No. 16-1545

In the Supreme Court of the United States

DERICK PHILLIP, *et al.*,
Petitioners,
v.
PAUL SCINTO, SR.,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

A prison official accused of violating the Eighth Amendment may be immune from suit for civil damages if that official's actions "did not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). *Estelle v. Gamble*, 429 U.S. 97, 104 (1976), holds that prison officials violate the Eighth Amendment when they are deliberately indifferent to the serious medical needs of inmates. In particular, "indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *Id.* at 104-05 (footnotes omitted).

This *Bivens* case presents the following two questions:

1. Was it clearly established that the Eighth Amendment prohibits a prison doctor from intentionally denying insulin to an insulin-dependent diabetic inmate for a non-medical reason and contrary to that inmate's prescribed insulin regimen?

2. Was it clearly established that the Eighth Amendment prohibits a prison doctor and a prison official from intentionally denying any medical aid to an inmate suffering from extreme stomach pain, incontinence, and vomiting blood?

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INTRODUCTION

While an inmate at Federal Prison Camp Butner in North Carolina, Respondent Paul Scinto, Sr., experienced two episodes of gross mistreatment at the hands of two prison officials. During the first episode, Mr. Scinto – an insulin-dependent diabetic – was intermittently denied insulin between June 2005 and July 2005 by the prison doctor, Petitioner Dr. Derick Phillip. The denial of insulin was for a non-medical reason, and it was done contrary to Mr. Scinto's prescribed regimen of insulin – a prescription that was written by Dr. Phillip himself.

During the second episode, Mr. Scinto on August 24, 2005 called in a medical emergency during a prison lockdown because he was experiencing severe abdominal pain, incontinence, and vomiting blood. Petitioners Dr. Phillip and camp administrator Susan McClintock responded to the emergency call, but neither provided any medical assessment. Dr. Phillip instead "looked at [Mr. Scinto] in disgust and turned his head and started to walk away," while Ms. McClintock ordered prison guards to "[l]ock him up" in the Special Housing Unit. Mr. Scinto did not receive any medical attention for days; the next entry in his medical records was dated August 29, 2005, five days after the August 24 incident.

Mr. Scinto spent almost six months in the Special Housing Unit. He was ultimately released only after he wrote a letter to his congressman, Walter Jones, about his treatment at Federal Prison Camp Butner. Congressman Jones then wrote the warden, Patricia Stansberry, inquiring about Mr. Scinto's grievances. Warden Stansberry responded to Congressman Jones

on February 13, 2006; Mr. Scinto was abruptly released three days before that. There was never an adjudicative hearing on the allegations asserted against him, and when the district court requested the entire disciplinary record regarding Mr. Scinto's segregation in the Special Housing Unit, the Federal Bureau of Prisons advised that the documents had been destroyed. The only records left were two electronic entries indicating that there was an incident report filed against Mr. Scinto that was later expunged.

In its unanimous opinion, the Fourth Circuit held that these facts, when viewed in the light most favorable to Mr. Scinto, were sufficient under *Estelle v. Gamble*, 429 U.S. 97 (1976), and *Farmer v. Brennan*, 511 U.S. 825 (1994), to establish Mr. Scinto's Eighth Amendment claims.[1] The court held that there were genuine disputes of material fact precluding summary judgment, and that a jury had to resolve those factual disputes and make credibility determinations to assess whether Petitioners were deliberately indifferent to Mr. Scinto's serious medical needs. *Scinto v. Stansberry*, 841 F.3d 219, 228, 231, 232 (4th Cir. 2016). With respect to the insulin claim, the Fourth Circuit relied on case law holding that the denial of insulin to a known insulin-dependent diabetic inmate violates the Eighth Amendment. With respect to the medical emergency claim, the Fourth Circuit relied on case law holding that a prison official is liable under the Eighth Amendment when he or she declines to provide any medical aid to an inmate suffering from symptoms so obvious that even a lay person would recognize the

[1] The panel was Judge Paul V. Niemeyer, Judge Diana Gribbon Motz, and Judge James A. Wynn, Jr.

need for medical attention. The Fourth Circuit held that Petitioners were not entitled to qualified immunity at summary judgment, rejecting Petitioners' argument that the absence of a prior case that precisely matches the facts of Mr. Scinto's case entitles them to qualified immunity. The Fourth Circuit also held that, with respect to the medical emergency claim, factual disputes precluded it from applying qualified immunity at summary judgment.

The Solicitor General reviewed the case and declined to file a rehearing petition. Petitioners then retained private counsel and filed a petition for rehearing en banc, which the Fourth Circuit denied. No judge called for a poll.

Petitioners do not seek review of the Fourth Circuit's holding that their conduct violated the Eighth Amendment. Rather, they contend that the Fourth Circuit erred in denying qualified immunity because the law governing Petitioners' conduct was not "clearly established," *i.e.*, that even though they violated the Eighth Amendment, no reasonable prison official would have understood at the time that what they did violated Mr. Scinto's constitutional rights. The petition is meritless.

1. Summary reversal would not be appropriate in this case. Read in its totality, the Fourth Circuit's opinion meaningfully engages with this Court's Eighth Amendment and qualified immunity precedent and the pertinent law of the other federal courts of appeal – while also carefully sifting through a fact-intensive record of approximately 1,000 pages. Boiled down to its essence, Petitioners object to the Fourth Circuit's assessment of the record and application of the

summary judgment standard, but as Members of this Court have said, error correction or disagreements about how the summary judgment standard applies to a record are not appropriate bases for granting a petition for a writ of certiorari, including in cases involving qualified immunity. *Tolan v. Cotton*, 134 S. Ct. 1861, 1866-69 (2014) (Alito, J., concurring).

2. Petitioners' questions presented repeatedly portray the record as they wish it was, ignoring the facts and that the standard of review on summary judgment requires that any court reviewing the record do so in the light most favorable to the non-movant (here, Mr. Scinto). This Court recently and very specifically warned against misapplying the summary judgment standard while conducting the clearly established analysis. *Tolan*, 134 S. Ct. at 1866. The petition does that which *Tolan* prohibits: it imports genuinely disputed factual propositions into the "clearly established" analysis.

