

No. 25-943

IN THE
Supreme Court of the United States

ANTONIO M. SMITH,

Petitioner,

v.

JOHN KIND, ET AL.,

Respondents.

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

**BRIEF OF CONSTITUTIONAL ACCOUNTABILITY
CENTER AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring meaningful access to the courts, in accordance with constitutional text and history, and therefore has an interest in this case.

**INTRODUCTION AND
SUMMARY OF ARGUMENT**

On a late-November day in Wisconsin, correctional officers put Petitioner Antonio Smith in a frigid cell with no clothes, bedding, or mattress. The temperature outside dropped to as low as 25 degrees Fahrenheit. Perceiving that a vent was blowing outside air into his cell, Mr. Smith informed a correctional officer that the cell was extremely cold and asked to move to a warmer cell. He also asked for clothing, bedding, and a mattress. Instead, correctional officers left him there, naked, for 23 hours.

Plainly, a jury could find that Respondents denied Mr. Smith the protection from extreme cold that is a basic human need and that they did so with deliberate indifference. The court below was unanimous on this important point. Pet. App. 19a-21a, 25a. But if the decision below stands, Mr. Smith will not have his day

¹ Counsel for all parties received notice at least 10 days prior to the due date of *amicus*'s intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel, party, or person other than *amicus* or its counsel made a monetary contribution intended to fund its preparation or submission.

in court. Despite recognizing that Mr. Smith was exposed to “extreme cold,” *id.* at 21a, and that the Seventh Circuit has previously determined in “a number of cases . . . that cold cell conditions violate[] an inmate’s Eighth Amendment rights,” *id.* at 21a-22a, the majority below concluded that Respondents cannot be held accountable for their violations of Mr. Smith’s constitutional rights.

This Court should review that decision or simply reverse it summarily. Qualified immunity shields officers from civil litigation only when “their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (quotation marks omitted). But here Respondents’ conduct did violate a clearly established right. As the dissent below recognized, the majority concluded otherwise only by succumbing to “a rigid[] overreliance on factual similarity” in reviewing prior case law involving extreme cold. Pet. App. 25a (quoting *Hope v. Pelzer*, 536 U.S. 730, 742 (2002)). The majority’s approach contravenes this Court’s commands. When an officer’s actions are obviously unconstitutional, even “novel . . . conduct violates established law.” *Hope*, 536 U.S. at 741.

The court below is not alone in failing to heed this Court’s instruction. To the contrary, federal courts of appeals frequently apply qualified immunity in a manner that creates a nearly impenetrable barrier to liability for officials sued under 42 U.S.C. § 1983. As this case illustrates, courts too often refuse to acknowledge constitutional rights as clearly established unless prior cases involved identical facts. But even without identical precedent, it should be obvious to any reasonable officer that it violates the Constitution to confine

someone naked in cell that is “colder than a refrigerator.” Pet. App. 27a.

These barriers to accountability do violence to Congress’s design. Qualified immunity can be justified, if at all, only as an interpretation of Section 1983. Yet the modern doctrine, especially as applied in the lower courts, is not a credible interpretation of that statute. Even assuming that Section 1983 was meant to incorporate “[c]ertain immunities” that were “well established” when it was enacted, *Buckley v. Fitzsimmons*, 509 U.S. 259, 268 (1993) (quotation marks omitted), the broad exemption from suit reflected in the decision below has no grounding in those common law immunities, nor in any indicia of congressional intent.

After the Civil War, when Southern states refused to respect the constitutional rights of all citizens, a new generation of Framers crafted the Fourteenth Amendment to “restrain the power of the States and compel them . . . to respect [the] great fundamental guarantees” in the Bill of Rights. *McDonald v. Chicago*, 561 U.S. 742, 832 (2010) (Thomas, J., concurring in part and concurring in the judgment) (quoting Cong. Globe, 39th Cong., 1st Sess. 2766 (1866)). Section 1983, originally part of the Civil Rights Act of 1871, reflects Congress’s commitment to the promise of those rights, including rights under the Eighth Amendment. When it became clear that Southern governments were continuing to let abuses of formerly enslaved people and their allies go unchecked, and perpetuating such abuses themselves, Congress passed Section 1983 to “interpose the federal courts between the States and the people, as guardians of the people’s federal rights.” *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).

