No. 21-1552

IN THE
Supreme Court of the United States

CENTRAL SPECIALTIES, INC.,

Petitioner,

v.

JONATHAN LARGE,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The case below is the poster child for the importance of *Harlow*'s scope-of-authority limitation on qualified immunity. Without this limitation, the test—which focuses on the existence of on-point caselaw—produces perverse results, providing a greater protection to, say, engineers performing *unsanctioned* traffic stops than police officers performing *sanctioned* traffic stops.

That's exactly what happened below. Because the Eighth Circuit's "inquiry beg[an] and end[ed] with the clearly established prong," without first being filtered through the scope-of-authority analysis, "no case [came] close to demonstrating" that a county engineer couldn't "prevent[] . . . trucks from traveling on a highway before the drivers complied with his request to wait for the arrival of law enforcement." Pet.App.10a–12a. Had a similar case been brought against a police officer—who, unlike a county engineer, has the legal authority to stop vehicles on the highway—plenty of precedent would have clearly established the law. See *United States* v. *Washington*, 455 F.3d 824, 826 (8th Cir. 2006) (a driver's Fourth Amendment rights were violated when police made a stop based on a misreading of a law); *United States* v. *Jones*, 269 F.3d 919, 924 (8th Cir. 2001) (a driver's Fourth Amendment rights were violated when police extended a stop past the point necessary to dispel initial suspicion).

To avoid such perverse results, this Court and seven federal circuits turn to qualified immunity only after asking whether the official acted within the scope of his authority. Pet.10–16.

Just last month, the Fifth Circuit—in yet another direct conflict with the Eighth—denied qualified immunity in a near-identical case involving a permit officer who stopped an ambulance from driving out of a parking lot because he believed that the ambulance operated without a permit. *Sweetin* v. *City of Texas City*, 48 F.4th 387, 390 (5th Cir. 2022). The permit officer ordered the ambulance driver to wait for a fire marshal to arrive and ticket him, even though nowhere did the state law provide permit officers with "the authority to conduct stops of any kind." *Id.* at 390–392. "To even get into the qualified immunity framework," the Fifth Circuit held, "the government official must satisfy his burden of establishing that the challenged conduct was within the scope of his discretionary authority." *Id.* at 392 (cleaned up). Because the permit officer failed to meet this burden, qualified immunity was not available. *Ibid.*

The opinion below is in clear disagreement with this holding. Just like the permit officer in Texas, the county engineer here stopped drivers from going about their business and forced them to wait to be ticketed. Pet.App.5a–6a. And just like under Texas law, nothing under Minnesota law allowed non-law-enforcement officers to do such things. *Id.* at 22a–24a; see also Pet.5, 20–21. Unlike the Fifth Circuit, however, the Eight Circuit skipped the state-law scope-of-authority analysis, choosing to proceed straight to the qualified immunity inquiry. Pet.App.10a. As a result, the county engineer in this case got qualified immunity for stopping trucks, since "no case [came] close" to clearly establishing that engineers can't prevent trucks from traveling on a highway. *Id.* at 11a; see also *Cummings* v. *Dean*, 913 F.3d 1227 (10th Cir.

2019). A permit officer in Texas, on the other hand, did not receive immunity, even if no case came close to clearly establishing that permit officers can't prevent ambulances from driving out of parking lots. *Sweetin*, 48 F.4th at 392.

Respondent does not address this fundamental misalignment between the circuits and the absurd results produced by the Eighth and Tenth Circuits' failure to test for an official acting outside of his authority. Instead, respondent imagines a vehicle problem where none exists. He argues (at 16) that CSI has failed to challenge the Eighth Circuit's determination that respondent's actions did not amount to a traffic stop. But the Eighth Circuit made no such determination. It expressly stated to the contrary that "the clearly established prong" of the qualified immunity test was the only issue it was reaching. Pet.App10a. It is true that, after holding against CSI on the second prong of qualified immunity, the Eighth Circuit addressed dissent's criticisms by characterizing the facts as not involving "an unlawful traffic stop." BIO16 (citing Pet.App11a–12a). But that is "nothing more than dictum." *United States* v. *Searcy*, 284 F.3d 938, 943 (8th Cir. 2002) (explaining that the district court wrongly relied on the appellate court's characterization of defendant as being "coaxed"). And even by the Eighth Circuit's own description of facts, see *infra* at 8, "this was in fact a stop and detention." Pet.App.20a n.3 (Grasz, J., dissenting).