3. When the facts are presented accurately and viewed properly according to the summary judgment standard, it becomes apparent that Petitioners are not entitled to qualified immunity. The touchstone of qualified immunity is fair notice, *i.e.*, to ensure that public officials receive "reasonable warning" that certain conduct violates the law before they are subjected to suit for that conduct. *United States v. Lanier*, 520 U.S. 259, 269 (1997). Several sources of law provided fair notice to Petitioners that their conduct violated Mr. Scinto's constitutional rights, including cases from the federal courts of appeal. Those cases hold (a) that the denial of insulin to an insulin-dependent diabetic – even the denial of a single

dose – violates the Eighth Amendment, and (b) that the denial of any medical care to an inmate experiencing symptoms similar to those exhibited by Mr. Scinto on August 24, 2005 – vomiting and vomiting blood, incontinence, severe stomach pain – violates the Eighth Amendment. While the Fourth Circuit cited these cases and others in its opinion, *Scinto*, 841 F.3d at 228-30, 232, 236, the petition tellingly omits any discussion of them.

For these reasons, and for those that follow, the petition should be denied.

STATEMENT OF THE CASE

When he submitted to federal custody in October 2002, Mr. Scinto was a 54 year-old insulin-dependent diabetic suffering from hepatitis C, anemia, high blood pressure/hypertension, and a knee infection arising out of a right total knee replacement.[2] *Scinto*, 841 F.3d at 226; J.A. II – 367; J.A. III – 944.[3] His medical classification status at the prison reflected his condition: he was to be given (1) a permanent bedtime snack, (2) a permanent knee brace, (3) a permanent low-bunk pass, (4) a permanent soft-shoes pass, (5) a permanent wheelchair pass, (6) a "short line chow pass," (7) a permanent cane pass, and (8) restricted

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[2] Mr. Scinto plead guilty to one count of maintaining a place for the purpose of manufacturing, distributing, or using phencyclidine. He was sentenced to 78 months in custody. *United States v. Paul Scinto*, Case No. 01–59 (E.D.N.C.).

[3] "J.A." references are to the joint appendix ("J.A.") filed in the Fourth Circuit. "J.A. II – 367" refers to page 367 of the second volume of the joint appendix.

work duty – that is, he was not permitted to stand for prolonged periods of time and any work was to be light duty at a desk or sitting. J.A. I – 287.

On January 15, 2003, after an intervening trip to Lenoir Memorial Hospital for medical treatment for his infected knee, Mr. Scinto was transferred to the Federal Medical Center at Butner. J.A. II – 368. He was admitted to an acute care unit "for IV antibiotics and continued management of [his] infected right knee." *Id.* His attending physician was Dr. Phillip. *Id.* Mr. Scinto was permanently transferred to Federal Prison Camp Butner on June 5, 2005. *Scinto*, 841 F.3d at 226-27. He was incarcerated at Federal Prison Camp Butner between June 2005 and March 2006. *Id.* at 226.

1. ***Dr. Phillip denies insulin to Mr. Scinto.*** On June 5, 2005, Dr. Phillip prescribed Mr. Scinto "morning and evening insulin injections, as well as supplemental insulin injections based upon a 'sliding scale' keyed to his blood sugar." *Id.* at 227. The sliding scale required two units of insulin when Mr. Scinto's blood sugar reached between 141 and 150 milligrams (mg) per deciliter (dL), four units of insulin when his blood sugar reached between 151 and 200mg/dL, and so on. *Id.*

Despite the prescription, Dr. Phillip refused to provide Mr. Scinto his supplemental insulin even when his blood sugar reached the prescribed thresholds. J.A. III – 819-20. By June 14, 2005, these continued refusals to supply Mr. Scinto with supplemental insulin triggered a confrontation: Mr. Scinto requested insulin from a nurse because his blood sugar had risen to 200. J.A. I – 302. He was taken to Dr. Phillip, who

admonished him for requesting insulin from the nurse. J.A. III – 818. Mr. Scinto again requested his insulin; a public health officer also present called Mr. Scinto a "troublemaker," and Dr. Phillip then terminated the medical visit and asked Mr. Scinto to leave. *Scinto*, 841 F.3d at 227; J.A. III – 818–19; J.A. I – 302. Mr. Scinto acknowledged that it was "a stressful situation," as "[t]his [was] not the first time" Dr. Phillip had denied him the prescribed insulin. J.A. III – 819–20.

Dr. Phillip does not dispute that he denied Mr. Scinto insulin at that particular June 14 visit. *Scinto*, 841 F.3d at 227. Dr. Phillip's medical notes state that Mr. Scinto "kept interrupting, would not listen and continued to raise his voice even after he was asked not to shout," so Dr. Phillip "terminated the visit and asked him to leave the clinic." J.A. I – 302. Mr. Scinto was indeed angry, because Dr. Phillip's repeated refusals concerned him, J.A. III – 819–20, and "at least in part because his blood sugar was high." *Scinto*, 841 F.3d at 227.

Dr. Phillip contends that he developed an alternative plan "to monitor [Mr. Scinto's] blood sugar levels at mealtimes and to 'cover each meal with short acting insulin' if [Mr. Scinto] desired." *Id.* at 227-28 (citation omitted). But Dr. Phillip failed to abide by these instructions as well. *Id.* at 230. On June 22, 2005, Mr. Scinto submitted a request to Dr. Phillip for "insulin coverage whenever my blood glucose levels rise above 200 mg/dl." J.A. I – 295. Mr. Scinto submitted *another* written request on July 27, 2005, referencing his prior written demand and noting that his "medical conditions remain untreated + uncured[.]" J.A. I – 301. See *Scinto*, 841 F.3d at 230. Mr. Scinto also spoke with

Camp Administrator Susan McClintock multiple times about Dr. Phillip's failure to properly treat his diabetes. J.A. III – 821.

