No.

In the Supreme Court of the United States

MARIN LOPEZ et al.,

Cross-Petitioners,

v.

EDUARDO RAMIREZ et al.,

Cross-Respondents.

On Conditional Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court should overrule or recalibrate the doctrine of qualified immunity.

PARTIES TO THE PROCEEDING

(i) Cross-petitioners Marin Lopez, Pedro Bermea, Trinidad Lopez, Arturo Menchaca, Eladio Bermudez, Javier Garcia, Robert Guerra, Luis Carlos Gonzalez, Epimenio "TJ" Gonzalez, Juan Garcia, Jr., Julio Eguia, and Aaron Garcia were Plaintiffs-Appellees below.

(ii) Cross-respondents Eduardo Ramirez, Noe Castillo, Basilio D. Villareal Jr., and Roel Gonzalez were Defendants-Appellants below.

(iii) Rio Grande City Consolidated Independent School District is a defendant in district court proceedings giving rise to this petition but was not a party on appeal below and is not a party to this cross-petition.

RELATED PROCEEDINGS

Ramirez v. *Lopez*, No. 26-493 (U.S.)

Lopez v. *Ramirez*,
No. 25-40170 (5th Cir. July 9, 2026)

Lopez v. *Ramirez*,
No. 23-40461 (5th Cir. Mar. 15, 2024)

Lopez v. *Ramirez*,
No 21-40234 (5th Cir. Aug. 10, 2022)

Lopez v. *Rio Grande City Consolidated Independent School District*,
No. 7:20-CV-33 (S.D. Tex. Mar. 31, 2025)

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CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

Cross-petitioners respectfully conditionally cross-petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case only in the event the Court grants certiorari in No. 26-493.

OPINIONS BELOW

The unreported opinion of the court of appeals is reproduced at Pet. App. 1a-12a and is available at 2026 WL 1481275.[1] The order of the court of appeals denying rehearing en banc is reported at 181 F.4th 593 and is reproduced at Pet. App. 16a-29a. The unreported order of the district court is reproduced at Pet. App. 13a-14a.

JURISDICTION

The judgment of the court of appeals was entered on April 1, 2026, and a timely filed petition for rehearing en banc was denied on July 9, 2026. The petition in No. 26-493 was docketed on October 14, 2026. This conditional cross-petition is timely filed on November 13, 2026, under Supreme Court Rule 12.5. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

42 U.S.C. § 1983 provides, in relevant part:

> 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

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[1] Citations to Pet. App. refer to the petition appendix filed in No. 26-493. See Rule 12.5 of the Rules of this Court.

> 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 * * *.

STATEMENT

In No. 26-493, three school board members and a superintendent seek qualified immunity for demoting, reassigning, and docking the pay of twelve government employees who opposed them in a local election. The district court deferred consideration of that immunity defense during a short-lived mediation, and the Fifth Circuit held such a case-management order is not immediately appealable. Cross-respondents petition for this Court's review of that determination. As we would explain should the Court call for a response, there is nothing in that petition warranting review.

If, however, the Court does grant certiorari in 26-493, it should also grant review of a logically antecedent question of increasing public significance: whether the judge-made doctrine of qualified immunity should be overturned or reexamined in the context of Section 1983 claims. As a growing consensus of judges and legal scholars have recognized, qualified immunity is incompatible with the text, structure, and original public understanding of Section 1983. It is a vestige of a period when policymaking was viewed as the province of courts rather than Congress. And—particularly for First Amendment retaliation cases like this one—it has failed in practice to advance the interests it was crafted to protect. If the Court weighs in at all, it should be to reexamine qualified immunity.

