

In the  
United States Court of Appeals  
For the Seventh Circuit

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No. 25-1041

KEVIN E. SMITH,

*Plaintiff-Appellant,*

*v.*

CHRISTOPHER PRICE, *et al.*,

*Defendants-Appellees.*

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Appeal from the United States District Court for the  
Southern District of Indiana, Indianapolis Division.  
No. 1:21-cv-00373 — **Jane Magnus-Stinson**, *Judge*.

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ARGUED SEPTEMBER 18, 2025 — DECIDED AUGUST 19, 2026

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Before RIPPLE, LEE, and PRYOR, *Circuit Judges*.

PRYOR, *Circuit Judge*. On two occasions in June 2019, correctional officers transported Kevin Smith, an Indiana Department of Correction inmate, between Wabash Valley Correctional Facility and an outside hospital. Smith alleges that officers violated his Eighth Amendment rights during each transport. The district court concluded at summary judgment that each officer was entitled to qualified immunity. For the

reasons below, we affirm in part, vacate in part, and remand for further proceedings consistent with this opinion.

## I. BACKGROUND

### A. Factual Background

We recite the facts in the light most favorable to Smith as the non-moving party at summary judgment. *Taylor v. Schwarzhuber*, 132 F.4th 480, 486 (7th Cir. 2025).

Kevin Smith was an Indiana Department of Correction (IDOC) inmate housed at the Wabash Valley Correctional Facility (Wabash Valley). The facts of this case center on two transports of Smith by IDOC from an outside hospital located in Indianapolis, Indiana back to Wabash Valley.

#### 1. *Transport on June 13, 2019*

On June 13, 2019, IDOC correctional officers Christopher Price and Jeff Hancock<sup>1</sup> transported Smith to an outside hospital for a medical appointment. During the transport, Smith was restrained in “trip gear.” This meant he had his hands handcuffed in front of him, a chain around his waist, and a “black box” plastic cover over the handcuff’s lock apparatus that pulled his hands up against his stomach.

While at the hospital, Officers Price and Hancock commented to Smith about grievances he had previously filed

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<sup>1</sup> Officer Hancock, who was the driver during this transport, is not a party in this suit.

against a different IDOC officer.<sup>2</sup> The officers told Smith that he “better watch out” and that he “better be careful.”<sup>3</sup>

Following Smith’s medical appointment and in preparation to transport him back to Wabash Valley, the officers placed Smith inside the transport van. Officer Price refused, however, to buckle Smith’s seatbelt. Smith was again in trip gear, so he could not buckle himself. His movement was also limited by an external fixator, or “ex-fix system,” attached to his elbow from a prior reconstructive elbow surgery. Smith questioned the officers’ reasoning for not buckling him in, and one of the officers responded, “you’re not going anywhere, don’t worry about it.” Once on the road, Smith could see outside traffic by looking through a two-foot square window in the passenger compartment that faced the front of the van and allowed him to see through the front windshield.

The van encountered traffic as it traveled towards Wabash Valley. To Smith, it felt like Officer Hancock, who was driving, kept “hitting the gas, kind of punching it kind of fast and then coming to a stop.” Smith thought it was “not the normal way a person drives.” Suddenly, Officer Hancock applied the brakes, causing Smith to “fly[] forward” and “slam[] on the ground” in the passenger compartment of the transport van.

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<sup>2</sup> Smith’s claims against this IDOC officer proceeded in *Smith v. Foster*, No. 1:22-cv-00404-JRS-CSW (S.D. Ind.).

<sup>3</sup> While Smith does not specify whether Officer Price personally made either of these warnings, Officer Price disputes that he was aware of Smith’s grievances at this time and that he discussed them with Smith. We need not resolve that factual dispute because we draw all inferences in Smith’s favor at summary judgment.

With Smith lying on the van's floor screaming in pain, Officer Hancock pulled into a nearby parking lot. Officer Price then exited the van to assist Smith in the passenger compartment. Officer Price tried to pick Smith up by the shoulder, but Smith told Officer Price not to do that because he thought his shoulder was broken. Officer Price, in response, picked Smith up by the waist and placed him back in the transport van. The officers then took Smith back to the hospital, where he was diagnosed with a broken collarbone.

While Smith was being treated for this injury in one of the hospital rooms, he overheard Officers Price and Hancock, sitting at the doorway, discussing how they were going to fill out their incident reports. The officers were writing the reports on their phones, discussing how to make their reports consistent and laughing with each other. Smith acknowledged, however, that he could not "hear everything they were saying."

After Smith was discharged, the officers buckled him in on the return trip to Wabash Valley. Upon their arrival at the prison, both officers refused to give Smith their names and hid their badges and ID cards from Smith.

## *2. Transport on June 20, 2019*

One week later, Smith had to be transported back to the hospital for another elbow surgery. This time, IDOC correctional officers Mark Lamb and Benjamin Rilenge transported him. The officers put Smith in trip gear, placed him on a seat in the transport van, and buckled him in. On this trip, Smith sat in the front of the van in a secure box, which is about four feet by four feet in size and has space for only one person to

sit. Smith arrived at the hospital without incident, and he underwent surgery.

While still in the hospital, the anesthesiologist explained to Smith that he had given him a "pain ball," which disburses pain medication over multiple days. Smith became sick and vomited due to the anesthesia. On his way out of the hospital with Officers Lamb and Rilenge escorting him, Smith asked for and received vomit bags from the hospital staff.

For the return trip, against Smith's requests, the officers sat him in the back of the van, not in the secure box in the front like on the trip there. The officers secured Smith's seatbelt. As Officer Lamb began driving, however, Smith began to feel nauseous. He was still under the effects of anesthesia, and he had not eaten since the night before. Given it was late June in Indiana, the van was very hot inside. By Smith's account, he asked the officers to turn on the air conditioning or roll down the windows, but they responded no.

The van continued down Interstate 70 towards Wabash Valley. According to Smith, I-70's right lane is bumpy while the left lane is not. The officers drove in the right lane, which left Smith in the back "screaming in pain" because the driving jostled his surgically repaired elbow and his collarbone, which he had broken during the prior week's hospital transport. He asked them to drive in the left lane, but they refused.

Eventually, the officers stopped at a gas station. The officers got out of the van, stood in front of it, and smoked cigarettes. The officers left Smith in the van. After about ten or fifteen minutes, the officers got back in the van and continued driving.

The officers later pulled off the interstate and traveled on street roads to avoid interstate traffic. After doing so, Officer Lamb drove the van over multiple sets of railroad tracks. At first, Officer Lamb slowed down to “bounce the van.” This left Smith screaming in pain while the officers laughed. Smith testified that one of the officers said: “Scream some more. This is funny.” Officer Lamb continued driving, and he asked Officer Rilenge whether he should “speed up or slow down over” the railroad tracks he approached. Smith then saw Officer Rilenge put his hand up and wave his finger, encouraging Officer Lamb to speed up. Officer Lamb then sped up, causing the van to “catch some air” and bounce as they drove over multiple sets of tracks. The officers laughed while doing this.