At bottom, respondent's vehicle argument is a contradictory attempt to obscure the glaring circuit split. Either (1) as respondent explains (at 24), "there is no

such threshold state-law-authority condition on qualified immunity," and defendants who act outside of their duties get to escape scrutiny because no caselaw will ever clearly establish the unconstitutionality of their conduct, Pet.App.11a; or (2) qualified immunity is cabined to "suits for civil damages arising from actions within the scope" of an official's duties, and these defendants cannot avail themselves of the clearly established test and must defend their actions without the benefit of qualified immunity, *Sweetin*, 48 F.4th at 392. Either way, the circuits are split and need this Court's intervention.

I. The decision below widens the split on whether qualified immunity applies to officials acting outside of their duties.

As respondent (at 20) agrees, "the Eighth Circuit chose to resolve this case on qualified immunity grounds." By doing so, it departed from "over half the circuit courts of appeal" that first filter qualified-immunity cases through a scope-of-authority analysis. *Stanley* v. *Gallegos*, 852 F.3d 1210, 1214 (10th Cir. 2017); see also Pet.10–16. This filter is necessary to ensure that qualified immunity only protects officials who perform their duties. See *Harlow* v. *Fitzgerald*, 457 U.S. 800, 814 (1982). Otherwise, given that the design of the qualified immunity test focuses on the existence of clearly established precedent, those officials who act beyond their legal authority fall through the cracks of the caselaw and receive a greater degree of protection than officials who do not. Pet.30.

Instead of first asking whether respondent Large acted within the scope of his authority, as understood

by him or delineated by Minnesota law, *id*. at 20–21, the court below went straight to the qualified immunity test, focusing exclusively on its second prong[1] and looking for another case where it was determined that a county engineer can't prevent "trucks from traveling on a county highway before the drivers complied with his request to wait for the arrival of law enforcement." Pet.App.12a. Not surprisingly, it found none.

Respondent does not address or even mention this circuit split, other than oddly noting that the decision below did not explicitly cite *Cummings* v. *Dean* (whose side of the split the Eighth Circuit joined). BIO16. Instead, respondent makes two contradictory arguments to undermine the importance of the split: first (at 18), that the court below did perform the scope of authority analysis, and second (at 16), that there was no reason for the court below to perform the scope of authority analysis, since it "expressly determin[ed]" that respondent "did *not* conduct a traffic stop or detain the drivers."

As to his first argument, the majority did not perform the scope of authority analysis, plainly explaining instead that "our inquiry begins and ends with the

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[1] Prong two focuses on whether the alleged constitutional violation is a reasonable one and looks for a circuit court or Supreme Court precedent that would have fairly warned a reasonable officer of his act's unconstitutionality. *Pearson* v. *Callahan*, 555 U.S. 223, 244 (2009). This standard becomes especially relevant for the purposes of BIO's erroneous discussion of *Davis* v. *Scherer*, 468 U.S. 183 (1984), which, contra BIO24–25, focuses on this second prong and not on the threshold scope-of-authority inquiry, *Davis*, 468 U.S. at 192; see also *infra* at 8–9.

clearly established prong." Pet.App.10a. For that reason, the court only looked to whether CSI presented any "case that comes close to demonstrating that the rights it alleges were violated were clearly established." *Id.* at 11a. Acknowledging that this case—unsurprisingly—presented "unique circumstances," it found none. *Id.* at 11a–13a. Nowhere in the opinion, contra BIO17, did the majority even discuss whether "Minnesota law" authorized respondent's conduct, a dispositive inquiry that seven other circuits would have performed, see Pet.10–16; see also *Sweetin*, 48 F.4th at 392 (because it was clearly outside of a permit officer's scope of authority to detain an ambulance for lack of a permit, qualified immunity was denied without reaching the actual test).

