

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[1] This Court denied review in *Perry*. 142 S. Ct. 563 (2021). But *Perry* was a poor vehicle: It arose on summary judgment with fact-bound disputes over whether the hospital even employed Perry.

3. Three circuits, including the Eleventh Circuit below, reject a privity requirement outright. These courts read section 1981 to protect contractual rights "against impairment" no matter who does the impairing. The decision below is the most recent example. The at-issue settlement agreement was between respondent and the Echols County Board of Education; petitioners never signed it in their individual capacities. The Eleventh Circuit nonetheless held that respondent stated a section 1981 claim against petitioners, who allegedly "impaired [respondent's] ability to reap the full benefits of her contract with the district." Pet.App.19a. The court rejected the notion that *Domino's Pizza* limits section 1981 claims to contracting defendants. Pet.App.14a-15a. And under the court's precedents, section 1981 provides for "third-party liability." Pet.App.15a; *see Moore v. Grady Mem'l Hosp. Corp.*, 834 F.3d 1168, 1172 (11th Cir. 2016) (permitting a section 1981 suit over "a contract with a third party").

The Sixth Circuit agrees. In *Inner City Contracting, LLC v. Charter Township of Northville*, 87 F.4th 743 (6th Cir. 2023), a minority-owned demolition contractor lost a municipal contract after the township's outside consultant allegedly disparaged its qualifications, steering the award to a white-owned bidder with a higher price. *Id.* at 749. The contractor and consultant had no contractual relationship. But the Sixth Circuit sustained a section 1981 claim against the consultant anyway. The court explained that plaintiffs may "vindicate their rights under § 1981 against third parties who interfere with those rights, even if they were not party to the contract." *Id.* at 755 n.7. That the contractor "did not ... contract with [the consultant] does not affect the validity of [its] § 1981 claim." *Id.*

So too in the Seventh Circuit. There, "tortious interference with contract rights violates section 1981 when the motivation for the interference is racial." *Muhammad v. Oliver*, 547 F.3d 874, 878 (7th Cir. 2008). That is so even when the interferer "is not a party to the contracts." *Id.* And like the Fifth Circuit's contrary approach, the Seventh Circuit's rule stretches back decades. *See Shaikh v. City of Chicago*, 341 F.3d 627, 630 (7th Cir. 2003) ("[A] third party's interference ... can support civil-rights claims under §[] 1981 …."); *accord Bronson v. Ann & Robert H. Lurie Child.'s Hosp.*, 69 F.4th 437, 452 (7th Cir. 2023) (agreeing that "a defendant's interference with a plaintiff's ... contract with another party can … support a claim under section 1981").

B. The Circuits Are Squarely Divided over Whether an Official's Personal Liability Must Be Clearly Established To Overcome Qualified Immunity

Qualified immunity shields officials from damages when "their conduct d[id] not violate clearly established statutory or constitutional rights." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This case presents a question antecedent to every application of that standard: what, exactly, must be clearly established? In the decision below, the Eleventh Circuit recognized a conflict in the circuits on the issue while reaffirming its precedent holding that qualified immunity turns only on the lawfulness of the official's conduct. But three circuits have embraced a broader approach that also considers whether the rules of personal liability are settled.

1. On one side of the split, the Fifth and Eighth Circuits each hold that the qualified-immunity analysis considers uncertainty about an official's personal liability. In other words, if existing law leaves doubt that the underlying statute or constitutional provision exposes officials to damages, then immunity attaches regardless of how plainly their conduct allegedly violates the law.

The Fifth Circuit holds that officials are entitled to qualified immunity unless it was clearly established that they "could be liable in their individual capacities" for the challenged conduct. *Modica*, 465 F.3d at 188. In *Modica*, the executive director of a Texas agency fired an inspector who had requested leave under the Family and Medical Leave Act (FMLA). *Id.* at 177-78. The court held that the FMLA subjects public employees to suit in their individual capacities—and then, in the same opinion, granted the director qualified immunity because that holding "was not clearly established" when she acted. *Id.* at 187-88. The conduct's illegality was never in doubt; only the official's personal exposure to liability was unsettled.