### **B. Procedural Background**

Smith later filed suit under 42 U.S.C. § 1983, naming eleven defendants in his complaint. The district court screened Smith’s pro se complaint, allowing his Eighth Amendment claims to proceed against Officers Price, Lamb, and Rilenge based on their conduct during the two transports. The court also permitted First Amendment retaliation claims against those same officers based on Smith’s allegations that his previous grievances motivated the officers’ conduct during the transports. The court severed all of Smith’s remaining claims that were unrelated to the van transports.

At the close of discovery, the district court granted in part and denied in part the defendants’ motion for summary judgment. First, the court granted qualified immunity to Officer Price on Smith’s Eighth Amendment claim based on the June 13 transport. The court reasoned that because Officer Price was not driving, he could not be held responsible for how Officer Hancock, the non-party officer, drove the van. So, the

court looked only at whether Officer Price violated Smith's clearly established rights by failing to buckle Smith's seatbelt, a fact the district court assumed for summary judgment purposes because it was otherwise disputed. In concluding Officer Price did not violate Smith's clearly established rights, the court reasoned that Smith did not offer any binding precedent in support.

Next, the district court granted qualified immunity to Officers Lamb and Rilenge on Smith's Eighth Amendment claims based on the June 20 transport. The court first reasoned that Smith did not present binding precedent putting the officers on notice that they were subjecting Smith to a "rough ride." The court then distinguished an unpublished Sixth Circuit case on its facts. The court further reasoned that the transport van's hot conditions and the officers' failures to give Smith food also did not violate his Eighth Amendment rights.

Finally, the district court granted summary judgment on Smith's First Amendment claims as to Officers Lamb and Rilenge, but denied Officer Price summary judgment on Smith's First Amendment claim against him. Smith lost at trial on his First Amendment claim against Officer Price. Smith does not challenge this verdict on appeal.

Smith now appeals the district court's grant of summary judgment to the officers on his Eighth Amendment claims.

## II. ANALYSIS

Summary judgment is appropriate when there is "no genuine dispute as to any material fact," and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). We review the district court's decision to grant qualified immunity at summary judgment de novo. *Jackson v. City of*

*Madison*, 176 F.4th 1005, 1015 (7th Cir. 2026). When the facts require us to draw inferences, we draw them in favor of the non-moving party. *Doe v. Gray*, 75 F.4th 710, 716 (7th Cir. 2023).

### A. Doctrine of Qualified Immunity

Qualified immunity under § 1983 protects state actors from civil damages liability for constitutional violations unless their conduct violated a “clearly established” statutory or constitutional right. *Reichle v. Howards*, 566 U.S. 658, 664 (2012); see also *District of Columbia v. Wesby*, 583 U.S. 48, 62–63 (2018). A plaintiff can overcome a defendant’s assertion of qualified immunity at summary judgment “by showing (1) there is a dispute of material fact as to whether the official violated a ‘statutory or constitutional right,’ and (2) the right was ‘clearly established at the time’” the officer’s alleged misconduct occurred. *Taylor*, 132 F.4th at 486 (quoting *Gupta v. Melloh*, 19 F.4th 990, 1000 (7th Cir. 2021)). “Our focus is on whether the officer had fair notice that his conduct was unlawful.” *Taylor v. City of Milford*, 10 F.4th 800, 806 (7th Cir. 2021) (citation modified).

#### 1. “Constitutional Right” Prong

Under the first prong of the qualified immunity analysis, Smith must present sufficient evidence from which a reasonable jury could infer that his constitutional rights were *in fact* violated. The Eighth Amendment’s Cruel and Unusual Punishments Clause proscribes “the unnecessary and wanton infliction of pain on prisoners.” *Stockton v. Milwaukee County*, 44 F.4th 605, 619 (7th Cir. 2022) (citation modified). Accordingly, prison officials must “take reasonable measures to guarantee the safety of ... inmates.” *Whitley v. Albers*, 475 U.S.

312, 320 (1986) (citation modified). But the general requirement that a prisoner must allege and prove the unnecessary and wanton infliction of pain is “applied with due regard for differences in the kind of conduct against which an Eighth Amendment objection is lodged.” *Id.*

Some Eighth Amendment violations constitute “deliberate indifference,” while others constitute “excessive force.” *Id.* at 319–20. The deliberate indifference standard applies where a prison official fails to safeguard an inmate’s “health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The Supreme Court has found this standard applies in certain contexts, including the failure to provide medical assistance, maintain humane conditions of confinement, or protect inmates from attack. See *Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976); *Wilson v. Seiter*, 501 U.S. 294, 303 (1991); *Farmer*, 511 U.S. at 834; accord *Hudson v. McMillian*, 503 U.S. 1, 6 (1992) (explaining deliberate indifference standard applies to medical care claim “because the State’s responsibility to provide inmates with medical care ordinarily does not conflict with competing administrative concerns”). Demonstrating a constitutional violation under this standard requires showing two elements: (1) the prisoner must be exposed to a “substantial risk of serious harm,” and (2) the prison official must subjectively know of and disregard that substantial risk to inmate health or safety. *Farmer*, 511 U.S. at 834, 837.

In excessive force cases, on the other hand, whether a correctional officer’s alleged use of “excessive physical force” violates the Eighth Amendment’s Cruel and Unusual Punishments Clause turns on “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously

and sadistically to cause harm.” *Hudson*, 503 U.S. at 6–7; see also *Smith v. Kind*, 140 F.4th 359, 366 (7th Cir. 2025).

## 2. “Clearly Established” Prong

Under the second prong of the qualified immunity analysis, even if an official violated an inmate’s constitutional right, the official is entitled to qualified immunity unless that right was clearly established at the time of the official’s conduct. E.g., *Taylor*, 132 F.4th at 486. “To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Reichle*, 566 U.S. at 664 (citation modified). That is why “[t]his step of the analysis requires specificity—for the law to be clearly established, the existing precedent must have placed the statutory or constitutional question beyond debate.” *City of Milford*, 10 F.4th at 807 (citation modified). Put another way, “the right must be clearly established to a degree of specificity such that a reasonable government official would be able to identify the violation with a specific set of facts.” *Leiser v. Kloth*, 933 F.3d 696, 702 (7th Cir. 2019). This means we must consider “whether the violative nature of *particular* conduct is clearly established.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam).

But although “specificity is important, it does not require a case presenting the exact same facts.” *City of Milford*, 10 F.4th at 807 (citation omitted). Indeed, the Supreme Court has stressed that “officials can still be on notice that their conduct violates established law even in novel factual circumstances.” *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Accordingly, a right is clearly established when:

- (1) a closely analogous case finds the alleged violation unlawful;
- (2) the relevant caselaw shows such a clear trend that we can say with fair assurance that the recognition of the right by a controlling precedent was merely a question of time; or
- (3) in rare cases, the defendant's conduct was so egregious and unreasonable that no reasonable official could have thought he was acting lawfully.

*Johnson v. Edwards*, 164 F.4th 1074, 1079 (7th Cir. 2026) (citation modified) (quoting *Stockton*, 44 F.4th at 620–21); *see also Kemp v. Liebel*, 877 F.3d 346, 351 (7th Cir. 2017) (“In the absence of controlling or persuasive authority, plaintiffs can demonstrate clearly established law by proving that the defendant’s conduct was so egregious and unreasonable that no reasonable official could have thought he was acting lawfully.” (citation modified)).