By September 10, 2005, Dr. Phillip's repeated denials of insulin took its toll. In January 2005, Mr. Scinto's A1c was 7, J.A. I – 312, and in April 2005, it was 6.9, J.A. I – 313, but by September 2005 – after Dr. Phillip's denials of insulin – Mr. Scinto's A1c ballooned to 9, J.A. I. – 304, an unhealthy level for a diabetic. *Scinto*, 841 F.3d at 228.[4] Dr. Phillip testified that this was an unacceptably high A1c for a diabetic, J.A. II – 456, and that a proper A1c is between 5.5 and 7.5. J.A. II – 452–53, 456–57. See *Scinto*, 841 F.3d at 228. The inadequate treatment exacerbated Mr. Scinto's diabetes, causing him pain and suffering and endangering his kidney, eyesight, nervous system, and psychological state. *Scinto*, 841 F.3d at 228.

2. ***Dr. Phillip and Ms. McClintock fail to provide medical care to Mr. Scinto during a medical emergency.*** On August 24, 2005, Mr. Scinto while in his cell experienced "severe abdominal pain," became incontinent, and began vomiting fluids and blood. J.A. I – 281. The prison, however, was on lockdown for a census count, and the water had been turned off because maintenance workers were repairing the showers. *Scinto*, 841 F.3d at 231. In fear and mindful of his serious medical conditions, Mr. Scinto used the emergency telephone to call in help. *Id.* at 231.

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[4] An A1c test measures a person's blood sugar over the prior three months. See *United States v. Diaz*, 630 F.3d 1314, 1323 n.6 (11th Cir. 2011).

When several officials showed up at his cell, including Dr. Phillip and Ms. McClintock, Mr. Scinto was "covered with partially wiped-up vomit and blood," and his cell had a stench. *Scinto*, 841 F.3d at 231. No one, however, inquired into Mr. Scinto's medical state or provided medical assistance. Dr. Phillip "looked at [Mr. Scinto] in disgust and turned his head and started to walk away," and Ms. McClintock yelled to another prison official, Officer Richard Holt, to "[l]ock him up" in administrative detention, also known as the Special Housing Unit. *Id*. (citations omitted). Inmates housed in the Special Housing Unit are "securely separated from the general inmate population[.]" 28 C.F.R. § 541.21.

Mr. Scinto did not receive medical attention for two days, and the next related entry in his medical records is dated August 29, 2005 – five days later. *Scinto*, 841 F.3d at 231. Mr. Scinto subsequently learned that the cause of his pain and bloody vomiting was gallstones. *Id.* at 232; J.A. III – 838; J.A. II – 451.

Mr. Scinto also learned he had been placed in administrative detention because he had received a "high-severity" incident report arising out of his use of the emergency telephone. J.A. I – 311. That incident report stated that Mr. Scinto used the emergency telephone because he wanted to take a shower so he could attend work. Mr. Scinto vigorously disputed this. *Scinto*, 841 F.3d at 231. The incident report was expunged. *Id.*

Mr. Scinto languished in the Special Housing Unit for months. Finally, on January 29, 2006, while still housed in the Special Housing Unit, Mr. Scinto wrote his congressman, Walter Jones. J.A. I – 100. Mr.

Scinto recounted his history at Federal Prison Camp Butner: that his diabetes had "worsened considerably"; that prison officials had denied him any help after he called in an emergency on August 24, 2005; that he was instead given a high severity incident report; and that his treatment had caused his A1c level to rise. J.A. I – 102. Congressman Jones' office responded on February 1, indicating that he had contacted the relevant authorities. J.A. I – 103. Warden Stansberry responded to Congressman Jones' letter on February 13, 2006 – and three days before Warden Stansberry sent her letter to Congressman Jones, Mr. Scinto was released from the Special Housing Unit. J.A. I – 104.

By then, he had spent almost six months in administrative detention. There was never an adjudicative hearing on the allegations in the incident report. J.A. III – 870–71, 938–39. When the district court requested "the entire record of the disciplinary proceedings against Scinto," J.A. III – 933, defense counsel filed a response and accompanying affidavit stating that "all records of the incident were expunged *and destroyed* pursuant to Bureau of Prisons ('BOP') policy." J.A. III – 934 (emphasis added).

A month after his release from the Special Housing Unit, Mr. Scinto was transferred to another prison in Maryland, then to a halfway house, and he was ultimately released in 2007.

3. ***The litigation and the Fourth Circuit's decision.*** Mr. Scinto brought this *Bivens* action *pro se* in 2008 in the U.S. District Court for the District of Columbia, but the case was transferred to the U.S. District Court for the Eastern District of North

Carolina after some defendants were dismissed.[5] *Scinto*, 841 F.3d at 226-27.

The district court initially dismissed Mr. Scinto's complaint, but the Fourth Circuit reversed, holding that the district court improperly failed to let Mr. Scinto exercise his right to file an amended complaint as a matter of course under Federal Rule of Civil Procedure 15(a)(1)(B). *Scinto v. Stansberry*, 507 F. App'x 311 (4th Cir. 2013). On remand, Petitioners filed their answers and the case proceeded to discovery. Following discovery, there were cross-motions for summary judgment; the district court denied Mr. Scinto's motion and granted Petitioners' motion. *Scinto*, 841 F.3d at 227.

Mr. Scinto appealed three claims on which the district court granted summary judgment. The first claim was that Dr. Phillip was deliberately indifferent in failing to provide Mr. Scinto with supplemental insulin according to the terms of his prescription, and for doing so for a non-medical reason. *Id.* at 227. The second claim was that Dr. Phillip and Ms. McClintock were deliberately indifferent in failing to provide Mr. Scinto any medical aid on August 24, even though his symptoms were outwardly apparent and serious. *Id.* The third claim was that Warden Stansberry failed to provide Mr. Scinto with a diet appropriate for a diabetic while he was housed in the Special Housing Unit. *Id.*

The Fourth Circuit reversed the judgment regarding the first two claims, and affirmed the judgment

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[5] The district judge was Judge James C. Dever, III.

regarding Mr. Scinto's claim against Warden Stansberry. With respect to Mr. Scinto's denial of insulin claim, the Fourth Circuit held that Dr. Phillip's "failure to provide him with insulin was an 'extreme deprivation' resulting in a 'serious or significant physical or emotional injury' or a 'substantial risk' thereof actionable under the Eighth Amendment." *Id.* at 228 (citation omitted). The court held that the denial of single dose of insulin alone may be enough to satisfy the requirements of the Eighth Amendment, but that in this case in particular the intermittent denial of multiple doses of insulin to a known insulin-dependent diabetic satisfied the requirements of the Eighth Amendment. *Id.* at 228-29. That Dr. Phillip himself prescribed the sliding scale and then refused to abide by it for a non-medical reason was "sufficient to prove a prima facie case of deliberate indifference" under the Fourth Circuit's precedent. *Id.* at 229 (citing *Parrish ex rel. v. Cleveland*, 372 F.3d 294, 303 (4th Cir. 2004), and *Miltier v. Beorn*, 896 F.2d 848, 853 (4th Cir. 1990), *overruled in part on other grounds by Farmer*, 511 U.S. at 837). Dr. Phillip asserted that Mr. Scinto's anger justified creating an alternative plan, but the Fourth Circuit rejected that argument, holding that it was disputed "whether Dr. Phillip followed through with that plan." *Scinto*, 841 F.3d at 230.