The Fifth Circuit regularly grants immunity because of "inconsistency in" or "mixed up principles of … liability." *Buchanan v. Alexander*, 919 F.3d 847, 855-56 (5th Cir. 2019) (alteration in original) (quoting *Sims v. City of Madisonville*, 894 F.3d 632, 641 (5th Cir. 2018)).

The Eighth Circuit is in the same camp. After this Court declined to determine in *Ziglar v. Abbasi*, 582 U.S. 120 (2017), whether the intracorporate conspiracy doctrine bars 42 U.S.C. § 1985(3) conspiracy claims against officers of a single entity, the Eighth Circuit held that commanders who planned the mass "kettling" (or containment) of protestors were immune from conspiracy claims because personal "liability was not clearly established." *Faulk v. City of St. Louis*, 30 F.4th 739, 750 (8th Cir. 2022). Reasonable officers could not "have known with any certainty," *id.* (quoting *Ziglar*, 582 U.S. at 155), that they faced personal "damage liability for a … conspiracy claim," *id.* (emphasis omitted); *accord Green v. City of St. Louis*, 52 F.4th 734, 741 (8th Cir. 2022). Indeed, when the Eighth Circuit *denies* qualified immunity, it first takes care to establish officials' personal liability. *See Rinne v.*

Camden County, 65 F.4th 378, 385 (8th Cir. 2023) (confirming that "a single member of a governing board can be liable for voting in favor of an unconstitutional government action"). The Eighth Circuit therefore reads this Court's precedents to require consideration of officials' knowledge of their personal exposure to liability. *See Faulk*, 30 F.4th at 750 (discussing cases such as *Ziglar*, 582 U.S. at 155); *infra* Part III.B.

2. In direct contrast, the Seventh, Tenth, and Eleventh Circuits each confine the clearly established prong to whether officials' conduct violated a clearly established right.

The Seventh Circuit adopted this rule in *Fields v. Wharrie*, 740 F.3d 1107 (7th Cir. 2014), where a prosecutor who fabricated witness testimony insisted that his exposure to damages was unsettled. "[T]he immunity," the court held, "depends on the official's acts," not "the existence of a cause of action." *Id.* at 1114. The Seventh Circuit has since put it bluntly: A defendant who frames the inquiry around liability "asks the wrong question about qualified immunity." *Taylor*, 999 F.3d at 491. According to the Seventh Circuit, that outcome follows from this Court's cases that do not squarely address the question presented but imply that the legality of the official's conduct is the proper focus. *Id.* (citing *Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *Behrens v. Pelletier*, 516 U.S. 299, 305 (1996); *Anderson v. Creighton*, 483 U.S. 635, 638 (1987); *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985); *Harlow*, 457 U.S. at 818).

The Tenth Circuit agrees. In *Gray*, college officials fired an employee after she sought FMLA leave and then claimed immunity because their individual liability was an open question. 399 F.3d at 1243-44. In other words, the defendants made the very same argument that carried the day in *Modica* in the Fifth Circuit. But the Tenth Circuit refused to treat the unsettled nature of personal liability as a qualified-immunity defense at all. The officials could not claim "they were unaware that a particular *course of conduct* would be violative." *Id.* at 1245 (emphasis added). Whether they were "subject to individual liability under the FMLA" was a "question of … statutory construction that" the Tenth Circuit thought "had no bearing on the decisions defendants made." *Id.*; *see Dodds v. Richardson*, 614 F.3d 1185, 1206 (10th Cir. 2010) (explaining that immunity "asks [about] … 'the right,'" not whether the defendant "could be liable in his individual capacity" (citation and emphasis omitted)).

The Eleventh Circuit sees the issue similarly. In *Williams v. Aguirre*, 965 F.3d 1147 (11th Cir. 2020), officers sought immunity where there was inter- and intra-circuit conflict over the availability of Fourth Amendment malicious-prosecution claims. The court denied immunity, holding that "those doctrinal tensions concerned only … the vehicle ... [for] liability," not the legality of the conduct. *Id.* at 1169. The decision below applied the same logic to petitioners. As the decision below acknowledged, "uncertainty exists about whether government officials can be held personally liable under § 1981." Pet.App.16a. But the Eleventh Circuit held that this uncertainty is irrelevant to the qualified-immunity analysis, because immunity looks to the legality of petitioners' conduct rather than their personal liability. Pet.App.16a-19a.