With those principles in mind, we assess whether the officers are entitled to qualified immunity at the summary judgment stage for their actions during the two June 2019 transports.

#### **B. Transport on June 13, 2019**

Smith argues that Officer Price violated his clearly established Eighth Amendment rights during the transport from the hospital to Wabash Valley on June 13, 2019. Officer Price responds that he is entitled to qualified immunity.

### 1. *Constitutional Violation*

At the outset, we must determine which Eighth Amendment standard to apply when assessing Officer Price's conduct. Smith contends Officer Price, the passenger officer during the June 13 transport, refused to buckle his seatbelt and then failed to intervene while Officer Hancock drove the transport van recklessly. This claim, in substance, "is functionally the same as claims in failure-to-protect or conditions-of-confinement cases, which are evaluated under the deliberate indifference standard." *Thompson v. Virginia*, 878 F.3d 89, 107 (4th Cir. 2017) (citing *Farmer*, 511 U.S. at 834, and *Wilson*, 501 U.S. at 303). So, we assess Officer Price's conduct under the deliberate indifference standard. To survive summary judgment under that standard, Smith must designate evidence sufficient for a reasonable jury to conclude that (1) he was exposed to a "substantial risk of serious harm," and that (2) Officer Price subjectively knew of and disregarded that risk. *Farmer*, 511 U.S. at 834, 837.

Starting with the objective element, Smith argues he was exposed to a substantial risk of serious harm because Officer Hancock drove recklessly while his seatbelt was not fastened. This resulted in Smith getting thrown to the floor, causing him to break his collarbone. So, on this prong, the question is whether these conditions add up to a substantial risk of serious harm.

The parties agree that the mere failure to fasten Smith's seatbelt, at least on its own, did not expose him to a substantial risk of serious harm. We concur. See *Proffitt v. Ridgway*, 279 F.3d 503, 507 (7th Cir. 2002) (holding failure to fasten detainee's seatbelt was at most negligence when the inmate escaped from back seat and caused crash).

But an inmate is exposed to a substantial risk of serious harm when he has a limited ability to protect himself during a transport because he is not restrained by a seatbelt and is then subjected to reckless driving. *Brown v. Fortner*, 518 F.3d 552, 559–60 (8th Cir. 2008) (finding substantial risk of serious harm when officer refused to fasten inmate’s seatbelt, drove recklessly, and ignored inmate’s pleas to slow down); *Thompson*, 878 F.3d at 107 (same for passenger officer). We hold that these conditions, taken together, expose inmates to an objectively “excessive risk to inmate health or safety.” *Farmer*, 511 U.S. at 837; cf. *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“[T]he Eighth Amendment protects against future harm.”).

Here, taking the facts in the light most favorable to Smith, a reasonable jury could find Smith was exposed to a substantial risk of serious harm during the June 13 transport. First, a reasonable jury could find Officer Hancock drove the transport van recklessly. To Smith, Officer Hancock was driving erratically—he kept “hitting the gas, kind of punching it kind of fast then coming to a stop” in a way that struck Smith as unusual. Then, Officer Hancock applied the brakes suddenly, causing Smith to fly forward and land on the van’s floor. Smith did not see any traffic warranting that behavior. Officer Price disputes this fact, arguing Officer Hancock was required to slam on his brakes because a car had pulled out in front of the transport van. Viewing these facts in the light most favorable to Smith, however, a reasonable factfinder could conclude Officer Hancock drove the van recklessly.

And Smith had limited ability to protect himself from that reckless driving. Smith was not restrained by a seatbelt. Smith also had additional limitations further impairing his ability to defend himself. Smith remained restrained in trip gear,

meaning his hands were handcuffed in front of him, a chain was cinched around his waist, and a “black box” pulled his hands up against his stomach. These restraints also prevented Smith from buckling his seatbelt on his own and limited his ability to brace for impact during the ride. And the ex-fix system attached to Smith’s elbow further limited his ability to brace for impact.

From Smith’s account of the facts, a reasonable jury could conclude Smith was exposed to a substantial risk of serious harm when he was recklessly driven in a transport van and had a limited ability to protect himself because his seatbelt was not fastened combined with the other restraints preventing him from bracing for impact.

Moving to the subjective element of Smith’s claim, we must next determine whether Officer Price was deliberately indifferent to the substantial risk of harm Smith faced because of Officer Hancock’s reckless driving and Smith’s inability to protect himself from that driving. *See Farmer*, 511 U.S. at 834, 837. It is important to note, here, that Officer Price cannot be held vicariously liable for Officer Hancock’s actions. *See City of Canton v. Harris*, 489 U.S. 378, 385 (1989) (“*Respondeat superior* or vicarious liability will not attach under § 1983.”). Officer Price is only liable for his conduct. Accordingly, Officer Price cannot be held liable under § 1983 if he took “measures reasonably calculated to address the risk” Smith faced. *Hunter v. Mueske*, 73 F.4th 561, 566 (7th Cir. 2023).

“Deliberate indifference is more than mere negligence or carelessness: it is ‘something approaching a total unconcern’ for inmate safety.” *Id.* (quoting *Rosario v. Brawn*, 670 F.3d 816, 821 (7th Cir. 2012)). Smith advances the following facts to show Officer Price was deliberately indifferent to the

substantial risk of harm he faced. While still at the hospital, both officers warned Smith to watch out because they had learned that Smith had filed grievances against another IDOC officer. Then, as the officers loaded Smith into the transport van, Officer Price did not buckle Smith's seatbelt. Smith responded and asked the officers why he was not being buckled in, to which one of the officers responded, "you're not going anywhere, don't worry about it." The record does not show which officer made this statement, but a reasonable juror could infer Officer Price at least heard this statement. And once they got on the road, as discussed above, Smith contends Officer Hancock drove the transport van recklessly. In particular, the designated evidence suggests Officer Hancock hit the brakes hard multiple times before Smith was eventually thrown to the transport van's floor. Officer Price did not intervene—either by telling Officer Hancock to drive less erratically or by fastening Smith's seatbelt—in response to Officer Hancock's driving that was, as Smith put it, not normal.

Taking these facts together, a reasonable jury could infer that Officer Price conspired with Officer Hancock to teach Smith a lesson for filing grievances against officers, anticipated that Officer Hancock would drive recklessly and erratically, and refused to fasten Smith's seatbelt to protect him from that driving. A reasonable jury could also conclude that Officer Price could have—but did not—intervene once Officer Hancock began driving recklessly, letting Smith get thrown around the van and ultimately break his collarbone.<sup>4</sup> Relying

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<sup>4</sup> "An official satisfies the personal responsibility requirement of section 1983 if she acts or *fails* to act with a deliberate or reckless disregard of plaintiff's constitutional rights[.]" *Crowder v. Lash*, 687 F.2d 996, 1005 (7th Cir. 1982) (emphasis added). Thus, an official can be held liable under

on Smith's telling, Officer Price callously disregarded the substantial risk of harm Smith faced during the transport. *See Hunter*, 73 F.4th at 566; *accord Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994). These disputed facts—around whether Officer Price admonished Smith for filing grievances, whether Officers Price and Hancock conspired to subject Smith to a malicious rough ride, and whether Officer Price was subjectively aware of the risk to Smith's safety and disregarded that risk by failing to intervene even though he had a realistic opportunity to—all affect the qualified immunity analysis.