A. Legal background

In 1871, Congress enacted 42 U.S.C. § 1983, which today provides that "every person" who commits a constitutional violation under color of state law "shall be liable to the party injured." As originally enacted, the Civil Rights Act of 1871 provided that a defendant would be liable "any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding." Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13, 13. The "notwithstanding clause," however, "was inexplicably omitted from the first compilation of federal law in 1874," "[f]or reasons lost to history." *Rogers* v. *Jarrett*, 63 F.4th 971, 980 (5th Cir. 2023) (Willett, J., concurring). When Congress enacted the compilation into positive law, this "unauthorized alteration to Congress's language" resulted in the provision's removal from what is now Section 1983. *Ibid.*

Even after the removal of the "notwithstanding" clause from the U.S. Code, Section 1983's text "is absolute and unqualified" (*Owen* v. *City of Independence*, 445 U.S. 622, 635 (1980)) and "admits of no immunities" (*Imbler* v. *Pachtman*, 424 U.S. 409, 417 (1976)). Prior to 1951, those courts to address the issue therefore found it "irresistible" that, by enacting Section 1983, "Congress * * * intended to abrogate" common law immunities shielding state officers. *Picking* v. *Pennsylvania R.R. Co.*, 151 F.2d 240, 250 (3d Cir. 1945); see also, *e.g.*, *Burt* v. *City of New York*, 156 F.2d 791, 793 (2d Cir. 1946) (L. Hand, J.).

This Court departed from that view in *Tenney* v. *Brandhove*, when it held that legislative immunity was "so well grounded in history and reason" in 1781 that it should be deemed incorporated into Section

1983 by reference. 341 U.S. 367, 376 (1951). Subsequently, in *Pierson* v. *Ray*, the Court extended *Tenney* to other common-law-based immunities, including to officers acting with "good faith and probable cause" in carrying out an arrest. 386 U.S. 547, 555-557 (1967). In the ensuing decades, the Court repeatedly expanded and recontoured these immunity doctrines. See, *e.g.*, *Scheuer* v. *Rhodes*, 416 U.S. 232, 245-248 (1974) (providing a broader "range of discretion" for executive officers); *Wood* v. *Strickland*, 420 U.S. 308, 320-322 (1975) (extending *Pierson* to school disciplinary decisions). As the Court acknowledged, the resulting immunities were "in large part * * * of judicial making" and turned on what the Court "deemed to be the appropriate type of immunity" under the circumstances. *Butz* v. *Economou*, 438 U.S. 478, 501-503 (1978).

This process culminated in the Court's adoption of the modern qualified immunity framework in *Harlow* v. *Fitzgerald*, which eliminated the requirement for subjective good faith. 457 U.S. 800, 815-816 (1982). Under *Harlow*, all an officer must show is that "their conduct d[id] not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id*. at 818.[2] *Harlow* did not base its holding on a common law analogue and instead found that this framework was "the best attainable accommodation" for "balanc[ing] the evils inevitable in any available alternative." *Id.* at 814-815; see also *Wyatt* v. *Cole*, 504 U.S. 158, 166 (1992) (noting that

[2] Although *Harlow* addressed a *Bivens* claim, the *Harlow* Court described its newly developed qualified immunity standard as applying to Section 1983 claims as well. See *Harlow*, 457 U.S. at 818 n.30.

"*Harlow* completely reformulated qualified immunity along principles not at all embodied in the common law" (internal citation omitted)).

After *Harlow*, a Section 1983 plaintiff must generally "identify a case where an officer acting under similar circumstances was held to have violated the Constitution." *Zorn* v. *Linton*, 607 U.S. 568, 572 (2026) (citation modified). That case, in turn, must be "clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *District of Columbia* v. *Wesby*, 583 U.S. 48, 63 (2018). This is an "exacting standard" and permits recovery only for constitutional violations that are "beyond debate." *City and Cnty. of S.F.* v. *Sheehan*, 575 U.S. 600, 611 (2015).

B. Factual background

Cross-petitioners were employees of the Rio Grande City Consolidated Independent School District during that district's 2018 school board election. Pet. App. 3a. In the lead-up to the election, cross-petitioners publicly supported a slate of candidates who ultimately lost. *Ibid*. In retaliation, cross-respondents (the three victorious board members and the acting superintendent) used their influence to have cross-petitioners demoted, reassigned, and/or reduced in salary. *Ibid*. Upon seeking clarification from the school district, it was repeatedly conveyed to cross-petitioners that these adverse employment actions were politically motivated. See C.A. R.E. 527-528.