With respect to Mr. Scinto's claim that Dr. Phillip and Ms. McClintock were deliberately indifferent in failing to provide him with medical care when he called in a medical emergency on August 24, the Fourth Circuit held that "[v]iewing the facts in the light most favorable to [Mr. Scinto], as we must, [Mr. Scinto] was suffering from a serious, visible medical need at the time Dr. Phillip and Administrator McClintock

responded to his emergency call." *Id.* at 231. Because he was throwing up vomit and blood, incontinent, and in extreme stomach pain, his condition was so obviously in need of medical attention "that even a lay person would [have] easily recognize[d] the necessity for a doctor's attention." *Id.* at 231-32 (citing *Iko v. Shreve*, 535 F.3d at 241) (quotations omitted).

With respect to qualified immunity, Petitioners argued that it was not clearly established that a prison doctor violates the Eighth Amendment when "he does not give one single dose of insulin to a federal inmate, after the inmate becomes angry and hostile . . . and the doctor implements a plan to monitor the inmate thereafter[.]" *Id.* at 235. Petitioners similarly argued that it was not clearly established that a prison official violates the Eighth Amendment when she "follow[s] protocol by placing an inmate in administrative detention after he receives an incident report." *Id.*

The Fourth Circuit rejected these framings as too granular: "[t]here is no requirement that the 'very action in question [must have] previously been held unlawful' for a reasonable official to have notice that his conduct violated that right." *Id.* at 236 (quoting *Hope v. Pelzer*, 536 U.S. 730, 739 (2002), and *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The court further held that, with respect to the medical emergency claim, holding that Petitioners were entitled to qualified immunity "would require . . . a credibility determination inappropriate at" summary judgment. *Id.* at 236 n.8.

Instead, the Fourth Circuit held that the inquiry with respect to qualified immunity is whether Petitioners' conduct, viewed through the proper

summary judgment lens, violated "the right of prisoners to receive adequate medical care and to be free from officials' deliberate indifference to their known medical needs." *Id.* at 236. The court cited a prior case, *Iko v. Shreve*, 535 F.3d 225, 243 n.12 (4th Cir. 2008), holding that this standard means that an official's failure to conduct any medical evaluation of an inmate who is known to be or is apparently suffering from serious symptoms is liable under the Eighth Amendment, even if those symptoms were caused by an official trying to force compliance with a prison official's instructions. *Iko* itself involved a defendant who failed to conduct any medical evaluation after he pepper-sprayed an inmate to compel compliance during a cell removal. *Id.* at 236. The Fourth Circuit also cited precedent holding that the Eighth Amendment is violated when medical care is denied or delayed after a physician or other health care provider "concludes with reasonable medical certainty" that the inmate is suffering from a "serious disease or injury." *Bowring v. Godwin*, 551 F.2d 44, 47-48 (4th Cir. 1977). Applying these and other precedents, the Fourth Circuit held that Petitioners were not entitled to qualified immunity.

The Fourth Circuit denied the petition for rehearing en banc. No judge called for a poll.

REASONS FOR DENYING THE PETITION

I. SUMMARY REVERSAL IS NOT APPROPRIATE FOR THIS CASE.

Petitioners request that the Court "issue a writ of certiorari and reverse the decision below," as it did in *White v. Pauly*, 137 S. Ct. 548 (2017), and as it has done in other qualified immunity cases. Pet. 3.[6] Summary reversal is not appropriate here.

1. The Court's summary reversals on qualified immunity are typically Fourth Amendment cases where the standard being applied is the more general and objective reasonableness standard, *Graham v. Connor*, 490 U.S. 386, 395 (1989), where there was a dissent either at the panel or from the denial of rehearing en banc, where the case law did not firmly tilt in the plaintiff's direction, and where there was instead a circuit split or divergent case law on whether the officer's conduct violated the Fourth Amendment. See, *e.g.*, *Carroll v. Carman*, 135 S. Ct. 348, 349-50 (2014) (reversing when there was a circuit split on "whether a police officer may conduct a 'knock and talk' at any entrance that is open to visitors rather than only the front door"); *Stanton v. Sims*, 134 S. Ct. 3, 5 (2013) (reversing when cases were split on "whether an officer with probable cause to arrest a suspect for a misdemeanor may enter a home without a warrant while in hot pursuit of that suspect").

Mr. Scinto's case is the opposite: it involves a subjective and more granular standard of liability under the Eighth Amendment, there was no dissent on

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[6] "Pet." references are to the Petition for a Writ of Certiorari.

the panel or from the denial of the petition for rehearing en banc, and there is a substantial amount of case law that all tilts in varying degrees in Mr. Scinto's favor. Petitioners cite not a single case suggesting otherwise. They do not even seek review of the Fourth Circuit's holding that they violated the Eighth Amendment.

2. The clearly established analysis in this case is mired in fact disputes, making it likely impossible for the Court to render a clear holding on qualified immunity. *Infra* at 17-22 (discussing how Petitioners' questions presented import genuinely disputed factual propositions). Even if the Court was inclined to sift through the 1,000-page record in this case and try to piece together a version of the facts that is undisputed, that is not a basis for granting the petition: error correction or disagreements about how the summary judgment standard applies to a given record are not appropriate bases for granting a petition for a writ of certiorari, even in cases involving qualified immunity. See *Tolan*, 134 S. Ct. at 1868-69 (Alito, J., concurring); *Salazar-Limon v. City of Houston, Tex.*, 137 S. Ct. 1277, 1278 (2017) (Alito, J., concurring). The Fourth Circuit's opinion does not modify the Eighth Amendment deliberate indifference standard to sweep within its ambit novel types of conduct; it merely applies the deliberate indifference standard to a set of facts that are in the heartland of the case law.