Viewing the evidence in the light most favorable to Smith, we conclude he has presented sufficient evidence to support both elements of the deliberate indifference test of his Eighth Amendment claim against Officer Price at summary judgment. Smith adequately asserts that he was exposed to the substantial risk of serious harm posed by being recklessly and erratically driven in a prison transport van without his seatbelt fastened and that Officer Price was aware of that risk but disregarded it by failing to intervene.

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§ 1983 for failing to intervene to prevent other officials' harm when: (1) a constitutional violation occurred, (2) the official observed that violation or had reason to know that violation occurred, and (3) the official "had a realistic opportunity to intervene to prevent the harm from occurring." *See Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994) (citing *Anderson v. Branen*, 17 F.3d 552, 556 (2d Cir. 1994)); *see also Harper v. Albert*, 400 F.3d 1052, 1064 (7th Cir. 2005) (noting longstanding recognition of "'failure to intervene' basis for a constitutional violation under the Eighth Amendment"). In other words, there can be no constitutionally impermissible failure to intervene when there is no violation that compelled intervention. *Fillmore v. Page*, 358 F.3d 496, 505–06 (7th Cir. 2004).

## 2. *Clearly Established Law*

Having concluded a reasonable jury could find Officer Price violated Smith's constitutional rights, we now consider the second prong of the qualified immunity analysis: whether that right was clearly established. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009). To make this determination, "[w]e first look to whether the Supreme Court or this circuit has previously held that conduct analogous to the present case violates the right at issue." *Leiser*, 933 F.3d at 702. "If no controlling precedent exists, we broaden our survey to include all relevant caselaw in order to determine whether there was such a clear trend in the caselaw that we can say with fair assurance that the recognition of the right by a controlling precedent was merely a question of time." *Kemp*, 877 F.3d at 351 (citation modified). "The dispositive question is whether the violative nature of *particular* conduct is clearly established." *Id.* (citation modified) (quoting *Mullenix*, 577 U.S. at 12).<sup>5</sup>

Here, determining whether Officer Price's violation of Smith's rights was clearly established in June 2019 requires findings of fact, which we cannot make at this stage of the litigation. *See City of Milford*, 10 F.4th at 808. Taking the facts most favorable to Smith, a jury could conclude that Officer Price was deliberately indifferent to the substantial risk of

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<sup>5</sup> The officers contend Smith waived reliance on the third path to defeating qualified immunity—that this is one of the rare cases where no reasonable official would have thought he was acting lawfully. But that contention misses the thrust of Smith's argument. Smith has consistently argued—both on appeal and in the district court—that a clear trend in the relevant case law would have put the officers during both June 2019 transports on notice that they were violating his clearly established constitutional rights.

harm Smith faced, in violation of Smith's clearly established rights.

Starting with the deliberate indifference standard's objective element, we have no trouble concluding it was clearly established by June 2019 that recklessly driving an inmate who is not secured by a seatbelt exposes that inmate to a substantial risk of serious harm.

A consensus of appellate case law bears this out, as multiple other circuits have reached the same conclusion. For example, the Fourth Circuit in *Thompson v. Virginia* held that the plaintiff there was exposed to substantial risk of harm when "he was fully shackled, unable to brace himself for impact, and sitting without a seatbelt, in a vehicle that was speeding and being driven in a way intended to scare and injure him, by a driver who refused both his requests to be seatbelted and to slow down." 878 F.3d at 107. Likewise, the Eighth Circuit in *Brown v. Fortner* affirmed the denial of qualified immunity at summary judgment when the plaintiff alleged he was injured by the driver operating the prison van recklessly after refusing to buckle plaintiff's seatbelt. 518 F.3d at 559–60. Furthermore, the Fifth Circuit in *Rogers v. Boatright* reversed in part a dismissal at the screening stage where the plaintiff alleged he suffered injuries while being transported without a seatbelt when an officer drove a prison transport van recklessly. 709 F.3d 403, 408–09 (5th Cir. 2013).<sup>6</sup>

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<sup>6</sup> The principles from these cases are consistent with a Second Circuit case involving officers' mere negligence, where the court explained that prison officials' failure "to provide inmates with seatbelts does not, *without more*, violate the Eighth or Fourteenth Amendments." *Jabbar v. Fischer*, 683 F.3d 54, 58 (2d Cir. 2012) (per curiam) (emphasis added).

These cases were sufficient to put reasonable officers on notice that, by June 13, 2019, recklessly driving an inmate who is not secured by a seatbelt exposes that inmate to a substantial risk of serious harm.

Now we turn to the deliberate indifference standard's subjective element. On that element too, after taking the facts in the light most favorable to Smith, we conclude his rights were clearly established as of June 13, 2019.

First, it is well-settled as a general matter that prison officials cannot stand back and allow the violent assault of an inmate in his care. "Being violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society.'" *Farmer*, 511 U.S. at 834 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). As we observed in the context of an officer's failure to protect an inmate from another inmate's attack, "[o]bviously, doing absolutely nothing about a known serious risk constitutes deliberate indifference." *Hunter*, 73 F.4th at 566; cf. *Ortiz v. Jordan*, 562 U.S. 180, 185, 190 (2011) (observing law "not in controversy" in 1996 that prison official would be liable for failing to protect inmate from subsequent sexual assault if he knew about prior incident). The obligation on prison officials to protect inmates' safety accords with the related failure-to-intervene doctrine, under which we have held "police officers who have a realistic opportunity to step forward and prevent a fellow officer from violating a plaintiff's rights through the use of excessive force but fail to do so could be held liable under § 1983." *Fillmore v. Page*, 358 F.3d 496, 505–06 (7th Cir. 2004) (citation modified); see also *Yang*, 37 F.3d at 285; *Harper v. Albert*, 400 F.3d 1052, 1064 (7th Cir. 2005) (observing we have "long

recognized” the “‘failure to intervene’ basis for a constitutional violation under the Eighth Amendment”).

Second, any reasonable officer would understand these principles to apply with obvious clarity to circumstances where a fellow officer, not another inmate, perpetrates the assault. *See Hope*, 536 U.S. at 739 (“[C]ontours [of the right] must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.”). As the Fourth Circuit explained in *Thompson*, reasonable officials would understand these well-established failure-to-protect principles “to mean that inmates have an Eighth Amendment right to be protected from malicious attacks, not just by other inmates, but also from the very officials tasked with ensuring their security.” 878 F.3d at 109.

Third, the Fourth Circuit has applied these principles in a context factually analogous to the circumstances Officer Price faced. In *Thompson*, the court concluded a passenger officer was deliberately indifferent to the substantial risk of harm posed to an inmate when driven recklessly without a seatbelt. *Id.* at 108–09. In that case, the passenger officer refused to buckle the plaintiff’s seatbelt. *Id.* at 108. The passenger officer was aware of the driving officer’s erratic driving and plaintiff’s corresponding concern for his safety during the trip, as the passenger officer had mocked the plaintiff for being scared during the drive. *Id.* And the passenger officer had at least heard a threat that the “rough ride” was intended to teach the plaintiff a lesson. *Id.* at 108. Based on those facts, the court concluded the passenger officer “was aware of the risk” to the plaintiff created by the driving officer. *Id.* at 108–09. The court then concluded that the passenger officer consciously disregarded that risk by failing to intervene. *Id.* at 109.