The Reconstruction Congress was acutely aware that callous indifference to inmates’ human needs was among the abuses they needed to address to combat

“the maladministration of justice in the South,” including by “sheriffs” and “jailors.” Donald H. Zeigler, *A Reassessment of the Younger Doctrine in Light of the Legislative History of Reconstruction*, 1983 Duke L.J. 987, 1009 n.151 (1983). For example, one representative during this period highlighted the “barbarity” of a South Carolina jailer who refused to open the doors to a jail that was on fire, resulting in the deaths of twenty-two Black citizens. Cong. Globe, 39th Cong., 2d Sess. 560 (1867) (Rep. Donnelly).

Qualified immunity, however, now gives state officials a broad shield against liability for violating constitutional rights. This judicial creation guts the remedial and deterrent purposes of Section 1983, even though Congress is the branch “best positioned to evaluate whether, and the extent to which, monetary and other liabilities should be imposed upon individual officers.” *Hernandez v. Mesa*, 589 U.S. 93, 101 (2020) (quotation marks omitted).

Because qualified immunity doctrine has strayed so far from statutory text and constitutional principles, virtually any corrective action by this Court would mark an improvement. At a minimum, this petition presents an important opportunity for the Court to provide additional guidance to the lower courts through summary reversal. If this Court is not willing to revisit qualified immunity wholesale—a step that is overdue—it can still send an important message to the lower courts by reaffirming an essential point: some conduct is so obviously unlawful that a prior case with precisely the same facts is not necessary to put officers on notice and defeat claims of qualified immunity. See *Taylor v. Riojas*, 592 U.S. 7, 9 (2020). Reaffirming this point is critical to ensuring that qualified immunity—an atextual, ahistorical judicial construction—does not entirely extinguish the robust civil remedy that

Congress intended to provide to victims of unconstitutional conduct.

ARGUMENT

I. Modern Qualified Immunity Is at Odds with the Text and History of Section 1983.

The remedial statute known today as Section 1983 sweeps broadly: “any person” who, under color of state law, deprives another of their federal constitutional rights “shall . . . be liable.” An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes, ch. 22, § 1, 17 Stat. 13, 13 (1871).

“Statutory interpretation, as we always say, begins with the text.” *Ross v. Blake*, 578 U.S. 632, 638 (2016). Section 1983 “on its face admits of no defense of official immunity,” but rather “subjects to liability [e]very person’ who, acting under color of state law, commits the prohibited acts.” *Buckley*, 509 U.S. at 268 (quoting 42 U.S.C. § 1983).

To be sure, Congress is sometimes “understood to legislate against a background of common-law adjudicatory principles.” *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 457 (2012) (quoting *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991)). So “where a common-law principle is well established, . . . the courts may take it as given that Congress has legislated with an expectation that the principle will apply.” *Astoria*, 501 U.S. at 108; see *Tenney v. Brandhove*, 341 U.S. 367 (1951) (applying this presumption to find absolute immunity for legislators under Section 1983). This presumption does not apply, however, when “a statutory purpose to the contrary is evident.” *Astoria*, 501 U.S. at 108 (quotation marks omitted). Section 1983’s sweeping text and remedial purpose call into question the notion that it displays “no

evidence” of an intent to abrogate common law immunities. *Briscoe v. LaHue*, 460 U.S. 325, 337 (1983); cf. Alexander A. Reinert, *Qualified Immunity’s Flawed Foundation*, 111 Cal. L. Rev. 201, 234-37 (2023) (highlighting terms from the 1871 legislation this Court has never grappled with, namely, that officials are liable for constitutional violations “notwithstanding” laws, customs, or usages “of the State to the contrary”).