3. If the Court is inclined to grant the petition, Respondent respectfully submits that summary reversal is not the appropriate vehicle for resolution of this case. The Court has not previously conducted a qualified immunity analysis in the context of a medical

deliberate indifference case; the first time the Court weighs in on this topic should be done with the benefit of full merits briefing, amicus participation from interested stakeholders, and oral argument.

II. THIS CASE DOES NOT PRESENT THE QUESTIONS STATED IN THE PETITION.

Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In making that assessment, the reviewing court must view the record in the light most favorable to the non-movant. *Tolan*, 124 S. Ct. at 1866. The Court's qualified immunity cases in particular "illustrate the importance of drawing inferences in favor of the nonmovant, even when, as here, a court decides [or is deciding] only the clearly-established prong of the standard." *Id.* at 1866. While the constitutional right asserted must be defined within the "specific context" of the particular case, "courts must take care not to define a case's 'context' in a manner that imports genuinely disputed factual propositions." *Id.* (citations and quotations omitted). Petitioners ignore *Tolan* and, in defining this case's context, improperly resolve disputed factual questions in their own favor and present the facts in the light most favorable to themselves.

1. Examples of this appear on the first page the petition. Petitioners' first question presented asks whether it was a clearly established violation of the Eighth Amendment for a prison official to "decline[] to administer to a hostile inmate a single dose of insulin

in favor of monitoring blood sugar[.]" Pet. i. Virtually every word of that statement is disputed.

Whether Mr. Scinto was "hostile" is disputed. At the time of this incident Mr. Scinto was a non-violent offender in his mid-50s, seriously ill, and recovering from a knee replacement. *Scinto*, 841 F.3d at 226; J.A. II – 367; J.A. I – 287; J.A. III – 944-45. Mr. Scinto testified that he was denied insulin, that a public health officer in the room called him a "troublemaker," and that when Mr. Scinto pleaded, "Please give me the insulin I . . . need," Dr. Phillip responded, "No. Get out." J.A. III – 818. Mr. Scinto complied and left. *Id.* No security officer was called to subdue him or escort him out. J.A. III – 652. Even Dr. Phillip's notes at the time indicate only that Mr. Scinto "kept interrupting, would not listen and continued to raise his voice even after he was asked not to shout." J.A. I – 302. Mr. Scinto indeed became "angry" – because Dr. Phillip refused to provide him insulin, J.A. III – 818, and because Mr. Scinto's blood sugar was high, *Scinto*, 841 F.3d at 227. These facts contradict the theory that Mr. Scinto was a hostile threat, and are particularly inconsistent with the theory that Mr. Scinto was so hostile that a doctor denying him insulin was appropriate and lawful.

Whether Mr. Scinto was denied a single dose of insulin is disputed. The record is that he was intermittently denied multiple doses of insulin over a period of months. *Scinto*, 841 F.3d at 228. That Mr. Scinto's A1c skyrocketed from 7 in January 2005 to 9 in September 2005 is further evidence indicating that Dr. Phillip denied him insulin more than once during the three months preceding September 2005 (June, July

and August). See J.A. I – 304, 312, 313; *Scinto*, 841 F.3d at 228.

Whether Dr. Phillip declined to administer supplemental insulin "in favor of monitoring blood sugar" is also disputed. Dr. Phillip's notes indicate that he would "monitor [Mr. Scinto's] blood sugar levels at mealtimes and . . . cover each meal with short acting insulin if [Mr. Scinto] desired." *Scinto*, 841 F.3d at 227-28 (citation omitted). But it is disputed whether Dr. Phillip actually did that: Mr. Scinto continued to submit written, formal requests to Dr. Phillip after the June 14 denial – on June 22 and July 27, 2005 – requesting insulin coverage consistent with his prescription, and Mr. Scinto's A1c level rose dramatically from 7 (normal range) to 9 (very high and unhealthy) in September 2005. *Scinto*, 841 F.3d at 228. Because an A1c test is a snapshot of a person's blood sugar over the *prior* three months, *Diaz*, 630 F.3d at 1323 n.6, the medical records contradict Dr. Phillip's claim and corroborates Mr. Scinto's testimony that he was not receiving the insulin he needed in the preceding June, July, and August 2005. The Fourth Circuit held that these facts were sufficient to create a genuine dispute of fact regarding whether Dr. Phillip followed through or simply continued denying Mr. Scinto treatment. *Scinto*, 841 F.3d at 228.

2. With respect to Mr. Scinto's medical emergency claim, Petitioners frame the question presented as whether it was a clearly established violation of the Eighth Amendment for prison officials to place an inmate "in administrative detention after he disrupts prison function by reporting a health emergency later determined not to be life-threatening[.]" Pet. i.

That is not Mr. Scinto's claim or an accurate statement of the record. The claim is that on August 24, 2005, Mr. Scinto – while the prison was on lockdown and the water turned off – began experiencing extreme stomach pain, throwing up vomit and blood, and became incontinent, and so he called in a medical emergency using the prison phone. *Scinto*, 841 F.3d at 231. At the time, he believed his symptoms may have been related to his hepatitis C, though he later was told the cause was likely gallstones. J.A. III – 838. When Dr. Phillip and Ms. McClintock arrived at his cell, they observed Mr. Scinto – whose cell "reeked to high heaven" and who was covered in "partially wiped-up vomit and blood" – but refused to provide any medical care. *Scinto*, 841 F.3d at 231. Dr. Phillip "looked at [Mr. Scinto] in disgust and turned his head and started to walk away," while Ms. McClintock ordered prison guards to "lock him up" in the Special Housing Unit. *Id.* Mr. Scinto did not receive medical attention from either Dr. Phillip or Ms. McClintock; he received no medical attention for at least two more days, and the only related entry in his medical records was dated August 29, 2005, five days after the emergency. *Id.* Both Petitioners knew that Mr. Scinto was an ailing and older inmate. See J.A. II – 417, 460, 520, 584-85, and J.A. III – 825-26. Mr. Scinto's medical records also indicated that he may have been experiencing "complications arising from an earlier gallstone diagnosis." *Scinto*, 841 F.3d at 232. The Fourth Circuit concluded that, based on this record, a jury "could reasonably infer that failing to treat, for two to five days, an inmate who is vomiting blood and experiencing evident physical distress creates a substantial risk that serious bodily injury will result or has already occurred." *Id.*