C. Proceedings below

Cross-petitioners sued cross-respondents and the school district for First Amendment retaliation in violation of 42 U.S.C. § 1983, and cross-respondents

moved to dismiss—in part based on qualified immunity. See *Lopez* v. *Ramirez*, 2022 WL 3230442, at *1 (5th Cir. 2022). The district court denied that motion without a written opinion, and the Fifth Circuit remanded so it could "ascertain the grounds for the district court's decision." See *id*. at *2. On remand, cross-petitioners filed the operative complaint. *Lopez* v. *Ramirez*, 2024 WL 1168048, at *1 (5th Cir. 2024). Cross-respondents again moved to dismiss, the district court again denied the motion without an opinion, and the Fifth Circuit again remanded "for an illumination of the court's analysis." *Id*. at *2.

Following this second remand, the district court determined that "the parties would benefit from proceeding before a Magistrate in a mediation setting." Pet. App. 13a. It therefore referred the parties to mediation and denied "[a]ll pending motions * * * without prejudice to refiling same in writing" after conclusion of the mediation "without any waiver of a substantive or procedural right of any party." *Id*. at 14a-15a. That mediation concluded "almost immediately" without a resolution. See *Id.* at 4a.

Cross-respondents appealed the district court's mediation order, and the Fifth Circuit dismissed for lack of jurisdiction. Pet. App. 2a.[3] While recognizing that "[o]rders denying dispositive pretrial motions asserting immunity from suit" are appealable, the court held that the mediation order was "in substance, a

[3] The court of appeals' initial opinion was issued on April 1, 2026. See *Lopez* v. *Ramirez*, 2026 WL 893104 (5th Cir. 2026). That opinion was withdrawn on May 27, 2026, and replaced with a substituted opinion that reached the same substantive conclusion but provided additional analysis and accounted for intervening procedural developments. See Pet. App. 2a.

case-management deferral pending a discrete, non-binding event" that "deferred a ruling, but [] also deferred discovery, case management deadlines, and the like" and "did not constitute an effective denial of Defendants' immunity defense." By a 10-7 majority, the Fifth Circuit denied *en banc* rehearing. Pet. App. 42. Cross-respondents then filed a petition for certiorari in No. 26-493, seeking this Court's review.

REASONS FOR GRANTING THE CROSS-PETITION

Qualified immunity is a judge-made doctrine adopted nearly a century after Section 1983. Since then, it has led to repeated calls from Justices of this Court, dozens of federal judges, and scholars to reexamine the doctrine. For good reason: It is incompatible with Section 1983's original public meaning and does not serve the policy ends it was intended to protect. The time has come to revisit it.

A. The status of qualified immunity is immensely important and debated.

Qualified immunity has been subject to widespread criticism. Only this Court's intervention can settle the issue and ameliorate the harm to the legitimacy of the judiciary from repeated criticism of a doctrine lower courts are obliged to apply.

1. Justices of this Court have repeatedly criticized the doctrine and called for its reexamination. See, *e.g.*, *Lombardo* v. *City of St. Louis*, 143 S. Ct. 2419, 2421 (2023) (Sotomayor, J., dissenting from the denial of certiorari) ("If this Court is going to endorse this 'Escherian Stairwell,' then it should instead reexamine the doctrine of qualified immunity and the assumptions underlying it. The doctrine is a creation of our own design."); *Baxter* v. *Bracey*, 590 U.S. 1011,

1015 (2020) (Thomas, J., dissenting from denial of certiorari) ("I continue to have strong doubts about our § 1983 qualified immunity doctrine."); *Wyatt*, 504 U.S. at 171 (Kennedy, J., concurring) (reserving the question "whether or not it was appropriate for the Court in *Harlow* to depart from history in the name of public policy"); *Pierson* v. *Ray*, 386 U.S. 547, 561 (1967) (Douglas, J., dissenting) (noting that "every member of Congress who spoke to the issue assumed that the words of [Section 1983] meant what they said" and did not preserve common law immunities).