Even setting aside the textual problem, history poses another. In English common law and early American cases, government actors were strictly liable for legal violations that deprived people of their rights. See, e.g., *Little v. Barreme*, 6 U.S. 170, 178-79 (1804); *Murray v. The Schooner Charming Betsy*, 6 U.S. 64, 122-26 (1804); *Sands v. Knox*, 7 U.S. 499, 503 (1806); *Wise v. Withers*, 7 U.S. 331, 335-37 (1806); *Tracy v. Swartwout*, 35 U.S. 80, 95 (1836); *Dynes v. Hoover*, 61 U.S. 65, 80-81 (1857). As this Court said: “It would be a most dangerous principle to establish, that the acts of a ministerial officer . . . injurious to private rights, and unsupported by law, should afford no ground for legal redress.” *Tracy*, 35 U.S. at 95. Thus, if an officer’s injurious conduct was “forbidden by law, or beyond the power which the law confided” to him, “he would be liable whatever were his motives.” *Dinsman v. Wilkes*, 53 U.S. 390, 404 (1851).

In areas where officers were vested with “quasi judicial” discretion, *Wilkes v. Dinsman*, 48 U.S. 89, 129 (1849), they were still liable for wrongful conduct if they acted “maliciously,” Thomas M. Cooley, *A Treatise on the Law of Torts* 411 (1879)—that is, if they acted “intentionally without just cause or excuse,” *id.* at 209 n.3 (quoting *Bromage v. Prosser*, 4 B. & C. 247, 255 (1825) (Bayley, J.)); accord Joel Prentiss Bishop, *Commentaries on the Non-Contract Law* 92, 365-66 (1889); see *South v. Maryland*, 59 U.S. 396, 403 (1855);

Kendall v. Stokes, 44 U.S. 87, 98-99 (1845); *Otis v. Watkins*, 13 U.S. 339, 355-56 (1815); *Dinsman*, 53 U.S. at 404; *Wilkes*, 48 U.S. at 123, 131.

At common law in 1871, police officers had never enjoyed broad immunity from suit, and “restrictions on the scope of [their] authority w[ere] routinely applied throughout the nineteenth century” in damages actions. James E. Pfander, *Zones of Discretion at Common Law*, 116 Nw. U. L. Rev. Colloquy 148, 167 (2021). Indeed, throughout the century, courts treated law enforcement as “a ‘ministerial’ act” that was “subject to ordinary law” and not shielded by judicial or even “quasi-judicial” immunity. William Baude, *Is Quasi-Judicial Immunity Qualified Immunity?*, 74 Stan. L. Rev. Online 115, 118-119 (2022); see, e.g., *Ely v. Thompson*, 10 Ky. 70, 76 (1820) (describing a justice of the peace as a “judicial officer” but a constable as a “ministerial officer”); *Sumner v. Beeler*, 50 Ind. 341, 342 (1875) (describing defendants in a false-arrest suit as “ministerial officers”); see also *Shanley v. Wells*, 71 Ill. 78, 81 (1873) (“If the plaintiff was assaulted and beaten” by a police officer “without authority of law,” the plaintiff was “entitled to recover.”).

At the same time, government officials were generally indemnified for their violations. James E. Pfander & Jonathan L. Hunt, *Public Wrongs and Private Bills: Indemnification and Government Accountability in the Early Republic*, 85 N.Y.U. L. Rev. 1862, 1906-07 (2010). Therefore, while “[s]ome personal inconvenience may be experienced by an officer who shall be held responsible in damages for illegal acts, . . . there can be no eventual hardship,” because “the government in such cases is bound to indemnify the officer.” *Tracy*, 35 U.S. at 98-99.

Those principles formed the backdrop for Congress’s enactment of Section 1983. Modern qualified

immunity is at odds with the text and purpose of the statute because it insulates officers from accountability for constitutional violations. See *Crawford-El v. Britton*, 523 U.S. 574, 595 (1998) (noting that qualified immunity “lacks any common-law pedigree and alters the [statute’s] cause of action itself in a way that undermines the very purpose of § 1983—to provide a remedy for the violation of federal rights”).

II. Modern Qualified Immunity Is a Judicial Creation Based Expressly on Policy Considerations.

Notwithstanding the “categorical language” in Section 1983, *Buckley*, 509 U.S. at 280 (Scalia, J., concurring), this Court held in *Tenney v. Brandhove*, 341 U.S. 367 (1951), that “Congress did not intend § 1983 to abrogate . . . [c]ertain immunities [that] were so well established in 1871, when § 1983 was enacted, that we presume that Congress would have specifically so provided had it wished to abolish them.” *Buckley*, 509 U.S. at 268 (quotation marks omitted). The Court explained that legislators’ immunity from suits arising out of their legislative duties traces back at least to the sixteenth century. *Tenney*, 341 U.S. at 372.