Petitioners' framing of the question says not a word about any of this, and instead erroneously focuses on whether it was proper to segregate Mr. Scinto in the Special Housing Unit. But that is irrelevant to whether Petitioners are entitled to qualified immunity: even if Mr. Scinto was properly segregated in the Special Housing Unit, that does not justify the denial of medical care to an inmate vomiting blood, incontinent, and in extreme stomach pain. *Id.* at 232 (holding that Petitioners "decision to send Plaintiff to the Special Housing Unit without providing medical aid created a substantial risk of serious injury").

Moreover, this argument twists the summary judgment standard. Petitioners ask the Court to conclude that Mr. Scinto fabricated all of the events relating to his medical emergency, and then ask whether the law was clearly established that segregating Mr. Scinto in the Special Housing Unit for using the emergency phone was a violation of his Eighth Amendment rights. That cannot be done at summary judgment: even in the qualified immunity analysis, the facts must be viewed in the light most favorable to Mr. Scinto. *Tolan*, 124 S. Ct. at 1866.

That is what the Fourth Circuit correctly held. *Scinto*, 841 F.3d at 236 n.8 ("We reject Dr. Phillip's and Administrator McClintock's framing of the right at issue in Plaintiff's medical emergency claim for the additional reason that it would require us to make a credibility determination inappropriate at the summary judgment stage of litigation."). On the one hand, the record evidence shows that Mr. Scinto was exhibiting outwardly apparent symptoms of a health emergency, was known as a sick man, and yet received

no medical aid from Petitioners. *Id.* at 231-32. On the other hand, Petitioners assert that Mr. Scinto disrupted prison function and reported a non-life threatening health emergency. There is no way to resolve that dispute at summary judgment in favor of Petitioners, in particular because the incident report and all documentation relating to Mr. Scinto's administrative segregation were destroyed by the Bureau of Prisons, *id.* at 231, making it impossible for Petitioners to now argue that their version of events should be accepted as undisputed.

III. PETITIONERS ARE NOT ENTITLED TO QUALIFIED IMMUNITY.

Qualified immunity protects government officials performing discretionary functions from suit for civil damages liability. *Anderson*, 483 U.S. at 638. The defense has two parts. First, the Court asks whether the plaintiff's allegations, "if true, establish a constitutional violation," and second, the Court asks whether the government official's challenged conduct violated "clearly established" statutory or constitutional rights. *Hope*, 536 U.S. at 736, 738. If the answer to either question is "no," then the defendant official is entitled to immunity from suit. Only the second part – the clearly established requirement – is raised by Petitioners. Pet. i.

With respect to the clearly established requirement, the overall "focus is on whether the officer had fair notice that her conduct was unlawful[.]" *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). The clearly established requirement operates in civil litigation identically to how the "fair warning" requirement operates in criminal law: it ensures that vaguely

worded constitutional rules, like vaguely worded criminal statutes, are not used to pursue defendants for conduct they had no "reasonable warning" was unlawful. *Lanier*, 520 U.S. at 269-71. The "salient question" for purposes of the clearly established analysis is "whether the state of the law" at the time of the events in question gave Petitioners "fair warning that their alleged treatment of [Mr. Scinto] was unconstitutional." *Hope*, 536 U.S. at 741. The answer to that question in this case is "yes."

A. Petitioners had fair and reasonable warning that their conduct violated Mr. Scinto's constitutional rights.

Several sources of law placed Petitioners on notice that their conduct violated Mr. Scinto's constitutional rights.

1. *Estelle* itself discussed specific factual circumstances that neatly map onto the facts of Mr. Scinto's case: "indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." 429 U.S. at 104-05 (footnotes omitted).

With respect to the insulin claim, Dr. Phillip prescribed Mr. Scinto a sliding scale regimen of insulin keyed to his blood sugar, and then intentionally interfered with that treatment for a non-medical reason. *Scinto*, 841 F.3d at 227-29. With respect to the medical emergency claim, Mr. Scinto was experiencing outwardly apparent and severe symptoms showing that he needed medical attention, but Petitioners

intentionally denied him access to any medical care for days, and instead locked him in segregated housing for six months. *Id.* at 230-32. These facts fall into the examples outlined by the Court in *Estelle* in 1976, and thus provided fair notice that Petitioners' conduct in 2005 violated Mr. Scinto's constitutional rights. 429 U.S. at 104-05. The Fourth Circuit cited these very pages of *Estelle* in holding that Petitioners were not entitled to qualified immunity. *Scinto*, 841 F.3d at 236 (citing *Estelle*, 429 U.S. at 104-05).

Following *Estelle*, the Fourth Circuit has set up more particular rules that identify what types of circumstances distinguish medical negligence from deliberate indifference. *Miltier* held that a prison official's "[f]ailure to respond to an inmate's known medical needs raises an inference that there was deliberate indifference to those needs," and that "[f]ailure to provide the level of care that a treating physician himself believes is necessary could be found conduct which surpass[es] negligence and constitute[s] deliberate indifference." 896 F.2d 848, 853 (4th Cir. 1990) (citations and quotations omitted), *overruled in part on other grounds by Farmer*, 511 U.S. at 837. See also *Parrish*, 372 F.3d at 303.

A plaintiff can pierce qualified immunity by identifying a prior case that has *reasoning* that advises officers that certain conduct is unconstitutional, even if the facts of that prior case are different. *Hope*, 526 U.S. at 743-44 (holding that a prior Eleventh Circuit case's "reasoning, though not the holding, . . . sent the . . . message to reasonable officers in that Circuit" about the unconstitutionality of using a hitching post). Here, the reasoning of *Estelle* and the examples it

identifies of what would constitute deliberate indifference, read alongside the reasoning of *Miltier* and its progeny, provided Petitioners with reasonable warning that their conduct violated the Eighth Amendment. See *Scinto*, 841 F.3d at 225, 226, 229 (discussing *Miltier*, *Parrish*, and *Estelle*).