Summed up, by June 2019, inmates had a clearly established right to reasonable protection from malicious assaults by a prison official. And *Thompson* demonstrated how this principle applies to a passenger officer in a prison transport van—a passenger officer, aware of the risk, may not sit by idly while the driving officer uses the manner of his driving to physically assault an inmate in his care.<sup>7</sup>

Applied here, if we accept Smith’s account of the June 13 transport, Officer Price violated Smith’s clearly established Eighth Amendment rights. Under that account, Officer Price was not a passive bystander. As explained above, a reasonable jury could infer that Officer Price conspired with Officer Hancock to teach Smith a lesson for filing grievances against officers, anticipated that Officer Hancock would drive recklessly, and thus refused to fasten Smith’s seatbelt to protect him. In keeping with the plan, once Officer Hancock began recklessly and erratically driving, Officer Price failed to intervene when given a realistic opportunity. Given those circumstances, in June 2019, any reasonable officer in Officer Price’s position would have known he was constitutionally obligated to intervene to protect Smith from Officer Hancock’s reckless driving.

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<sup>7</sup> In reaching this conclusion, we do not rely on the unpublished circuit court cases and district court cases Smith offers. See *Johnson*, 164 F.4th at 1084 n.1 (explaining *Scott v. Becher*, 736 F. App’x 130, 134 (6th Cir. 2018), a case relying on *Thompson*, “is an unpublished, nonprecedential opinion from a sister circuit, so we do not consider it further”); *Day v. Wooten*, 947 F.3d 453, 462 (7th Cir. 2020) (“We have conclusively stated that district court opinions cannot clearly establish a constitutional right because they are not binding authority.”).

We acknowledge, of course, that Officer Price's account of the June 13 transport "diverge[s] with respect to the facts surrounding the incident." *City of Milford*, 10 F.4th at 810. As we explained above, the parties' divergent accounts create disputes of material fact. "Each of these material disputes of fact must be determined by the jury, so that the court can properly assess [Officer Price's] entitlement to qualified immunity." *Id.* at 811. But taking the facts in the light most favorable to Smith at this stage, we disagree with the district court's conclusion that Officer Price did not violate Smith's clearly established constitutional rights. Thus, the district court erred in awarding Officer Price qualified immunity at summary judgment.

### **C. Transport on June 20, 2019**

We now consider Smith's claim that Officers Lamb and Rilenge violated his Eighth Amendment rights during the June 20 transport from the hospital to Wabash Valley. Both officers claim entitlement to qualified immunity at summary judgment.

Recall that, in Smith's telling, he endured the following conditions during the June 20 transport. Earlier in the day, Officers Lamb and Rilenge transported Smith to the hospital. They put him in trip gear, placed him on a seat in a secure box located in the front of the van, and buckled him in. They arrived at the hospital without incident. Then, after Smith underwent significant orthopedic surgery on his elbow, the officers transported him back to Wabash Valley. For the return trip, the officers—over Smith's protests—sat him in the back of the van and not in the secure box in the front like on the trip there, and they fastened his seatbelt. The drive back took about two hours, and the transport van was hot inside. Smith was also nauseated from the anesthesia he received earlier

that morning, had vomited while still at the hospital, and had not eaten since the night before. The officers, according to Smith, also drove the van in the interstate's rougher lane, causing him significant pain by jostling his surgically repaired elbow and recently broken collarbone. The officers stopped at a gas station, leaving Smith in the van for about ten or fifteen minutes. Then, once they got back on the road, the officers left the interstate and went out of their way to drive over multiple sets of railroad tracks in a manner causing Smith to scream in pain while the officers laughed.

The district court analyzed the two officers' conduct together. But because we apply the Eighth Amendment "with due regard for differences in the kind of conduct against which an Eighth Amendment objection is lodged," *Whitley*, 475 U.S. at 320, we assess each officers' conduct separately. See also *Thompson*, 878 F.3d at 99–110 (analyzing officer driving van separately from passenger officer). We start with Officer Lamb, the officer who drove the transport van. Then we turn to Officer Rilenge, the passenger officer.

*1. Officer Lamb – Driving Officer*

At the threshold, we must determine the proper Eighth Amendment standard under which we should assess Officer Lamb's conduct. Smith asks us to apply the excessive force standard, while the defendants advocate for the deliberate indifference standard for both officers' actions during the June 20 transport. Smith's contention, in substance, is that Officer Lamb "applied force against him without any legitimate purpose, albeit using the transport van's momentum rather than a punch." *Thompson*, 878 F.3d at 99. In *Hudson v. McMillian*, the Supreme Court applied the excessive force standard when prison officials struck an inmate for no obvious reason during

a transport. 503 U.S. at 4, 6–7. These facts are not meaningfully distinguishable from *Hudson*. So, we evaluate Officer Lamb’s conduct under the excessive force standard.<sup>8</sup>

*a. Constitutional Violation*

Under the excessive force standard, we must determine whether Officer Lamb applied force “not in a good-faith effort to maintain or restore discipline, but maliciously and sadistically to cause harm.” *Smith*, 140 F.4th at 366 (citations and internal quotations omitted). To evaluate this, we look at factors such as “the need for the application of the force, the amount of the force applied, the threat an officer reasonably perceived, the effort made to temper the severity of the force used, and the extent of the injury that force caused to an inmate.” *Stockton*, 44 F.4th at 619 (quoting *Fillmore*, 358 F.3d at 504). The force applied cannot be *de minimis*—instead it must be “repugnant to the conscience of mankind.” *Id.* (quoting *Hudson*, 503 U.S. at 7). And *Smith* must also designate evidence demonstrating “a reliable inference of wantonness in the infliction of pain.” *Id.* (quoting *Whitley*, 475 U.S. at 322).

The district court did not assess Officer Lamb’s driving under this excessive force standard. In fairness to the district court, the parties did not clearly frame their arguments in these terms. Even so, the court did not fully grapple with the most troubling aspect of the June 20 transport: *Smith*’s

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<sup>8</sup> Defendants also argue that *Smith* waived reliance on the excessive force standard because, they contend, he did not expressly clarify in the district court or his opening appellate brief that he was pursuing such a theory. We disagree. As *Smith* explains in his reply brief, he has repeatedly referenced the Eighth Amendment excessive force standard and cited excessive force cases both in the district court and on appeal. *See* Dist. Ct. Dkt. 126, *Smith* Summ. J. Resp. Br. at 23, 25.

allegations that Officer Lamb drove the transport van over multiple sets of railroad tracks in a manner intended to inflict pain on Smith, who had undergone orthopedic surgery earlier that day and was no longer in a secure box. Taking the facts in the light most favorable to Smith, a reasonable jury could find this conduct constitutes excessive force under the Eighth Amendment.

