No. 24-538

IN THE

Supreme Court of the United States

DONNA CHISESI,

Petitioner,

v.

MATTHEW HUNADY, HUEY "HOSS" MACK, JR.,

Respondents.

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

PETITIONER'S REPLY BRIEF

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December 23, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES

REPLY BRIEF

On the first question presented, Respondent does not dispute that the Eleventh Circuit, alone among the courts of appeals, feels free to decide whether an interlocutory qualified-immunity appeal involves genuine factual disputes. See Pet. 9–13. Nor does he dispute that other circuits view failure-to-train claims as uniquely fact-bound, while the Eleventh Circuit does not. See *id.* at 12–13. And he does not try to square the Eleventh Circuit's rule with this Court's decisions in *Johnson* and *Behrens*. *Id.* at 13–15.

Respondent instead claims this case does not implicate the Eleventh Circuit's outlier approach because the material facts were undisputed. But the district court found genuine factual disputes, and the Eleventh Circuit's contrary ruling is precisely the problem—another circuit could not have evaluated evidentiary sufficiency in this way. Respondent is trying to explain away the decision below based on the very error that warrants review.

On the second question, Respondent again does not dispute the key facts justifying review: Recent scholarship and powerful opinions from multiple Justices and judges call into question the very foundations of modern qualified-immunity doctrine, strongly suggesting it should be pared back or abrogated entirely. And the lower courts remain confused about how the apply the doctrine. Respondent's only real answer is that this case "serves as an example of the need" for the doctrine. Opp. 12. But that is a merits argument, not a reason to deny this petition.

I. The Eleventh circuit's outlier approach to qualified-immunity appeals warrants review.

There is no question that the Eleventh Circuit's approach to factual disputes in qualified-immunity appeals conflicts with decisions from other circuits and this Court. See Pet. 9–15. Respondent contends, however, that his appeal involved no factual disputes. Opp. 9–11. He is mistaken.

Respondent starts with the district court's observation that his own arguments focused entirely on "the absence of a pattern of similar unconstitutional conduct by Baldwin County deputy sheriffs." Opp. 9 (quoting App. 42a). He acknowledges the court's holding that "showing a similar pattern of unconstitutional conduct was unnecessary" here, *id.* at 10, but he overlooks the *reason* for that holding: "[T]he conflicting evidence in this case"—in particular, undisputed evidence—"view[ed] . . . in the light most favorable to Chisesi," created "genuine disputes of material fact" as to whether "this is the kind of recurring situation . . . that can trigger liability for failure to train, even in the absence of a pattern of violations." App. 44a (brackets omitted); *id.* at 41a, 43a (reviewing this evidence). That is, "whether Sheriff Mack was deliberately indifferent is a question that should have been left to a jury"—meaning a *factual* question. App. 44a (brackets omitted); see *id.* at 40a ("Plaintiff argues that sufficient evidence of a causal connection exists [between Mack's actions and the constitutional violation] to create a jury question"). That holding was sound, especially given that Sheriff Mack failed to provide *any* relevant training to the responding officers and had other officers with relevant training who were not deployed.

To be sure, as Respondent emphasizes, the Eleventh Circuit then declared on appeal that "the facts underlying th[is] claim are not in dispute," Opp. 10 (quoting App. 11a) (brackets omitted), albeit without identifying which facts it meant. *But that is precisely the problem*. The district court held that genuine factual disputes existed; the Eleventh Circuit looked at the same record and held that they didn't. In at least five other circuits, that would be impossible. See Pet. 9–12. In turn, this case squarely implicates the Eleventh Circuit's improper practice of reviewing evidentiary sufficiency on interlocutory qualified-immunity appeals.

For the same reasons, Respondent finds no support in the Eleventh Circuit's holding that "Sheriff Mack's failure to train sheriff deputies in these areas falls outside the limited circumstances that the Supreme Court has hypothesized could give rise to single-incident liability for failure to train." Opp. 10–11 (quoting App. 16a). That holding rests on the court's antecedent conclusion that no genuine factual disputes existed, which—under this Court's decisions—it had no authority to reach. What's more, other circuits correctly hold that, because "the 'need for more or different training' . . . is at least partly factual," it is not reviewable "on an appeal from the denial of summary judgment." *Valdez* v. *Macdonald*, 66 F.4th 796, 818–19 (10th Cir. 2023). So the Eleventh Circuit's treatment of this issue as purely legal simply underscores the conflict.

Finally, Respondent's invocation of appellate standing misses the mark. Opp. 11. As just explained, this case does raise the first question presented—indeed, that question was dispositive of Respondent's appeal below. In any event, standing to petition for a writ of certiorari requires merely that

the petitioner suffer a concrete injury that would be "redressed if [this Court] were to reverse the judgment" below. *Seila L. LLC* v. *CFPB*, 591 U.S. 197, 211 (2020). That requirement is plainly met here.

II. This case is an appropriate vehicle to reevaluate qualified-immunity doctrine.

Respondent does not dispute that whether qualified-immunity doctrine should be abrogated or pared back is a vitally important question that warrants this Court's review. Instead, he again claims this issue is not "properly before this Court." Opp. 9. But it is; in the district court, "defendants move[d] for summary judgment in favor of defendant Sheriff Mack on the basis of qualified immunity." App. 39a; see *id.* at 42a. The district court rejected that argument, but the Eleventh Circuit accepted it. The second question is thus presented here. And Respondent does not dispute that whether qualified immunity should be abrogated or revised was preserved at each level.

Beyond that, Respondent says only that (i) the petition "fails to even challenge the legal basis of the Eleventh Circuit's ruling" and (ii) this case illustrates "the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Opp. 12. The first point is wrong for the reasons just explained: The petition squarely targets the grounds for the Eleventh Circuit's decision. The second point is a merits argument. If Respondent believes that policy arguments justify retaining qualified immunity in some form, he is free to make that claim at the merits stage. But whatever the force of his view, it does not justify overlooking the recently unearthed historical evidence about the

original text and meaning of § 1983, see Pet. 16–17, or multiple Justices' concerns about how far the doctrine has strayed from its common-law origins, see *id.* at 17–18. Nor does it justify ignoring the continued confusion in the lower courts, as reflected in their opinions and jury instructions. See *id.* at 18.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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