2. The federal courts of appeal have held that conduct similar to that of Petitioners in this case violates the Eighth Amendment.

Denial of insulin. The overwhelming weight of federal appellate authority stands for the proposition that consciously denying insulin to an insulin-dependent diabetic inmate violates the Eighth Amendment. In *Lolli v. County of Orange*, 351 F.3d 410, 419 (9th Cir. 2003), the Ninth Circuit denied qualified immunity to state officers who, the plaintiff alleged, knew the arrestee was diabetic and needed insulin but did not provide him with any. Collecting cases from six different circuits and case law stretching back to 1981, the court held that "a constitutional violation may take place when the government does not respond to the legitimate medical needs of a detainee whom it has reason to believe is diabetic." *Id.* (citing *Natale v. Camden County Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003); *Egebergh v. Nicholson*, 272 F.3d 925, 927–28 (7th Cir. 2001); *Hunt v. Uphoff*, 199 F.3d 1220, 1223–24 (10th Cir. 1999); *Roberson v. Bradshaw*, 198 F.3d 645, 648 (8th Cir. 1999); *Weyant v. Okst*, 101 F.3d 845, 857 (2d Cir. 1996); *Slay v. Alabama*, 636 F.2d 1045, 1046 (5th Cir. 1981)). *Lolli* and these cases provided reasonable warning to Dr. Phillip that it was unconstitutional to refuse to administer Mr. Scinto's prescribed insulin for non-medical reasons.

See *Garretson v. City of Madison Heights*, 407 F.3d 789, 798 (6th Cir. 2005) (holding that qualified immunity was inappropriate where plaintiff advised police officers that she needed insulin and was past due for her current dose, and officers failed to provide insulin).

Petitioners make several arguments in response, none of which is persuasive. First, they assert that "the Fourth Circuit did not identify any law that could have allowed Petitioners to understand that they violated Respondent's rights under the factual circumstances they faced," Pet. 12. That is not true: "several of our Sister Circuits have denied defendants summary judgment on Eighth Amendment claims alleging that prison officials deprived diabetic inmates of insulin." *Scinto*, 841 F.3d at 230 (citing *Lolli*, 351 F.3d at 419-20, and *Natale*, 318 F.3d at 582-83).

Petitioners next assert that it was only a single dose of insulin that was denied. Pet. 2. As a matter of fact, that is disputed: Mr. Scinto's record evidence is that he was denied *multiple* doses of supplemental insulin. *Supra* at 18-19. As a matter of law, it is irrelevant: the Seventh Circuit in 2001 held that two officers who failed to provide the plaintiff detainee with a single dose of insulin for a non-medical reason – because they wanted to quickly get him to his bond hearing – were liable under the Eighth Amendment when they knew that the plaintiff was an insulin-dependent diabetic. *Egebergh*, 272 F.3d at 926-28. Thus, even assuming Petitioners' preferred version of the record is accurate (it's not), Mr. Scinto would still prevail on piercing the immunity.

Petitioners contend that it was not clearly established that the Eighth Amendment prohibits a prison doctor from denying insulin to an insulin-dependent diabetic inmate when (a) the inmate was angry, and (b) the prison doctor formulated an alternative plan after denying him that medical care. Pet. 2. As noted above, *supra* at 18-19, these facts are disputed. The record in the light most favorable to Mr. Scinto is that while he was "angry," he was not threatening, hostile, or violent. Similarly, while Dr. Phillip's notes reflect that he was going to monitor Mr. Scinto's blood sugar and provide short-acting insulin at meal times when Mr. Scinto desired, it is disputed whether Dr. Phillip followed through with this purported plan. *Supra* at 19; *Scinto*, 841 F.3d at 230. In any event, Petitioners' argument fails on the law: even a history of "threatening and argumentative behavior" does not supply a legal basis for the denial of medical care to an inmate, and at a minimum it raises a factual dispute about whether it was appropriate to deny medical care for a non-medical reason under those circumstances. *Hartsfield v. Colburn*, 371 F.3d 454, 456–57 (8th Cir. 2004).

Medical emergency. The federal courts of appeal are virtually unanimous in holding that an official acts with deliberate indifference and violates the Eighth Amendment when she provides no medical aid to an inmate whose symptoms are "so obvious that even a lay person would easily recognize the necessity for a doctor's attention[.]" *Simkus v. Granger*, 940 F.2d 653 (4th Cir. 1991) (citations and quotations omitted); *Gaudreault v. Municipality of Salem*, Mass., 923 F.2d 203, 208 (1st Cir. 1990); *Monmouth Cty. Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d

Cir. 1987); *Blackmore v. Kalamazoo Cty.*, 390 F.3d 890, 897 (6th Cir. 2004); *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7th Cir. 1997); *Coleman v. Rahija*, 114 F.3d 778, 784 (8th Cir. 1997); *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980); *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003).

The Fourth Circuit relied on this line of case law in holding that Petitioners' failure to provide medical aid in the face of Mr. Scinto's apparent symptoms – extreme stomach pain, throwing up vomit and blood, and becoming incontinent – violated the Eighth Amendment. *Scinto*, 841 F.3d at 231-32 ("This is the sort of serious medical condition 'so obvious that even a lay person would easily recognize the necessity for a doctor's attention.'") (quoting *Iko*, 535 F.3d at 241). That is enough to satisfy the clearly established requirement: a constitutional rule may apply with obvious clarity to the defendant's conduct such that it cannot be said that he or she did not have reasonable warning that what was done violated the plaintiff's constitutional rights. *Brosseau*, 543 U.S. at 199. Respondent's case – denying any medical care for days to an inmate vomiting blood, incontinent, and in extreme pain, and instead punishing him for requesting medical aid – is the paradigm deliberate indifference case. See *Hope*, 536 U.S. at 745 (noting "obvious cruelty" of defendants' treatment of inmate in denying qualified immunity).

Petitioners argue that they are entitled to immunity because Mr. Scinto's emergency was "later determined not to be life-threatening," Pet. i. Again, this argument is wrong as a matter of both fact and law. On the facts, neither Petitioner indicated that they refused Mr.