3. The Sixth Circuit, for its part, straddles the divide depending on the context. In takings cases, officials are immune from takings claims as a class because "individual liability for takings claims is not clearly established." *Novak v. Federspiel*, 140 F.4th 815, 821 (6th Cir. 2025) (quoting *O'Connor*, 83 F.4th at 1022); *see Sterling Hotels, LLC v. McKay*, 71 F.4th 463, 468 (6th Cir. 2023). Because

"no court in th[e] [Sixth] [C]ircuit ha[s] yet decided whether an officer c[an] be liable for a taking in his individual capacity," an officer's "potential individual liability" is "not clearly established," conferring qualified immunity. *McKay*, 71 F.4th at 468.

By contrast, the Sixth Circuit jettisoned the focus on personal liability from the clearly established analysis in two malicious-prosecution cases. In that context, the Sixth Circuit opined that the lack of clarity surrounding the contours of personal liability for malicious prosecution "misses the point." *Miller v. Maddox*, 866 F.3d 386, 395 (6th Cir. 2017). Instead, the relevant inquiry was whether the defendant's "alleged actions … violated [the plaintiff's] clearly established constitutional rights." *Id.*; *accord Jackson v. City of Cleveland*, 925 F.3d 793, 826 (6th Cir. 2019).

The lower courts have acknowledged the divide. Below, the Eleventh Circuit noted the Fifth Circuit's contrary rule and characterized that court as "ha[ving] endorsed the misunderstanding" that unsettled rules of liability confer immunity. Pet.App.18a. And in the Sixth Circuit, Judge Thapar has acknowledged that his court applies a liability-focused rule (in the takings context) while encouraging a different path. *See O'Connor*, 83 F.4th at 1025 (Thapar, J., concurring). Given that the circuits interpret this Court's body of qualified-immunity precedent to require different outcomes, *compare*, *e.g.*, *Faulk*, 30 F.4th at 750 (holding liability relevant), *with*, *e.g.*, *Taylor*, 999 F.3d at 491 (considering only conduct), this Court's intervention is required.

II. The Questions Presented Are Important, Recurring, and Squarely Presented

1. Section 1981's applicability to non-contracting defendants presents an issue of crucial importance. The

approach followed below opens the floodgates to section 1981 claims against individuals and entities with only tangential relationships to the contracting parties and without authority or control over the contract.

The risk of attenuated section 1981 claims proceeding past dismissal is not merely hypothetical, as examples from the caselaw confirm. In one case, a nurse sued the estate of a deceased nursing-home resident under section 1981 after the resident falsely accused the nurse of assault, thereby purportedly interfering with the nurse's employment contract with the nursing home. *Collins v. Christie*, 2008 WL 2736418, at *9-12 (E.D. Pa. July 11, 2008) (surviving summary judgment). "[F]ellow employee[s]" have been sued under section 1981 for allegedly impairing another employee's contract with the employer. *Collin v. Rector & Bd. of Visitors of Univ. of Va.*, 873 F. Supp. 1008, 1015 (W.D. Va. 1995). Such claims against employees have survived even when the defendant "had no supervisory or decisionmaking authority over" the plaintiff. *Moeinpour v. Bd. of Trs. of Univ. of Ala.*, 2022 WL 164999, at *3 (N.D. Ala. Jan. 18, 2022).

Entities also have been subject to tenuous section 1981 claims. A doctor sued a medical licensing board under section 1981 after the doctor failed to pass the board-certification exam, thereby purportedly impeding the doctor's ability to contract with future employers. *Morrison v. Am. Bd. of Psychiatry & Neurology, Inc.*, 908 F. Supp. 582, 589 (N.D. Ill. 1996); *see also Sambasivan v. Kadlec Med. Ctr.*, 338 P.3d 860, 863, 867, 871 (Wash. Ct. App. 2014) (allowing claim that hospital's suspension of privileges interfered with doctor's ability to contract with prospective patients). A national religious organization became the subject of a section 1981 suit after it allegedly interfered with the employment relationship between the plaintiff and a local charity by attaching strings to a grant to the local charity. *Shirkey v. Eastwind Cmty. Dev. Corp.*, 941 F. Supp. 567, 571, 574-75 (D. Md. 1996). And a plaintiff recently sued an amusement-park kiosk under section 1981 for interfering with the customer's contract with the amusement park. *Taft v. Kamen's Art Shoppes, Inc.*, 2024 WL 1388743, at *1, *3-4 (M.D. Pa. Apr. 1, 2024).