*First*, a reasonable jury could find Officer Lamb knew Smith was particularly susceptible to pain during the transport back to Wabash Valley. Smith had surgery just a few hours prior. And Smith had already been screaming in pain when Officer Lamb drove, by Smith's telling, in the interstate's "bumpy" lane. This aggravated the pain Smith felt from his surgically repaired elbow and his collarbone, which he had broken just a week earlier during the June 13 transport.

*Second*, a reasonable jury could find that Officer Lamb, after exiting the interstate, drove the van over multiple sets of railroad tracks in a manner evincing an intent to inflict pain on Smith. Officer Lamb slowed down to "bounce the van" over the first tracks the van encountered. This left Smith screaming in pain while the officers laughed, and one of the officers then said: "Scream some more. This is funny." And as Officer Lamb continued driving, he asked Officer Rilenge whether he should "speed up or slow down over" the approaching railroad tracks. In Smith's telling, Officer Rilenge encouraged Officer Lamb to speed the van up. Officer Lamb obliged, which caused the van to "catch some air" and bounce as he drove the van over multiple sets of tracks. The officers laughed while doing this. A reasonable jury could conclude from this evidence that Smith has demonstrated "a reliable

inference of wantonness in” Officer Lamb’s “infliction of pain.” *Whitley*, 475 U.S. at 322.

A reasonable jury could also find the officers’ refusal to place Smith in the transport van’s secure box bolstered this inference. Recall that during the trip *to* the hospital, the officers put Smith in trip gear, placed him on a seat in a secure box located in the front of the van, and buckled him in; they arrived at the hospital without incident. But for the trip *from* the hospital, Smith asked to be placed in the same secure spot in the van, but the officers refused. And even though the officers buckled Smith’s seatbelt for the return trip, the record reflects no legitimate penological reason justifying the officers’ change in seating arrangement. Given what then transpired during the return trip, a reasonable jury could draw the inference that the officers refused Smith’s seating request to further impair his ability to defend himself from Officer Lamb’s malicious driving.

*Third*, a reasonable jury could conclude Officer Lamb’s application of force under these circumstances—intentionally launching a van airborne to jostle an inmate especially vulnerable to pain—was not *de minimis*. Officer Lamb attests that any roadway bumps or railroad tracks they encountered were unavoidable and Smith did not complain during the drive. But viewing the evidence in the light most favorable to Smith, an issue of material fact remains as to whether the force Officer Lamb applied was “repugnant to the conscience of mankind.” *Hudson*, 503 U.S. at 10; *see also Stockton*, 44 F.4th at 619–20 (reasonable jury could conclude “offering and then removing support from uniquely vulnerable inmate,” causing inmate to strike head on floor, was not *de minimis* application of force).

And *fourth*, nothing in the record suggests Officer Lamb applied force “in a good-faith effort to maintain or restore discipline.” *Smith*, 140 F.4th at 366 (citation modified). Indeed, the officers do not argue that Smith exhibited any non-compliance or otherwise posed a risk to the officers’ safety during the transport back to Wabash Valley. Nor could Officer Lamb’s driving plausibly be viewed as a “preventative measure[] intended to avoid future disturbances.” *Id.* at 368 (citing *Whitley*, 475 U.S. at 322). That means there was no “need for the application of the force.” *Stockton*, 44 F.4th at 619 (citation omitted). And from this, if we make the necessary inferences in Smith’s favor, it follows that the force Officer Lamb applied was necessarily disproportionate to the threat Smith posed to the officers, as a reasonable jury could find Smith posed no threat at all. *See Hudson*, 503 U.S. at 9 (“When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated.”).

All said, a jury could reasonably conclude from these facts that Officer Lamb purposely drove over the railroad tracks in a way intended to inflict pain on Smith. Accepting these facts as true at this stage, Officer Lamb’s conduct constituted excessive force in violation of the Eighth Amendment.

*b. Clearly Established Law*

Given that, the next question is whether Officer Lamb’s conduct violated a right “clearly established” on June 20, 2019. For Officer Lamb to be immune from liability, we must determine whether his conduct violated “clearly established statutory or constitutional rights of which a reasonable person would have known.” *Smith*, 140 F.4th at 369 (citation modified). “The relevant inquiry is whether existing precedent placed the conclusion that [Officer Lamb] acted unreasonably

in these circumstances beyond debate.” *Mullenix*, 577 U.S. at 13–14 (citation modified). In other words, Officer Lamb would need to identify a case that “every reasonable official would interpret to establish the particular rule he seeks to apply.” *Smith*, 140 F.4th at 369 (citation modified).

Smith first asks us to define the clearly established right at issue as prohibiting “the malicious and retaliatory exposure of inmates to an apparently intended harm without a penological purpose.” *Williams v. Jackson*, 600 F.3d 1007, 1014 (8th Cir. 2010). But that frames the right “at too high a level of generality,” *Leiser*, 933 F.3d at 702–03, and does not account for “whether the violative nature of *particular* conduct is clearly established.” *Mullenix*, 577 U.S. at 12. “We must determine whether a right is clearly established in light of the specific context of the case, not as a broad general proposition.” *Leiser*, 933 F.3d at 702 (citation modified).

Taking that cue, Smith next advances a narrower alternative definition of the right at issue: the right to be free from pain inflicted through a “rough ride” in an automobile. Smith offers the Fourth Circuit’s decision in *Thompson v. Virginia* for that proposition.<sup>9</sup> But that case is factually distinguishable from the conduct in this case, and the Supreme Court has warned against, especially in excessive force cases, reasoning from broad principles when considering whether a right is clearly established for qualified immunity purposes. *Smith*, 140 F.4th at 370. The allegations in *Thompson* involved an

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<sup>9</sup> Smith also discusses the Sixth Circuit’s unpublished decision in *Scott v. Becher* and various district court decisions. But we do not consider these decisions for the reasons already discussed above. See *Johnson*, 164 F.4th at 1084 n.1; *Day*, 947 F.3d at 462.

inmate being driven recklessly in a transport van without a fastened seatbelt. 878 F.3d at 94–95. By contrast, during the June 20 transport, at issue here, Smith has not alleged that Officer Lamb drove the van recklessly nor has he contested that he was secured by a seatbelt. Thus, when viewed at the appropriate level of particularity, we find *Thompson* is not factually similar enough to have lent sufficient notice to Officers Lamb that his particular conduct ran the risk of violating Smith’s Eighth Amendment rights.

With no case that “squarely governs” Officer Lamb’s conduct, we affirm the district court’s grant of summary judgment for him on Smith’s Eighth Amendment excessive force claim.

## 2. Officer Rilenge – Passenger Officer

Finally, we assess whether Officer Rilenge, the passenger officer during the June 20 transport, is entitled to qualified immunity at summary judgment.

### a. Constitutional Violation

As we did for Officer Price’s conduct during the June 13 transport, we evaluate Officer Rilenge’s conduct under the Eighth Amendment deliberate indifference standard. *Thompson*, 878 F.3d at 107. To survive summary judgment under that standard, Smith must designate evidence sufficient for a reasonable jury to conclude that (1) he was exposed to a “substantial risk of serious harm,” and that (2) Officer Rilenge subjectively knew of and disregarded that risk. *Farmer*, 511 U.S. at 834, 837.

