No. 26-180

In the Supreme Court of the United States

EDWARD ALLYN HUDACKO,
Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.,
Respondents.

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

BRIEF OF INDEPENDENT WOMEN'S LAW CENTER AND THE MANHATTAN INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

Beth Parlato
INDEPENDENT WOMEN'S LAW CENTER
1802 Vernon St. NW
Suite 1027
Washington, DC 20009
(202) 807-9986

Ilya Shapiro
Counsel of Record
Trevor Burrus
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
ishapiro@manhattan.institute

September 9, 2026

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

QUESTIONS PRESENTED

1. Whether judicial decisions are the only valid source of clearly established law (the approach of the Fifth, Seventh, Ninth, Tenth, and D.C. Circuits); or whether other sources of law or non-legal materials, like professional knowledge, may also be examined (as in the First, Second, Third, Fourth, Sixth, Eighth, and Eleventh Circuits)?

2. Whether the same clearly established-law test applies to all government officials, or whether as a threshold question courts should determine "whether immunity was historically accorded the relevant official in an analogous situation at common law," as this Court used to ask in qualified immunity cases and still does for absolute immunity. *Baxter v. Bracey*, 590 1011, 1014 (2020) (Thomas, J., dissenting).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Independent Women's Law Center (IWLC) is a project of Independent Women's Forum (IWF), a non-profit, non-partisan 501(c)(3) organization founded by women to foster education and debate about legal, social, and economic issues. IWF promotes policies that advance women's interests by expanding freedom, encouraging personal responsibility, and limiting the reach of government. IWF also documents the experiences of individuals whose lives have been affected by consequential legal, medical, and public-policy decisions. Independent Women's Law Center supports this mission by advocating for equal opportunity, individual liberty, and parental rights.

The **Manhattan Institute** (MI) is a nonprofit policy research foundation whose mission is to develop new ideas that foster economic choice and individual responsibility. It has filed briefs opposing regulations that interfere with constitutional rights, including parental rights. As relevant here, MI senior fellow Leor Sapir, Ph.D., focuses his research on pediatric gender medicine and medical policy in the U.S. and abroad. His academic work has investigated how America's political culture and constitutional government shape public policy on matters of civil rights.

IWF has particular knowledge relevant here. Five of its representatives contributed to a recently released report commissioned by the U.S. Department of Health and Human Services, *Wolves in White Coats: How Doctors and Hospitals Pushed and Profited from*

---

[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel; no person or entity other than *amici* funded its preparation or submission.

the Fraud of "Gender Medicine." The HHS Report examines the institutional, financial, and professional practices surrounding medical interventions intended to alter the sex characteristics of minors. It also documents the experiences of patients and parents who encountered those practices. That evidence provides important context for the allegations in this case.

Amici submit this brief to provide that context and to give voice to individuals whose experiences illustrate the consequences of subjecting young people to irreversible medical interventions and the critical importance of parental authority over such decisions.

SUMMARY OF ARGUMENT

This case is about qualified immunity. But beneath that doctrine lies a remarkably simple allegation: government-employed medical professionals performed a surgical procedure on a minor even though a court order expressly required his father's consent to "any gender identity related surgery," and they did so without obtaining that consent.

Petitioner alleges that Respondents knew the procedure was surgery. The manufacturer described implantation of the Supprelin device as a surgical procedure. Respondents possessed professional knowledge concerning the procedure they themselves performed. And UCSF's own insurance billing characterized the procedure as "surgery." Yet the Ninth Circuit held that those facts could not overcome qualified immunity because Petitioner could not identify sufficiently analogous judicial precedent establishing that this particular procedure constituted surgery.

A newly released report commissioned by the U.S. Department of Health and Human Services illustrates

why that cramped inquiry is especially problematic in the medical context. *Wolves in White Coats: How Doctors and Hospitals Pushed and Profited from the Fraud of "Gender Medicine"* (2026) ("HHS Report").

The HHS Report documents a medical system in which pediatric sex-rejecting interventions expanded rapidly and generated substantial revenue. It also examines in detail the medical terminology, diagnostic codes, procedural codes, and billing practices through which providers identify and describe the treatments they perform. Those findings matter here because they underscore the flaw in asking what a reasonable medical professional would have understood while refusing to consider the very sources of professional knowledge that inform that understanding, including training, medical terminology, institutional practices, and other information possessed by medical professionals.