The universe of defendants affected by the specter of third-party liability is substantial, because section 1981 reaches both public and private actors. 42 U.S.C. § 1981(c). Section 1981 defendants thus run the gamut from school-board members to Fortune 50 companies. *E.g.*, Pet.App.7a; *cf. Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 330 (2020) (considering claim among contracting parties).

Unlike other anti-discrimination statutes, such as Title VII, section 1981 offers fewer protections for defendants. There are no damages caps or administrative-exhaustion requirements for section 1981 claims, while Title VII defendants enjoy both protections. *Compare* 42 U.S.C. § 1981 (no guardrails), *with id.* §§ 1981a(b)(3) (Title VII damages caps), 2000e-5(e) (Title VII administrative-exhaustion requirement). And the four-year statute of limitations that applies to many section 1981 claims, *see Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 371, 383 (2004), far exceeds the 180-day limitations period to file a charge with the EEOC for a Title VII claim, *see* 42 U.S.C. § 2000e-5(e)(1). As a result, section 1981 defendants may be faced with costly litigation and enormous damages awards for interfering with contracts they never even signed.

At bottom, in most circuits, section 1981 has been distorted into "an omnibus remedy for *all* racial injustice"—something this Court has made clear section 1981 was never intended to be. *Domino's Pizza*, 546 U.S. at 479.

This Court's intervention is desperately needed to create uniformity in section 1981's liability.

2. Clarifying qualified immunity's clearly established prong is also extremely important. The split means that officials sued for comparable conduct face different outcomes depending on the circuit.

The issue of whether unsettled personal liability affects the clearly established prong has arisen repeatedly in the FMLA and takings contexts, as discussed above.[2] *See supra* Part I.B. But the issue arises in other contexts too. For instance, a district court awarded qualified immunity due to uncertainty over "[w]hether a nonfinal decisionmaker can be individually liable for first amendment retaliation." *Smith v. City of Madison*, 364 F. Supp.

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[2] *See also Tamayo v. Krimpelbein*, 2022 WL 834422, at *4 (W.D. Wis. Mar. 21, 2022) (rejecting qualified-immunity defense premised on unsettled liability in FMLA context); *Richards v. Schoen*, 2018 WL 447731, at *5-6 (D. Kan. Jan. 17, 2018) (same); *Hibben v. Okla. ex rel. Dep't of Veterans Affs.*, 2017 WL 1239146, at *6-7 (N.D. Okla. Mar. 31, 2017) (same); *Radeker v. Elbert Cnty. Bd. of Comm'rs*, 2016 WL 1586391, at *2-3 (D. Colo. Apr. 19, 2016) (same); *Olschefski v. Red Lion Area Sch. Dist.*, 2012 WL 6003620, at *13 (M.D. Pa. Nov. 30, 2012) (same); *Mason v. Mass. Dep't of Env. Prot.*, 774 F. Supp. 2d 349, 371-72 (D. Mass. 2011) (same); *Brunson v. Forest Preserve Dist. of Cook Cnty.*, 2010 WL 780331, at *8 (N.D. Ill. Mar. 3, 2010) (same); *Wanamaker v. Westport Bd. of Educ.*, 899 F. Supp. 2d 193, 204 (D. Conn. 2012) (awarding qualified immunity due to unsettled liability in FMLA context); *Fields v. Trollinger*, 2011 WL 3422689, at *9 (W.D.N.C. Mar. 28, 2011), *R&R adopted*, 2011 WL 3421489 (W.D.N.C. Aug. 4, 2011) (same); *Crockett v. Roberts*, 2010 WL 1254656, at *6 (E.D. La. Mar. 25, 2010) (same); *Knellinger v. Young*, 2026 WL 411749, at *10-11 (D. Colo. Feb. 13, 2026) (awarding qualified immunity due to unsettled liability in takings context); *Torzy v. Gronda*, 2026 WL 916114, at *5 (E.D. Mich. Mar. 31, 2026) (same); *Brenden v. Castro*, 2025 WL 2771834, at *6 (N.D.N.Y. Sept. 26, 2025) (same); *Smith Land Co. v. City of Fairlawn*, 2023 WL 6162860, at *10 (N.D. Ohio Sept. 21, 2023) (same).