On the objective element, a reasonable jury could find Smith was exposed to a substantial risk of serious harm during the June 20 transport. Smith has designated evidence

showing Officer Lamb, the driving officer, intentionally drove in a manner to gratuitously inflict pain on him. A prison official intentionally inflicting unnecessary pain on an inmate in his care puts that inmate's safety at further future risk of assault. Here, Smith faced a substantial risk of serious harm when the prison official transporting him maliciously subjected him to unnecessary pain and, as explained above, the officers refused to place Smith in the transport van's secure box to protect him from that assaultive driving.<sup>10</sup>

And on the subjective element, a reasonable jury could find Officer Rilenge subjectively knew of and disregarded the substantial risk Smith faced, but disregarded it. "Proving actual subjective knowledge of the risk is often difficult, but not here." *Lisle v. Welborn*, 933 F.3d 705, 717 (7th Cir. 2019) (internal citation omitted). Officer Rilenge, as the passenger officer, rode in the van and could perceive how Officer Lamb drove during the transport.

A reasonable jury also could easily conclude Officer Rilenge disregarded the substantial risk Smith faced. Smith was already screaming in pain after Officer Lamb "bounce[d] the van" over the first set of railroad tracks they encountered.

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<sup>10</sup> It is also of no moment that Smith did not suffer as serious of an injury during the June 20 transport as the broken collarbone he suffered during the June 13 transport. "[T]he Eighth Amendment protects against future harm," and courts have "plainly recognized that a remedy for unsafe conditions need not await a tragic event." *Helling*, 509 U.S. at 33. For that reason, even though a reasonable jury could likely conclude the severe pain Smith endured during the June 20 transport was objectively serious, we need not actually decide whether a reasonable jury could reach that conclusion. The substantial risk of future harm he faced here is sufficient. *Cf. Lisle v. Welborn*, 933 F.3d 705, 716 (7th Cir. 2019) (explaining the "risk of suicide is an objectively serious medical condition" (emphasis added)).

As Smith screamed in pain while the officers laughed, one of the officers taunted Smith by stating: “Scream some more. This is funny.” And as the van approached more tracks, Smith designates evidence that Officer Lamb asked Officer Rilenge whether he should “speed up or slow down over” those tracks. Smith then saw Officer Rilenge put his hand up and wave his finger, encouraging Officer Lamb to speed up. Officer Lamb did so, causing the van to “catch some air” and bounce as they drove over multiple sets of tracks and the officers laughed.

These facts, if true, reveal Officer Rilenge conspired with Officer Lamb by actively encouraging Officer Lamb’s conduct and taunting Smith as he cried out in pain. A reasonable jury could easily conclude on these facts that Officer Rilenge, by encouraging the physical assault of an inmate in his care and failing to protect him, exhibited deliberate indifference. *See Thompson*, 878 F.3d at 108–09 (concluding passenger officer disregarded known risk of harm when he “took no action, whether to ask [the driving officer] to slow down or to finally secure” the plaintiff’s seatbelt, and officer had mocked plaintiff for being scared during drive); *cf. Lisle*, 933 F.3d at 717 (suicide watch nurse could be deemed deliberately indifferent to inmate’s suicide risk “by taunting him for being unsuccessful and actually encouraging [the inmate] to kill himself while he was in the infirmary on suicide watch”; also observing this claim “lies at the intersection of deliberate and pointless infliction of psychological injury and deliberate indifference in medical care”).

Taken all together, Smith has designated sufficient evidence to satisfy the deliberate indifference standard. He asserted that he was exposed to a substantial risk of harm by

Officer Lamb's driving and Officer Rilenge was aware of that risk and disregarded it. Accordingly, we conclude Officer Rilenge's failure to intervene violated Smith's Eighth Amendment rights.

*b. Clearly Established Law*

Given that conclusion, the next question is whether Officer Rilenge's conduct violated a right "clearly established" on June 20, 2019. Like with Officer Lamb, the "clearly established" inquiry as to Officer Rilenge turns on whether a closely analogous case or a clear trend in the relevant case law shows that his conduct was unconstitutional. *See Smith*, 140 F.4th at 372.

For this inquiry, Smith offers the same case law for Officer Rilenge as he did for Officer Lamb. That means, like with Officer Lamb, Smith's attempt to pierce Officer Rilenge's assertion of qualified immunity hinges on whether the Fourth Circuit's opinion in *Thompson v. Virginia* was sufficiently analogous. But as discussed above, *Thompson* is factually distinguishable. That case involved an inmate being driven recklessly in a transport van without a fastened seatbelt, *Thompson*, 878 F.3d at 94–95, but here, Smith has not alleged that Officer Lamb drove the van recklessly nor has he contested that he was secured by a seatbelt. These facts would not have put Officer Rilenge on notice that he had a constitutional obligation to intervene. Thus, we conclude *Thompson* is not factually similar enough to have lent sufficient notice to Officer Rilenge

that his particular conduct ran the risk of violating Smith's Eighth Amendment rights.<sup>11</sup>

\* \* \*

We do not doubt the June 20 transport was likely very unpleasant for Smith. And, if Smith's allegations are true, we are deeply troubled by the callous and unprofessional behavior Officers Lamb and Rilenge exhibited by laughing at Smith's pain. But that is not enough to have put the officers on notice that they were violating Smith's Eighth Amendment rights. Accordingly, we affirm the district court's grant of summary judgment as to Officers Lamb and Rilenge.

### III. CONCLUSION

For these reasons, we AFFIRM the district court's judgment as to Officers Lamb and Rilenge, VACATE the district court's judgment as to Officer Price, and REMAND for further proceedings consistent with this opinion.

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<sup>11</sup> The dissent urges us to reach the same result for the June 20 transport that we do for the June 13 transport. Respectfully, doing so would require us to frame the "clearly established" inquiry at too high a level of generality. In the Supreme Court's most recent instruction on how closely analogous a case must be to clearly establish a right, the Court explained that officers must have been able to "read" the precedent "beforehand and known that it proscribed their specific conduct." *Zorn v. Linton*, 146 S. Ct. 926, 930 (2026) (citation modified). That did not pose a problem for the June 13 transport because, as explained above, the Fourth Circuit's opinion in *Thompson v. Virginia* is on all fours with the factual circumstances Officer Price faced during that transport. But it does pose a problem for the June 20 transport because *Thompson* is factually distinguishable.

RIPPLE, *Circuit Judge*, concurring in part and dissenting in part. I join the court in holding that the officers involved in the transport of June 13, 2019, are not entitled to qualified immunity. It was well-established at the time of the incident that the intentional and gratuitous infliction of pain on a prisoner without any penological justification by a malicious assault violates the Eighth Amendment. The court states the principle succinctly: “[B]y June 2019, inmates had a clearly established right to reasonable protection from malicious assaults by a prison official.” *Smith*, Slip Op. at 21.

In my view, the court should apply that same principle to the events of June 20, 2019, and hold that the officers involved in the alleged rough ride episode should likewise not enjoy the protection of qualified immunity for their *assaultive* behavior. The court’s attempt to distinguish between the two instances is difficult to understand and will encourage the sort of analytical casuistry that inevitably will enfeeble the doctrine of qualified immunity’s effectiveness as an instrument of governance.