To bolster its second argument, respondent (at 16, 20) states that the decision below did not contribute to the split because the court simply determined that "no unlawful stop occurred." But the court below made no such determination. It expressly skipped prong one of the qualified immunity test, which would have dealt with whether respondent's behavior violated the Constitution. Pet.App.10a. Instead, the court single-mindedly focused on prong two, stating that "CSI simply presents no case that comes close to demonstrating that the rights it alleges were violated were clearly established." *Id.* at 11a.

Furthermore, the court laid out the facts in a manner that on remand would have left little choice for the district court but to find that the traffic stop was unlawful and conclude that a constitutional violation took place, making the Eighth Circuit's decision to not

perform the scope-of-authority analysis outcome determinative, contra BIO22. For example, the majority acknowledged that respondent Large "used his [official] vehicle to block the road and motioned to the drivers to pull over." Pet.App.5a. Elsewhere it added that respondent "prevented the CSI trucks from traveling on a county highway before the drivers complied with his request to wait for the arrival of law enforcement." *Id.* at 12a. In addition, the court recognized that in his deposition respondent agreed "that he did not have the authority to perform a traffic stop." *Ibid.* And the summary judgment record further reflected that one of the drivers "*had* to wait until law enforcement arrived," being "detained from 2:11 until 5:30 p.m." *Id.* at 20a n.3 (emphasis added); see also *id.* at 5a. The other driver "testified that . . . he observed individuals changing the weight restriction signs along [the highway]" and "other large trucks driving on the highway without being stopped." *Id.* at 6a.

The factual record in the case below is nearly identical to *Sweetin*'s. In both cases defendants (1) attempted to justify the stops by arguing that the law was violated; (2) argued that plaintiffs could have ignored the defendants' claimed authority and left at any point prior to the arrival of law enforcement; and (3) conceded that they had no authority to stop motorists under state law. Compare Pet.App.5a–6a, 12a, with *Sweetin*, 48 F.4th at 391–392. Yet, in *Sweetin*, the Fifth Circuit recognized the stop as a facially apparent seizure and held that the permit officer "was not acting within the scope of his discretionary authority"—and thus could not "even get into the qualified-immunity framework"—"because state law does not give a permit officer the authority to conduct stops

of any kind." *Sweetin*, 48 F.4th at 392. No such determination was made by the court below, resulting in the opposite outcome for plaintiff and an absurd grant of qualified immunity to defendant.

Respondent makes much ado about the Court's dicta that "Large did not conduct a traffic stop or detain the drivers." BIO16 (citing Pet.App.11a–12a). But these dicta are nothing more than a practical response to dissent's correct characterization of the opinion as sanctioning engineers to perform traffic stops. Pet.App.11a. This criticism in the decision below appeared only after the majority applied the clearly established test and concluded that qualified immunity shielded respondent because "no case . . . comes close to demonstrating that the rights [CSI] alleges were violated were clearly established." *Ibid.* This conclusion is what splits the Eighth Circuit—along with Tenth Circuit's decision in *Cummings*—from seven sister courts.

II. The decision below is contrary to this Court's precedent and common law.

Respondent (at 22, 23) tacitly acknowledges the circuit split by conceding that the Eight Circuit, unlike seven of its sister courts, "properly applied longstanding qualified immunity jurisprudence" in this case, without "add[ing] a new 'threshold scope-of-authority inquiry' to the established qualified immunity test." According to respondent, "[t]hat is the plain import of this Court's holding in *Davis* v. *Scherer*, which flatly *rejected* CSI's argument" on scope of authority. BIO24–26.

But *Davis* did no such thing. No one in *Davis* argued that firing the plaintiff fell outside the scope of the defendants' authority. The only question was whether, because the firing took place in contravention of internal regulations, the action was unreasonable and, as a result, failed to overcome prong two of the qualified immunity test. 468 U.S. at 193; see also *supra* at 5 n.1. The Court answered in the negative, stating that for the purposes of overcoming the reasonableness prong, all that matters is measuring the conduct "by reference to clearly established law." *Davis*, 468 U.S. at 191. "No other 'circumstances' are relevant to the issue of qualified immunity." *Ibid.*

In the case below, *Davis* would have been relevant had CSI argued that respondent, while acting pursuant to his authority, nonetheless acted unreasonably—and thus in violation of clearly established law—because he contravened regulations on how to perform a traffic stop. But that's not CSI's argument. Since respondent could not perform traffic stops under any circumstances, the point is that stopping CSI trucks from traveling on the highway was not within respondent's authority in the first place, barring respondent from qualified immunity eligibility altogether. See Pet.24–26.