3d 656, 661-62 (S.D. Miss. 2018).[3] Similarly, qualified immunity resulted in dismissal because it was unsettled that "individual commissioners serving on a multi-member board could be held personally liable for the collective decision of the board" to terminate the plaintiff. *Johnson v. Clarksdale Pub. Utils. Comm'n*, 807 F. Supp. 3d 593, 611 (N.D. Miss. 2025). So too a superintendent, principal, and teacher were entitled to qualified immunity when "the 'scope of individual liability under § 1981 remain[ed] unclear'"—essentially the same context as this case, but with the opposite outcome. *See Russ v. N. Pike Sch. Dist.*, 2020 WL 13682829, at *4 (S.D. Miss. Feb. 6, 2020) (citation omitted).[4]

The guardrails imposed by qualified immunity matter because unbounded section 1983 litigation poses "a serious threat to the fiscal health of cities and counties." Theodore Eisenberg & Stewart Schwab, *The Reality of Constitutional Tort Litigation*, 72 Cornell L. Rev. 641, 650 (1987). In addition to the "inordinate amounts of money [needed] to satisfy judgments" (including by indemnifying local officials like petitioners), local governments may also need to reimburse plaintiffs' attorney fees and pay sky-high liability-insurance premiums. *Id.* at 650-51.

[3] *Accord Carter v. Yazoo City*, 2020 WL 13682497, at *4 (S.D. Miss. Jan. 28, 2020); *Sockwell v. Town of Calhoun City*, 2019 WL 3558173, at *3 (N.D. Miss. Aug. 5, 2019); *Epps v. Hazlehurst City Sch. Dist.*, 2019 WL 1210110, at *2 (S.D. Miss. Mar. 14, 2019); *Davis v. Matagorda County*, 2019 WL 1015341, at *12 (S.D. Tex. Mar. 4, 2019).

[4] *See also Lumry v. State*, 427 P.3d 1014, at *8 (Kan. Ct. App. 2018) (unpublished table op.) (rejecting qualified-immunity argument premised on uncertainty over personal liability for Fair Labor Standards Act claims).

And the number of civil-rights cases is only growing. *See* U.S. Courts, *Federal Judicial Caseload Statistics 2025*, https://tinyurl.com/327637zb. "Many [of these suits] are marginal and some are frivolous." *Town of Newton v. Rumery*, 480 U.S. 386, 395 (1987). Yet even if a section 1983 lawsuit ultimately fails, "the burden of defending such lawsuits is substantial." *Id.*

Additionally, the possibility of liability can affect how officials perform their duties. *See id.* at 396. Officials may "refrain from acting," "delay their actions," or "substitute safe actions for riskier, but socially more desirable, actions." Eisenberg & Schwab, *supra*, at 652 (cleaned up). And "able citizens" may decline to take up public office. *Harlow*, 457 U.S. at 814.

These dynamics underscore the importance of maintaining qualified immunity's scope. The Eleventh Circuit's approach "undermine[s] the values qualified immunity seeks to promote," *see District of Columbia v. Wesby*, 583 U.S. 48, 62 (2018) (citation omitted), which include "giving fair and clear warning to officers," *Kisela v. Hughes*, 584 U.S. 100, 105 (2018) (citation omitted). Eliminating the availability of qualified immunity in this case and others like it threatens municipal budgets and officials' efficacy alike.

3. This case presents an ideal vehicle for resolving both questions presented. The Eleventh Circuit addressed each issue head on, Pet.App.11a-19a, and rejected petitioners' arguments that they were entitled to qualified immunity as non-contracting parties and because their individual liability under section 1981 was not clearly established, making the questions outcome-determinative.