Scinto medical aid because they perceived him to be suffering from a non-life threatening emergency: "[i]n recounting their version of events, prison officials make no mention of Plaintiff's physical appearance or medical condition," *Scinto*, 841 F.3d at 231 n.5, and they point to no documents corroborating their implied argument that they knew Mr. Scinto was only mildly suffering. Indeed, they cannot do so, because the disciplinary record relating to that incident was destroyed by the Bureau of Prisons. *Id.* at 231.

That is also not the law. Whether Mr. Scinto's symptoms were life threatening or not is not a legal justification for denying him any medical care whatsoever; rather, the case law holds that a prison official acts with deliberate indifference when she refuses to provide medical aid and it later turns out the inmate was suffering from gallstone-related pain, as was the case here. *Toombs v. Bell*, 798 F.2d 297, 297–98 (8th Cir. 1986) (inmate with gallstone-related pain properly asserted Eighth Amendment claim against nurse). In any event, Petitioners did not know whether Mr. Scinto's symptoms were life-threatening or not, and "the Court considers only the facts that were knowable to the defendant" officials in qualified immunity cases. *White*, 137 S. Ct. at 550.

Petitioners next assert that the Fourth Circuit split with the approach taken by other federal courts of appeal. Pet. 9-12. That is incorrect. Other circuits have similarly held that officials violate the Eighth Amendment when they refuse medical aid to inmates who exhibit the same symptoms Mr. Scinto exhibited. See *Phillips v. Roane Cty.*, Tenn., 534 F.3d 531, 540 (6th Cir. 2008) (finding violation of the Eighth

Amendment when pretrial detainee exhibited "nausea, vomiting of blood, swelling, lethargy, and chest pains"); *Gayton v. McCoy*, 593 F.3d 610, 621 (7th Cir. 2010) (observing that "having blood in one's vomit, or the like" would notify prison officials of serious medical needs); *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005) ("[A] lay person would recognize the need for a doctor's care to treat severe heartburn and frequent vomiting."). The case law clearly established that Petitioners' conduct violated the Eighth Amendment.

B. The Fourth Circuit's framing of the right was proper.

Petitioners insist that the Fourth Circuit's denial of qualified immunity violates this Court's precedent by relying on a "clearly established" right that is defined at too high a level of generality, in violation of *White v. Pauly*, 137 S. Ct. at 548. See Pet. 7-8. They are wrong.

1. Petitioners misconstrue the law of qualified immunity. Their framing of the questions presented assumes that Mr. Scinto can only pierce the immunity if he identifies a prior case where liability was found on facts that precisely match the facts of his case. Pet. i. That is not the law. Qualified immunity is not only defeated when a plaintiff identifies a case where "the very action in question has previously been held unlawful[.]" *Hope*, 536 U.S. at 739-40. Although identifying a case with "similar circumstances" *can* be a relevant part of the analysis, it is not the only way to pierce the immunity. For example, this Court has relied on state administrative regulations, U.S. Department of Justice reports, the obviously cruel nature of the challenged conduct, and factually dissimilar circuit court cases with applicable reasoning

to hold that certain conduct was a clearly established violation of the Eighth Amendment. *Id.* at 741-45.

In any event, "similar" does not mean *identical*: this Court has repeatedly cautioned that qualified immunity is not a case matching exercise. The Court rejected the Sixth Circuit's "fundamentally similar" prior case requirement in *Lanier*, 520 U.S. at 269-71, and rejected the Eleventh Circuit's "materially similar" prior case requirement in *Hope*, 536 U.S. at 739. The Solicitor General has similarly argued that insisting on a materially similar prior case to defeat qualified immunity is improper. Brief for the United States as Amicus Curiae, *Hope v. Pelzer*, Case No. 01-209, at 18 (Feb. 2002). Thus, Petitioners' assertion that Mr. Scinto can only pierce qualified immunity if he can find a case matching the facts stated in Petitioners' questions presented is baseless. None of the circuit court cases Petitioners cite hold otherwise. See Pet. 9-11.

2. The Fourth Circuit's clearly established analysis was sufficiently particularized to the facts of Respondent's case. Petitioners' contrary argument is based on improperly parsing a few lines of the Fourth Circuit's opinion in isolation rather than reading the opinion in its totality. As described above, *supra* at 23-30, the Fourth Circuit cited extensive case law with applicable reasoning and similar facts – *Estelle*, *Miltier*, *Parrish*, *Iko*, *Bowring*, the denial of insulin case law, and the medical emergency case law. The Fourth Circuit's decision is thus fully consistent with *White*, as it cites a quantum of "existing precedent" that placed the "constitutional question[s] beyond debate," *White*, 137 S. Ct. at 551 (citation omitted).

3. *White* is inapposite. *White* was a Fourth Amendment case in which a divided panel denied qualified immunity to an officer who shot and killed a man after he and his brother shouted "we have guns," his brother had opened fire on the officer's colleagues, and the suspect pointed a shotgun in the defendant officer's direction. 137 S. Ct. at 549-50 (citation omitted). The panel majority held that "clearly established" case law mandated that the officer issue a warning before using deadly force, but there was no prior case law indicating that using deadly force had to be preceded by a warning when officers were faced with the imminent threat of armed violence, and this Court reversed on that basis. *Id.* at 552-53.

White is nothing like Mr. Scinto's case. The Eighth Amendment case law governing Mr. Scinto's claim is much closer to the facts of Mr. Scinto's case than were the Fourth Amendment cases governing the plaintiff's excessive force claim in *White*, *supra* at 25-30. Nor did the Fourth Circuit expand or change the Eighth Amendment standard to capture new types of conduct, as the lower court did in *White*. More generally, looking to Fourth Amendment case law to determine what level of granularity is appropriate in the clearly established analysis for an Eighth Amendment claim is improper: the Eighth Amendment deliberate indifference standard is a subjective test and already substantially more granular than the objective "reasonableness" test in Fourth Amendment cases, *Graham*, 490 U.S. at 395. How the clearly established requirement is applied in an Eighth Amendment case therefore cannot mirror how it applies in a Fourth Amendment case, and thus *White* cannot bear the weight Petitioners have placed upon it.

CONCLUSION

For the reasons stated, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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