Davis's explicit limitation to "officials with a broad range of *duties* and *authority*" further reinforces this conclusion. 468 U.S. at 196 (cleaned up) (emphasis added). As such, there is no daylight between it and *Harlow*, which cabined qualified immunity to "suits for civil damages arising from actions within the scope of an official's duties." 457 U.S. at 819 n.34; see also Pet.22–24. The Court's subsequent decisions,

such as *Ziglar* v. *Abbasi*, are also in accord. See 137 S. Ct. 1843, 1866 (2017) (explaining that "[g]overnment officials are entitled to qualified immunity with respect to discretionary functions performed in their official capacities" (cleaned up)). And so are decisions in seven federal circuits, none of which consider *Davis* an obstacle. See *In re Allen*, 119 F.3d 1129, 1133–1134 (4th Cir. 1997) (Mutz, J., concurring in denial of rehearing en banc) (addressing concerns over *Davis* raised by Luttig, J. (dissenting)); see also Pet.10–16.

By splitting from its sister courts, the decision below also disregarded the common law. See Pet.26–29. Respondent does not disagree, arguing instead that "this Court has 'never suggested that the precise contours of official immunity can and should be slavishly derived from the often arcane rules of the common law.'" BIO28–29 (quoting *Anderson* v. *Creighton*, 483 U.S. 635, 645 (1987)). But far from being arcane, common law rules now stand front and center in this Court's analysis of official immunity and are very much relevant here. See *Rehberg* v. *Paulk*, 566 U.S. 356, 362–363 (2012) ("the Court has looked to the common law for guidance in determining the scope of the immunities available in a § 1983 action"); *Filarsky* v. *Delia*, 566 U.S. 377, 380 (2012) ("[o]ur decisions have looked to . . . common law protections in affording either absolute or qualified immunity to individuals sued under § 1983"). This Court should not overlook but consider important that the decision below has no common-law (or other) foundation.

III. The decision below perversely provides near-absolute immunity to officials who act outside of their authority, making its reversal exceptionally important.

Finally, respondent (at 29) disputes the dissent's characterization of the opinion below as cloaking officials acting outside of their authority with near-absolute immunity. In respondent's view (at 30), "[s]tate officials who exceed their authority under state law will remain subject to whatever remedies the relevant state law provides to address any such abuses." This argument is twice wrong and only underscores the need for this Court's review.

First, a hypothetical availability of state-law remedies against those who exceed their duties has no relevance to dissent's criticism or the question presented. The point is that such officials should not be shielded from constitutional scrutiny by a federal doctrine whose goal it is to ensure that "those who try to do their duty," rather than those who violate it, are protected from "the constant dread of retaliation." *Gregoire* v. *Biddle*, 177 F.2d 579, 581 (2d Cir. 1949); see also Pet.22–24.

Second, Judge Grasz's "near-absolute immunity" observation illuminates the absurdity of applying qualified immunity without first performing the scope-of-authority analysis. Pet.App.20a. Because prong two of the qualified immunity test focuses solely on the "reference to clearly established law," *Davis*, 468 U.S. at 191, there will almost never be "existing cases circumscribing or defining the scope of this newly discovered, unwritten . . . authority" that

officials exercise when they act outside of their duties. Pet.App.20a. Officials who do perform their duties, on the other hand, will be much less successful in claiming qualified immunity, since there will be plenty of cases discussing the constitutionality of their conduct with the requisite degree of specificity. See *Mullenix* v. *Luna*, 577 U.S. 7, 12 (2015).

That's why *Harlow* explicitly limited qualified immunity to "suits for civil damages arising from actions within the scope of an official's duties." 457 U.S. at 819 n.34. That's also why seven circuits "recognize[] a scope-of-authority exception to the protection of qualified immunity." *Stanley*, 852 F.3d at 1214. The Eighth and Tenth Circuits must fall in line.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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OCTOBER 11, 2022