As to the first question presented, had this case arisen in the D.C. or Fifth Circuits, it would have ended at the pleadings. Petitioners never signed the Negotiated Settlement Agreement as individuals, which would have stopped respondent's section 1981 claim in its tracks in the D.C. Circuit. And the amended complaint provides no non-conclusory factual allegations indicating that petitioners "are 'essentially one and the same'" as the Board, which did sign the agreement, knocking out respondent's claim in the Fifth Circuit, too. *See Perry*, 990 F.3d at 933 (citation omitted).

The split on qualified immunity also was outcome-determinative. There is no dispute that it is an open question in the Eleventh Circuit whether public individuals are liable under section 1981. *See* Pet.App.16a-19a & n.8 (declining to decide personal-liability issue). And because petitioners' personal liability as government officials under section 1981 was not clearly established, they would have been entitled to qualified immunity had this case arisen in the Fifth or Eighth Circuits. But in the Eleventh Circuit, petitioners face liability for allegedly impairing a contract they had no power to breach even though their susceptibility to a section 1981 suit was unclear. And because this case sits at the motion-to-dismiss stage, the Court need not wade into a messy factual record to decide these questions.

III. The Decision Below Is Incorrect

A. The Eleventh Circuit Erred by Allowing Third-Party-Impairment Claims

Section 1981's text and *Domino's Pizza* require reversal on the first question presented.

Section 1981 protects the right "to make and enforce contracts," which includes "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(a)-(b).

Only contracting parties have any role in making, performing under, modifying, or terminating their contracts. *See, e.g.*, Restatement (Second) of Contracts §§ 9, 89, 318, 368 (1981) (discussing making, modification, performance, and termination by parties or their delegees). Likewise, only contracting parties and, potentially, intended beneficiaries enjoy a contractual relationship's "benefits, privileges, terms, and conditions." *See, e.g.*, *id.* § 302 (discussing intended versus incidental beneficiaries). That section 1981(b)'s protected activities are generally taken only by contracting parties in a "contractual relationship" demonstrates that section 1981 claims must be brought against contracting parties, not third parties.

The decision below also is inconsistent with *Domino's Pizza*. There, this Court explained that "[a]ny claim brought under § 1981 … must initially identify an impaired '*contractual relationship*,' under which the plaintiff has rights." 546 U.S. at 476 (emphasis added) (citation omitted). As a result, "contractual privity" is "a *sine qua non* of a § 1981 claim." *Id.* at 478. The Court also pointed to Congress' amendment of section 1981 in 1991, which added subsection (b)'s list of contract rights; the Court explained that the "reference to a '*contractual relationship*'" in subsection (b) "positively reinforced" section 1981's "focus upon contract obligations." *Id.* at 477 (citing *Patterson v. McLean Credit Union*, 491 U.S. 164, 176 (1989)). And the Court clarified that section 1981 serves to protect a limited universe of parties with clear ties to the at-issue contract, *i.e.*, "those who already have made contracts," "the would-be contractor," and, "possib[ly], … a third-party intended beneficiary of a contract." *Id.* at 476 & n.3.

The Eleventh Circuit, however, reasoned that because "*Domino's* did not consider th[e] question" of whether "a *defendant* must be a party to the contract for a § 1981 claim to follow," the court was bound by pre-*Domino's Pizza* precedent. Pet.App.14a-15a. The decision below therefore did not consider whether the Eleventh Circuit's prior authorization of third-party-impairment claims is consistent with either section 1981's text (including subsection (b), which postdates the Eleventh Circuit's prior precedent) or this Court's emphasis in *Domino's Pizza* of the centrality of "contractual relationship," "contract obligations," and "privity" to section 1981 claims. 546 U.S. at 477-78. By permitting third-party-impairment claims, the Eleventh Circuit has effectively transformed section 1981 into "a strange remedial provision designed to fight racial animus in all of its noxious forms" so long as a plaintiff can "somehow connect[]" her contract to the non-contracting third party's alleged "animus and the hurt it produced," regardless of how attenuated that connection may be. *See id.* at 476.

B. The Eleventh Circuit Erred in Declining To Require Personal Liability To Be Clearly Established

The Eleventh Circuit's holding that the qualified-immunity analysis does not consider whether the defendant's personal liability was clearly established is likewise at odds with this Court's qualified-immunity precedents and the purpose of qualified immunity.