Employing the same standard, this Court later found immunity for judges. Because judicial immunity dates back to English common law, see *Yates v. Lansing*, 5 Johns. 282, 290-95 (N.Y. 1810), and was firmly established in American law by 1871, see *Bradley v. Fisher*, 80 U.S. 335 (1871), this Court held that if Congress had wished to abolish judicial immunity under Section 1983, it “would have specifically so provided,” *Pierson v. Ray*, 386 U.S. 547, 555 (1967).

Central to these holdings were historical findings that these immunities were so well established in the common law and so central to the functioning of

government that the members of Congress who enacted Section 1983 must have been aware of them and could not have meant to abrogate them by implication. The immunity question was, appropriately, treated as a question of statutory interpretation—albeit one that required going beyond plain text to consider “the immunity historically accorded the relevant official at common law and the interests behind it.” *Tower v. Glover*, 467 U.S. 914, 920 (1984) (quotation marks omitted); see *Malley v. Briggs*, 475 U.S. 335, 342 (1986) (“[O]ur role is to interpret the intent of Congress in enacting § 1983, not to make a freewheeling policy choice.”).

In *Pierson v. Ray*, however, this Court departed from that approach with respect to immunity for police officers. The Court in *Pierson* focused on the specific type of constitutional claim brought against the officers in that case and analogized it to a specific type of tort action—false arrest. See 386 U.S. at 555. The Court then held that because police officers sued for false arrest may assert “the defense of good faith and probable cause,” that defense “is also available to them in the action under [Section] 1983.” *Id.* at 557.

This new approach had many problems. First, the Court did not purport to analyze the common law as it existed in 1871 when Section 1983 was enacted, but instead cited sources from the 1950s and 1960s in support of its rule. *Id.* at 555.

Second, even if the same defenses were available to police officers in false arrest cases in 1871, *Pierson* made no attempt to demonstrate that those rules were so well established and widely known—like the immunity for legislators and judges—that Congress would have been aware of them and expressly eliminated them had that been its intent.

Third, the analysis in *Pierson* confused common law immunities with the elements of specific common law torts. Indeed, the Court simply erred in asserting that police officers could assert a *defense* of good faith and probable cause in false arrest cases. The absence of good faith and probable cause was, instead, “the essence of the wrong itself,” and thus part of “the essential elements of the tort.” *Wyatt v. Cole*, 504 U.S. 158, 172 (1992) (Kennedy, J., concurring); *accord id.* at 176 n.1 (Rehnquist, C.J., dissenting).

The earlier *Tenney* approach ascribed to Congress only an intent to preserve true immunities of the common law—broad, categorical principles that shielded particular officials and functions from liability as a general matter. But *Pierson* held that even in the absence of such immunities, plaintiffs could not vindicate their rights under Section 1983 if they could not recover under whatever state tort was “most closely analogous” to the constitutional violation they suffered. *Id.* at 164 (majority opinion).

Pierson never explained why Congress would have intended to make Section 1983 duplicative of the remedies already available under state tort law. As this Court has recognized elsewhere, “Section 1983 impose[d] liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law.” *Baker v. McCollan*, 443 U.S. 137, 146 (1979). The statute “was designed to expose state and local officials to a new form of liability,” *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 259 (1981), which would be “supplementary to any remedy any State might have,” *McNeese v. Bd. of Educ.*, 373 U.S. 668, 672 (1963). As the debates over Section 1983 reflect, the statute was aimed at “injuries, denials, and privations of rights and immunities under the Constitution,” “not injuries inflicted . . . upon ordinary rights

of individuals.” Cong. Globe, 42d Cong., 1st Sess. App. 79 (1871).

While this Court never provided a justification for *Pierson*’s “analogous tort” approach, that approach at least tethered immunity to “limitations existing in the common law,” *Wyatt*, 504 U.S. at 170 (Kennedy, J., concurring)—limitations “that the statute presumably intended to subsume,” *Crawford-El*, 523 U.S. at 611 (Scalia, J., dissenting). The judicial task was still seen as “essentially a matter of statutory construction.” *Butz v. Economou*, 438 U.S. 478, 497 (1978).