Those criticisms fall in line with the growing chorus of lower court judges who "acknowledge the legal, social, and practical defects of the judicially contrived qualified-immunity doctrine," yet remain "powerless" to alter it without this Court's help. *Green* v. *Thomas*, 129 F.4th 877, 890 (5th Cir. 2025); see, *e.g.*, *Jackson* v. *City of Madison*, 176 F.4th 1005, 1031-1032 (7th Cir. 2026) (Jackson-Akiwumi, J., concurring in the judgment) ("For years, critics have warned of the dangers qualified immunity presents. * * * Now the day has come when the doctrine's privilege has nearly eclipsed the Constitution's guarantees."); *Sosa* v. *Martin Cnty.*, 57 F.4th 1297, 1304 (11th Cir. 2023) (Jordan, J., joined by Wilson and J. Pryor, J.J., concurring in the judgment) ("[T]he Supreme Court's governing (and judicially-created) qualified immunity jurisprudence is far removed from the principles existing in the early 1870s."); *McKinney* v. *City of Middletown*, 49 F.4th 730, 757 (2d Cir. 2022) (Calabresi, J., dissenting) ("[T]here was no common law background that provided a generalized immunity that was anything like qualified immunity."); *Horvath* v. *City of Leander*, 946 F.3d 787, 800 (5th Cir. 2020) (Ho, J., concurring

in the judgment in part and dissenting in part) (explaining that neither the "common law of 1871 [n]or [] the early practice of § 1983 litigation" supports the qualified immunity defense); *Goffin* v. *Ashcroft*, 977 F.3d 687, 694 n.5 (8th Cir. 2020) (L.R. Smith, C.J., concurring) (concluding that "increased legal and historical scrutiny" on qualified immunity is "warranted"); *Zadeh* v. *Robinson*, 928 F.3d 457, 480-481 (5th Cir. 2019) (Willett, J., concurring in part, dissenting in part) ("[I]t's curious how this entrenched, judge-created doctrine excuses constitutional violations by limiting the statute Congress passed to redress constitutional violations.").

2. This issue of qualified immunity is also exceptionally important and recurring. Thousands of lawsuits are filed each in which defendants might invoke the qualified immunity defense. See, *e.g.*, Civil Federal Judicial Caseload Statistics, tbl. C-2 (Mar. 31, 2022) (identifying that, during the 12 months ending in March 2026, 24,755 "other civil rights" lawsuits were filed). Resolving whether to retain the qualified immunity doctrine despite the widespread criticism is immensely important for the thousands of plaintiffs and government actors who must litigate the issue each year.

The continuing vitality of qualified immunity is independently important in each individual instance where it applies. Section 1983 is meant to vindicate a wide-ranging set of constitutional rights. Qualified immunity impedes the vindication of these and other rights in two different ways. First, by definition, it makes a difference only in cases where a court has found—or would find—that a litigant suffered a constitutional violation. Second, it allows courts to stay

silent on whether there was a constitutional violation in the first place, depriving the public of "guidance about what the Constitution requires" (*Zadeh*, 928 F.3d at 480 (Willett, J., concurring in part and dissenting in part)) and "stunt[ing] the development of constitutional rights" (Stephen R. Reinhardt, *The Demise of Habeas Corpus and the Rise of Qualified Immunity*, 113 Mich. L. Rev. 1219, 1248, 1250 (2015)).

B. Qualified immunity is wrong and needs recalibration.

Qualified immunity is also wrong: It has no basis in the text of Section 1983, and the doctrine does not even serve the policy goals it was created to address. Nor does stare decisis present a bar to reevaluating the doctrine.

1. Qualified immunity is judge-created and atextual.

a. As the Court emphasized last term, determining who should be liable in tort is a prerogative that "belongs to Congress" alone. *Cisco Systems, Inc.* v. *Doe I*, 609 U.S. 141, 152-153 (2026). Just as courts may not create causes of action Congress has not authorized, they should not create a blanket immunity from a cause of action Congress expressly enacted.

Yet, in holding that state officers are entitled to qualified immunity under Section 1983, this Court's precedents have never grounded that conclusion in Section 1983's text. Nor could they have. As the Court has long acknowledged, Section 1983's text "is absolute and unqualified" and sweeps in "every person" acting under the color of state law. *Owen* v. *City of Independence*, 445 U.S. 622, 635 (1980). Instead, in engrafting a qualified immunity defense into Section

1983, this Court has relied on two extratextual sources of authority: common law and public policy. Neither of those, however, can bear qualified immunity's weight.

b. This Court's cases have long characterized qualified immunity as resting on an assumption that "Congress would have specifically so provided had it wished to abolish" longstanding officer immunities. *Pierson* v. *Ray*, 386 U.S. 547, 555 (1967); accord, *e.g.*, *Wood* v. *Strickland*, 420 U.S. 308, 317 (1975); *Filarsky* v. *Delia*, 566 U.S. 377, 383-384 (2012).