This Court has repeatedly characterized officials' awareness of their potential exposure to damages liability as relevant to qualified immunity. In *Davis v. Scherer*, for example, the Court explained that "officials can act without fear of harassing litigation only if they reasonably can anticipate when their conduct may give rise to liability for damages." 468 U.S. 183, 195 (1984). The Court therefore rejected the notion "that a defendant official's violation of a clear statute or regulation, although not itself the basis of suit, should deprive the official of qualified immunity," because such an approach would make it "more difficult

… for officials to anticipate the possible legal consequences of their conduct." *Id.* at 193, 196. Additionally, the Court opined that "officials sued for violations of rights conferred by a statute … forfeit their immunity … [and] become liable for damages only to the extent that there is a clear violation of the statutory rights that give rise to the cause of action for damages." *Id.* at 194 n.12.

Similarly, in *Ziglar*, the Court held that the petitioners were entitled to qualified immunity because their "potential liability for this statutory offense would not have been known or anticipated by reasonable officials in their position." 582 U.S. at 152. That outcome stemmed in part from confusion in the lower courts over whether the challenged conduct violated the statute at issue, *i.e.*, "whether or not a [42 U.S.C.] § 1985(3) conspiracy can arise from official discussions between or among agents of the same entity." *Id.* at 153-54. As the Court saw things, "[w]hen the [lower] courts are divided on an issue so central to the cause of action alleged, a reasonable official lacks the notice required before imposing liability." *Id.* at 154.

Qualified immunity must therefore account for government officials' ability to forecast their exposure to damages liability. Officials thus must know *both* what conduct is unlawful *and* whether they may be liable in their personal capacities for engaging in such conduct.

The same principle applies across analogous contexts. In the criminal-law context, the Due Process Clause requires that "a fair warning … be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed." *McBoyle v. United States*, 283 U.S. 25, 27 (1931). That requirement includes "fair notice" with respect to the "penalties for … violations" of a particular statute. *Bittner v. United States*, 598 U.S. 85, 102-03 (2023). For example, where tax professionals were "seemingly warned of per-report, not per-account, penalties for non-willful violations," it would be a "a serious fair-notice problem" to impose "per-account penalties." *Id.* at 102.

The same is true under the Ex Post Facto Clause, which requires notice of the amount and nature of the punishment and not just the illegality of the defendant's conduct. *See Collins v. Youngblood*, 497 U.S. 37, 43 (1990); *Ellingburg v. United States*, 607 U.S. 163, 176 (2026) (Thomas, J., concurring).

So too, in the Spending Clause context, this Court has required "fair" and "clear notice regarding the liability" a recipient of federal funds may face. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296, 304 (2006). Specifically, funding recipients must be "*on notice*" of not only "the scope of conduct" that may give rise to damages liability but also their "expos[ure] … to liability of [a particular] nature," like punitive damages. *Barnes v. Gorman*, 536 U.S. 181, 186-87 (2002); *see also Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 220 (2022).

Those principles apply with equal force to the clearly established inquiry. After all, qualified immunity "in effect … is simply the adaptation of the fair warning standard to give officials (and, ultimately, governments) the same protection from civil liability and its consequences that individuals have traditionally possessed in the face of vague criminal statutes." *United States v. Lanier*, 520 U.S. 259, 270-71 (1997). As a result, for purposes of qualified immunity, fair warning is required as to both the conduct that violates federal rights and the potential penalties (*e.g.*, personal-damages liability) that may be imposed for such violations.

The Eleventh Circuit's approach also weakens the protections qualified immunity affords to government officials. Qualified immunity protects officials tasked with "mak[ing] close decisions in the exercise of the broad authority that necessarily is delegated to them" and with "act[ing] swiftly and firmly at the risk that action deferred will be futile or constitute virtual abdication of office." *Davis*, 468 U.S. at 196 (citation omitted). By refusing to consider officials' ability to reasonably anticipate their exposure to personal-damages liability, the Eleventh Circuit's rule risks discouraging officials from taking swift and firm action, as well as chilling their decision-making. *See id.*; *Ziglar*, 582 U.S. at 154.

CONCLUSION

The petition for a writ of certiorari should be granted.

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