What followed, however, was a steady slide toward “less deference to statutory language and congressional intent, less belief that law is fixed and unchanging, and less commitment to the notion that the judicial function is a merely mechanical one of ‘finding’ the law.” David Achtenberg, *Immunity Under 42 U.S.C. § 1983: Interpretive Approach and the Search for the Legislative Will*, 86 Nw. U. L. Rev. 497, 501 (1992). Statutory interpretation, and the common law backdrop informing it, increasingly took a back seat to “the Justices’ individual views of sound public policy.” *Id.*

Tellingly, “it was in the context of *Bivens* that matters of policy took the reins completely and the Court abandoned any common law underpinnings to immunity doctrine.” Ilan Wurman, *Qualified Immunity and Statutory Interpretation*, 37 Seattle U. L. Rev. 939, 955 (2014). After recognizing an implied cause of action for damages against federal officials for certain types of constitutional violations, *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), this Court applied to those actions the doctrine of qualified immunity that it had developed as a matter of statutory interpretation under Section 1983. The Court then concluded that “it would be incongruous and confusing . . . to develop different standards of

immunity for state officials sued under § 1983 and federal officers sued on similar grounds” under the *Bivens* doctrine. *Butz*, 438 U.S. at 499 (quotation marks omitted). Rejecting the argument that Section 1983’s statutory basis should make a difference, this Court said, remarkably, that such arguments “would place undue emphasis on the congressional origins of the cause of action in determining the level of immunity.” *Id.* at 501.

Having equated qualified immunity under the Civil Rights Act of 1871 with qualified immunity under *Bivens*, this Court then announced a new, broader formulation of that doctrine: “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

Although *Harlow*’s new formulation arose in a *Bivens* action, with no statute to interpret, this Court “made nothing of that distinction,” *Burns v. Reed*, 500 U.S. 478, 498 n.1 (1991) (Scalia, J., dissenting), and later applied *Harlow*’s novel standard to claims brought under Section 1983, see *Wyatt*, 504 U.S. at 165-67. This Court did so even though it had “completely reformulated qualified immunity along principles not at all embodied in the common law.” *Anderson v. Creighton*, 483 U.S. 635, 645 (1987). And this Court did so even though Section 1983 was enacted to provide a means of enforcing the Fourteenth Amendment’s guarantees just three years after the Amendment was ratified, before it had ever been interpreted by this Court. A requirement that plaintiffs show the violation of “clearly established” rights recognized in

factually similar prior decisions would have strangled the statute at birth.

Indeed, this Court was “forthright in revising the immunity defense for policy reasons.” *Crawford-El*, 523 U.S. at 594 n.15; see *Wyatt*, 504 U.S. at 165 (emphasizing that “insubstantial claims should not proceed to trial” (quoting *Harlow*, 457 U.S. at 815-16)); *Anderson*, 483 U.S. at 640 n.2 (describing this aim as “the driving force behind *Harlow*’s substantial reformulation of qualified-immunity principles”). Gone was any consideration of Section 1983’s text, much less the broad remedial goals Congress passed the statute to advance. This Court subsumed those goals to its own concern that “fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties.” *Anderson*, 483 U.S. at 638. In doing so, the Court flouted the principle that “Congress is best positioned to evaluate whether, and the extent to which, monetary and other liabilities should be imposed upon individual officers.” *Hernandez*, 589 U.S. at 101 (quotation marks omitted).

III. This Court Should, at a Minimum, Reaffirm the Limits on Qualified Immunity that the Decision Below and Others Like It Have Disregarded.

If this Court is not willing to revisit its modern qualified immunity doctrine, it should at least ensure that lower courts respect the limits of that doctrine. The Seventh Circuit failed to do so here, and its error is clear enough to warrant summary reversal. This Court can send an important signal to the lower courts simply by reaffirming that a constitutional right may be “clearly established” even in the absence of factually identical precedent. See *Taylor*, 592 U.S. at 8-9.