That assumption is questionable as a matter of first principles. See Amy Coney Barrett, *Substantive Canons & Faithful Agency*, 90 B.U. L. Rev. 109, 177 & n.324 (2010) (noting that the derogation canon "conflict[s] with the obligation of faithful agency" and "cuts against the principle that legislation is hierarchically superior to common law").

And it has been rendered untenable by recent scholarship demonstrating that Congress *did* affirmatively intend to abrogate such immunities. See, *e.g.*, Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 201, 238 (2023); Jacob Harcar, *The Original Meaning of Section 1983 and Official Immunity*, 73 U. Kan. L. Rev. 357, 381-392 (2024). The original Civil Rights Act imposed liability "any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding." 17 Stat. 13. Although that language was omitted from the 1874 revision—which was intended to be non-substantive—the original enactment disproves the premise that Congress's silence reflects an intent to preserve common-law immunities. See Reinert, 111 Calif. L. Rev. at 238. Moreover, the text of the Civil Rights

Act of 1871 was directly patterned on that of the earlier Civil Rights Act of 1866, which was widely and contemporaneously recognized as abrogating official immunities. See Harcar, 73 U. Kan. L. Rev. at 381-392.

Even if Congress *had* intended to preserve common law immunities, modern qualified immunity had no analogue at common law and would not have been one of them. See, *e.g.*, William Baude, *Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45, 58-61 (2018) (noting that the common law limited the defense of good faith to specific torts and had no analogue to the "clearly established law" requirement). And the Court's adoption of qualified immunity is irreconcilable with Section 1988, which permits the Court to add to Section 1983 only where it is "deficient," and even then only by looking to state law where it is not inconsistent with federal law. 42 U.S.C. § 1988; Note, Leo Rassieur, *Recentering Section 1988 in Constitutional Torts*, 78 Stan. L. Rev. 1079, 1121-1122 (2026).

2. Qualified immunity does not serve its own policy justifications.

With no textual foundation, that leaves the Court's frequently stated concern that, without immunity, the "fear of being sued will dampen the ardor of all but the most resolute, or the most irresponsible public officials, in the unflinching discharge of their duties." *Harlow*, 457 U.S. at 814 (citation modified). But this premise, too, has been negated in the years since *Harlow*.

First, whether qualified immunity might be good policy is no basis for departing from Section 1983's text. See *Bostock* v. *Clayton County*, 590 U.S. 644, 653 (2019) ("When the express terms of a statute give us

one answer and extratextual considerations suggest another, it's no contest.").

Second, even if such policy goals *were* relevant, research has shown that qualified immunity does not advance them. See, *e.g.*, Joanna C. Schwartz, *Qualified Immunity's Boldest Lie*, 88 U. Chi. L. Rev. 605, 664 (2021) (finding that "officers are not taught about the facts of the hundreds or thousands of cases that can be used to clearly establish the law"); Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. Rev. 885, 943 (2014) (reviewing evidence that "officers almost never financially contribute to settlements and judgments, * * * lawsuits have little negative impact on [their] employment, and * * * [their] behavior is not influenced to any substantial extent by the threat of being sued").

Third, other legal developments have eliminated any policy gains that may have once existed. See, *e.g.*, *Wyatt*, 504 U.S. at 171 (Kennedy, J., joined by Scalia, J., concurring in judgment) (noting that "subsequent clarifications to summary-judgment law have alleviated" *Harlow*'s concerns about insubstantial claims).

Finally, even if qualified immunity *was* necessary for split-second life or death decisions, that would not support the Court's current "one-size-fits-all" approach immunizing "calculated choices about enacting or enforcing unconstitutional policies" like the retaliation claims at issue here. See *Hoggard* v. *Rhodes*, 594 U.S. 962, 962 (2021) (Thomas, J., respecting the denial of certiorari); see also *Villareal* v. *City of Laredo*, 134 F.4th 273, 282-283 (5th Cir. 2025) (Oldham, J., concurring).