Officers Lamb’s and Rilenge’s assignment for the trip of June 20, 2019, was to transport Smith from the hospital where he had just undergone serious orthopedic surgery to the prison where he was then housed. The parties do not contest that, at the time of the transport, Smith was still in the very initial stages of recovery from the surgery and still experiencing the aftermath of anesthesia. Moreover, at this stage of the litigation, we also must accept Smith’s account that he informed his two escorts that the rough road chosen by the driver was exacerbating his pain and that he asked that they travel on the smoother adjacent lane. We also must accept his assertion that upon encountering railroad

crossings, the guards deliberately chose to speed up to subject him to more pain from the resulting jostling of the van. He also alleges that the officers' placement of him in an unprotected part of the van and their refusal to run the air conditioning system exacerbated further his pain.

The court justifies its decision on the ground that Smith does not point to a case where those conducting a rough ride produced the resulting pain by precisely the same actions as employed here. Respectfully, this insistence warps significantly the policy concerns that animate the qualified immunity doctrine. At bottom, qualified immunity protects a government officer who acts without actual or constructive knowledge that his actions violate the law. *Kisela v. Hughes*, 584 U.S. 100, 104 (2018). It embodies the principle that we hold governmental actors accountable only when "they knew or reasonably should have known that their actions violated [a] plaintiff's constitutional rights." *Silverman v. Ballantine*, 694 F.2d 1091 (7th Cir. 1982) (citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)). It ensures that government officers are not restrained unrealistically from performing their duties by ambiguities in the law. *Harlow*, 457 U.S. at 816–18.

Here, Smith submits that it was well established that the Eighth Amendment forbids the deliberate infliction of pain when it is inflicted for no valid penological reason. He points to numerous cases that have articulated that principle. See *Calhoun v. DeTella*, 319 F.3d 936, 939 (7th Cir. 2003) (explaining that the "gratuitous infliction of pain always violates contemporary standards of decency and need not produce serious injury in order to violate the Eighth Amendment"); accord *Leiser v. Kloth*, 933 F.3d 696, 703 (7th Cir. 2019); see also *Wilkins v. May*, 872 F.2d 190, 194 (7th Cir. 1989) ("[N]o one

doubts” that “the wanton or malicious infliction of severe pain or suffering upon a prison inmate violates the Eighth Amendment”); and *Fillmore v. Page*, 358 F.3d 496, 504 (7th Cir. 2004) (“Infliction of pain that is ‘totally without penological justification’ is *per se* malicious.” (quoting *Hope v. Pelzer*, 536 U.S. 730, 737 (2002))). My colleagues nevertheless maintain that the officers cannot be held accountable for their conduct because of the absence of precedent addressing a situation where the deliberate and gratuitous infliction of pain was inflicted upon a post-surgical patient by means of a rough ride.

Respectfully, today’s decision cuts the doctrine of qualified immunity loose from its moorings and sets us on an untenable path. Our case law requires that the right asserted by a section 1983 plaintiff be articulated at a *meaningful degree* of specificity. See *Phillips v. Cmty. Ins. Corp.*, 678 F.3d 513, 528 (7th Cir. 2012). We do so to ensure that the defendant officer is held responsible only for action that is “clearly illegal.” *Gustafson v. Jones*, 117 F.3d 1015, 1021 (7th Cir. 1997). Does this underlying policy concern of the qualified immunity doctrine require that an officer, *intending* to inflict significant pain on a prisoner and acting without *any* penological justification, be absolved from liability simply because he selects as his instrument of depravity an instrument not chosen by the sadistic malefactors in earlier cases? Certainly not. See *Strand v. Minchuk*, 910 F.3d 909, 915 (7th Cir. 2018) (“The demand for specificity is not unyielding or bereft of balance.”); *Wilson v. Layne*, 526 U.S. 603, 615 (1999) (“This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful.” (citation modified)); cf. *Becker v. Elfreich*, 821 F.3d 920, 929 (7th Cir. 2016) (“[T]he relevant case law did not need to involve a

police dog in order to clearly establish the principle that you cannot allow a dog to violently attack ... a [nonresisting] suspect.”).

When the plaintiff alleges that gratuitous pain was inflicted intentionally and without any penological purpose, demanding a granular level of congruence with sadistic behavior reported in earlier cases is beside the point and turns the qualified immunity doctrine, designed to ensure fair notice, into pointless casuistry.<sup>1</sup> Here, Smith maintains that the officers *purposely* subjected him to severe pain and that they had *no* justifiable penological purpose for doing so. If a trier of fact concludes that the guards deliberately inflicted such gratuitous pain and had no penological justification, they have violated the Eighth Amendment. Period.

*Stockton v. Milwaukee County*, 44 F.4th 605, 620–21 (7th Cir. 2022), is instructive. There, we were confronted with an allegation that an officer, knowing that a prisoner was incapable of sitting up without assistance and was very likely to fall, hit his head, and experience significant pain if the officer did not continue to physically hold him up, deliberately ceased his support of the prisoner and let him fall. We made clear that, despite the absence of any analogous case, qualified immunity for the officer was out of the question and the case had to be submitted to a trier of fact. A

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<sup>1</sup> This case is not controlled by *Zorn v. Linton*, 146 S. Ct. 926 (2026). There, the defendant officer was undertaking the legitimate law enforcement action of removing a trespassing demonstrator and, in the process, employed a painful wristlock technique to overcome her passive resistance. Here, by contrast, Smith was not engaged in any unlawful activity that might have justified any use of pain-inducing force.

jury would be entitled to determine that the officer acted without any penal justification and solely to inflict pain.

Here, in his opposition to summary judgment, Smith squarely raised his argument that the constitutional violation was patently obvious. *See Jacobs v. City of Chicago*, 215 F.3d 758, 767 (7th Cir. 2000); *Kernats v. O'Sullivan*, 35 F.3d 1171, 1176 (7th Cir. 1994). He quotes extensively from his deposition: For example, one excerpted quote says, "And I'm back there screaming in pain and they're sitting [there] laughing. I mean, laughing out loud (Descriptive noise) 'Scream some more. This is funny.'" <sup>2</sup> He goes on to say that the officers knew he was particularly susceptible to pain during the transport because they knew he had recently broken his collarbone and just had elbow surgery. "[T]hey knew that I was in pain and they knew that I was suffering. I mean, why else would you do that?" <sup>3</sup>

Where do we go from here? Apparently, every sadistic prison guard who *deliberately* inflicts pain for the sheer enjoyment of inflicting pain can act with impunity as long as he chooses to implement his depravity through a means not previously chosen by another twisted mind. Courts will spend their time trying to determine whether one instrument of depravity is closely akin to another. And legal historians of future millennia will scratch their heads as they attempt to understand why we expended so much time on a pointless task with the same usefulness as inquiring how many angels can dance on the head of a pin.

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<sup>2</sup> R.126 at 9 (quoting R.117-1 at 76:01–04).

<sup>3</sup> *Id.* at 10 (quoting R.117-1 at 88:25–89:02).

I respectfully submit that the judgment of the district court ought to be reversed in its entirety.