Given “the obviousness” of the constitutional violations here, “any reasonable officer should have realized” that Respondents’ indifference to the conditions in Mr. Smith’s cell “offended the Constitution.” *Id.* at 9 & n.2. As the dissent below put it, no reasonable officer could “have thought they could lawfully refrigerate a naked human being for hours.” Pet. App. 35a-36a; *see id.* at 27a (“it is obviously unconstitutional to deliberately subject a naked prisoner to temperatures equivalent to and colder than a refrigerator”).

Even the majority acknowledged that “inmates have a well-established constitutional right to protection from extreme cold.” Pet. App. 21a. Nevertheless, the majority exempted Respondents from accountability for their obvious constitutional violation simply because officers in past cases subjected inmates to different combinations of temperatures and durations of confinement. Pet. App. 22a. That result exemplifies the “overreliance on factual similarity” that this Court has repudiated, and it defies this Court’s instruction that “novel” conduct can violate clearly established law when it is obviously unconstitutional. *Hope*, 536 U.S. at 741-42.

Notably, too, Mr. Smith is not relying here on mere “general statements of the law,” even though such general statements are fully capable “of giving fair and clear warning” and applying “with obvious clarity.” *Id.* at 741 (quotation marks omitted). Instead, Mr. Smith has highly instructive precedent on his side. *See, e.g., Wilson v. Seiter*, 501 U.S. 294, 304 (1991) (describing “a low cell temperature at night combined with a failure to issue blankets” as an Eighth Amendment violation); *Dixon v. Godinez*, 114 F.3d 640, 643-44 (7th Cir. 1997) (discussing precedent establishing that inadequate heating can state an Eighth Amendment claim). Indeed, illustrating just how obvious the

constitutional violation here was, the majority below, the dissent, and the district court all agreed that the conditions Respondents subjected Mr. Smith to did not meet the minimal civilized measure of life's necessities. Pet. App. 19a, 25a-26a, 79a. Yet the court below dismissed Mr. Smith's precedent-based argument because it found the temperatures or durations in those cases to be "more extreme." Pet. App. 21a-22a.

In the Seventh Circuit, then, "fair and clear warning" is no longer enough to overcome the judge-made barrier of qualified immunity, notwithstanding this Court's admonishments to the contrary. *See Taylor*, 592 U.S. at 9 & n.2; *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) ("We do not require a case directly on point."). This Court should fix that and ensure that qualified immunity does not turn into absolute immunity.

Doing so is especially important because a number of courts, not just the Seventh Circuit, have begun marginalizing *Taylor* and the principles it reaffirmed into irrelevance—relegating them to only the most "extreme circumstances." *Frasier v. Evans*, 992 F.3d 1003, 1015 (10th Cir. 2021) (quoting *Taylor*, 592 U.S. at 8); *see also, e.g., Rico v. Ducart*, 980 F.3d 1292, 1300 n.9 (9th Cir. 2020) (distinguishing *Taylor* because the circumstances were not "as extreme"); *Cope v. Cogdill*, 3 F.4th 198, 206 (5th Cir. 2021) (characterizing *Taylor* cases as "rare"). In many recent decisions granting officials qualified immunity for obvious violations, the lower federal courts have not acknowledged *Taylor* at all. *See, e.g., Martinez v. High*, 91 F.4th 1022 (9th Cir. 2024); *Jimerson v. Lewis*, 94 F.4th 423 (5th Cir. 2024). Due to the "particularly egregious facts" of *Taylor*, 592 U.S. at 9, that decision has failed to provide sufficient guidance to the lower courts—empowering them to disregard its message even when, as here, they are

confronted with shocking facts. At a minimum, therefore, this Court should clarify that *Taylor* and the principles it reaffirmed sweep more broadly than some courts have held.

In sum, Congress enacted Section 1983 to allow victims of constitutional violations to obtain redress in federal court, stating plainly that the perpetrators of these violations “shall . . . be liable.” 17 Stat. at 13. Modern qualified immunity largely undoes that remedy. It honors neither the plain text of Section 1983 nor Congress’s purpose in passing it. Having created that doctrine, this Court, at the very least, should ensure that lower courts do not erroneously expand it. This Court can do so here by reaffirming—as it has before—that obviously unconstitutional conduct is subject to liability even without factually identical precedent.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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