3. Stare decisis cannot save qualified immunity.

This Court's opinions adopting qualified immunity were wrong the day they were decided and have been rendered untenable since. The factors traditionally considered by this Court all "weigh in favor of letting [the doctrine] go." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 407 (2024).

a. The flaws in qualified immunity were "apparent from the start" and have "launched and sustained a cottage industry of scholars attempting to decipher its basis and meaning." *Loper Bright*, 603 U.S. at 407. See *supra* at 10-13. And the doctrine has been "long questioned" by "Members of this Court." *Loper Bright*, 603 U.S. at 407. See *supra* at 7-8; *e.g.*, *Lombardo*, 143 S. Ct. at 2421 (Sotomayor, J., dissenting from the denial of certiorari); *Baxter*, 590 U.S. at 1015 (Thomas, J., dissenting from denial of certiorari); *Wyatt*, 504 U.S. at 171 (Kennedy, J., concurring); *Pierson*, 386 U.S. at 561 (Douglas, J., dissenting). Numerous other jurists have echoed those same criticisms. See *supra* at 8-9.

b. Nor has qualified immunity proven workable. See *Loper Bright*, 603 U.S. at 407. Instead, it required frequent modification to account for implementation issues. See, *e.g.*, *Harlow*, 457 U.S. 800, 815-816 (1982) (finding a common law subjective standard to be unworkable); *Pearson* v. *Callahan*, 555 U.S. 223, 236 (2009) (abolishing the mandatory ordering of the two-step framework for qualified immunity decisions). And even with those changes, this Court has been forced to dedicate an inordinate portion of its docket to guiding lower courts struggling to implement the doctrine. See Baude, 106 Calif. L. Rev. at 86-87

(discussing the "rise in the Court's immunity-protection docket").

c. Qualified immunity's errors, in turn, have had persistent and "disruptive effect[s] on other areas of the law" (*Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 268 (2022)) with "real-world effects on the citizenry" (*Ramos* v. *Louisiana*, 590 U.S. 83, 122 (2020) (Kavanaugh, J., concurring in part)).

On the one hand, by permitting judges to resolve Section 1983 disputes without ruling on the constitutionality of the underlying conduct, qualified immunity post-*Pearson* has trapped victims of constitutional violations in an "Escherian Stairwell" under which "[i]mportant constitutional questions go unanswered precisely because no one's answered them before." *Zadeh*, 928 F.3d at 479-480. On the other, by channeling immunity claims through a judge-made immunity standard, qualified immunity has prevented courts from elucidating the degree (if any) to which certain, more narrow protections might be supportable by other constitutional provisions (such as the Fourth Amendment's reasonableness requirement). See generally *Hoggard*, 594 U.S. at 962.

d. Finally, no reliance or implicit ratification concern counsels against reversal. No party, after all, can have a reliance interest in "arrang[ing its] affairs on an assumption that [it] can violate constitutional rights." *Monell* v. *Department of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 700 (1975). And because qualified immunity is "in large part * * * of judicial making" (*Butz*, 438 U.S. at 501-503), it is a rule whose errors are the responsibility of "this Court, not Congress" to fix (*Pearson*, 555 U.S. at 233-234).

C. This case is a suitable vehicle for revisiting qualified immunity.

The petition in No. 26-493 raises questions regarding whether deferring consideration of a qualified immunity defense while a short-term mediation is ongoing constitutes an immediately appealable denial of that defense. As we would explain should the Court call for a response, there is nothing in that petition warranting this Court's review, and the petition should be denied.

If the Court were to grant review to determine whether qualified immunity justifies cross-respondents' interlocutory appeal, it should also consider the antecedent question whether Section 1983 authorizes that immunity at all—or, at a minimum, whether the doctrine should apply unchanged to deliberate retaliation for protected political speech. Cross-respondents specifically invoke qualified immunity as the only basis for departing from the ordinary final-judgment rule. Reconsidering the validity or scope of that doctrine would therefore bear directly on the justification for the interlocutory review they seek.

CONCLUSION

If the Court grants the petition in No. 26-493, it should grant the conditional cross-petition as well.

Respectfully submitted.

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