IWF has spent years listening to young people and families affected by pediatric gender medicine. Their stories differ in their particulars, but a disturbing pattern repeatedly emerges: vulnerable children entered medical systems that moved them toward cross-sex hormones and surgery with extraordinary speed, while parents' concerns, underlying conditions, alternative explanations, and the possibility of future regret were ignored altogether.

The petition's questions presented warrant review.

ARGUMENT

I. THE HHS REPORT PROVIDES IMPORTANT NEW CONTEXT FOR THE COURT'S CONSIDERATION OF THIS CASE

The recently released HHS Report provides important context for evaluating the allegations in this

case and the qualified immunity question they present. The report examines the professional practices, institutional incentives, medical terminology, and billing practices surrounding pediatric gender-related medical interventions; the same medical environment in which the events here occurred. The report illustrates the extent to which medical professionals rely on their training, experience, and institutional practices to understand and characterize the procedures they perform. That is particularly significant here, where the Ninth Circuit confined its clearly-established-law inquiry to judicial precedent despite allegations that Respondents knew, through those very sources of professional knowledge, that the procedure performed on the Petitioner's son was surgery requiring Petitioner's consent.

A. The HHS Report Documents the Medical Environment in Which Pediatric Gender Medicine Rapidly Expanded

In 2026, HHS commissioned *Wolves in White Coats*, an investigation into the role of hospitals and medical providers in the expansion of pediatric sex-rejecting interventions. *See* U.S. Dep't of Health & Hum. Servs., *Wolves in White Coats: How Doctors and Hospitals Pushed and Profited from the Fraud of "Gender Medicine"* 3, 5 (2026). Five contributors to the report are affiliated with IWF. *Id.* at 3. The report describes extraordinary growth in the field of pediatric gender clinics. What had been a handful of specialized clinics in the early 2010s expanded to programs operating within more than 225 hospitals and health systems by the early 2020s. *Id.* at 7.

That growth created substantial financial incentives. Unlike routine pediatric care, the report

explains medical transition can place an otherwise physically healthy child on a path involving repeated endocrinology visits, laboratory testing, prescriptions, monitoring, surgery, and continuing medical care extending into adulthood. The report describes this as a "captive patient" dynamic. *Id.* at 7–8.

The financial figures are significant. The report estimates lifetime hormone-related costs reaching tens of thousands of dollars and surgical costs potentially exceeding $100,000 for a single patient. *Id.* at 8–9. Nationwide, watchdog data examined by the report identified nearly $120 million in total submitted hospital and clinic charges involving sex-rejecting procedures on minors. *Id.* at 9. Petitioner's allegations fit within that broader context. According to the complaint, Petitioner discovered what had occurred only after his insurer received bills totaling more than $200,000. Pet. App. 129a.

The report also examines the professional and institutional practices accompanying the expansion of pediatric gender medicine and illustrates the sources of knowledge medical professionals rely upon to understand and characterize the procedures they perform, as further discussed below.

B. The Report Demonstrates How Medical Terminology and Coding Reflect Professional Knowledge

The report's extensive discussion of medical coding is particularly relevant here. ICD and CPT codes form a common professional language through which physicians and insurers communicate. ICD codes document why treatment was provided; CPT codes identify what treatment was performed. Physicians and medical

institutions use that terminology to document treatment and seek reimbursement for the procedures they perform. *Id.* at 10. The report examines these practices in detail, including the diagnostic and procedural codes used in connection with pediatric gender-related interventions. Its analysis illustrates the significant role that medical terminology and coding play in identifying both the nature of a procedure and the medical reason for which it is performed. *Id.* at 10–12.

This underscores a point central to this case: medical terminology and billing practices reflect professional knowledge about the nature and purpose of medical treatment. *Id.* at 10–12. That principle is directly relevant here. Petitioner alleges that Respondents knew the implant procedure constituted surgery based on their professional knowledge and experience, the manufacturer's prescribing information expressly describing insertion of the implant as a "surgical procedure," and UCSF's own billing records identifying the procedure as "surgery." Pet. App. 160a, 202a.

Yet under the Ninth Circuit's approach, that professional knowledge is effectively beside the point. But this Court has made clear that qualified immunity does not require a prior case involving "materially similar" facts and does not preclude liability simply because an official acts in "novel factual circumstances." *Hope v. Pelzer*, 536 U.S. 730, 739, 741 (2002). The relevant question is whether the official had "fair warning" that the conduct was unconstitutional. *Id.* at 741.

Where, as here, a plaintiff alleges that government-employed medical professionals knew from their training, experience, manufacturer instructions, and their own institution's billing practices that a procedure constituted surgery, courts should not be required to

disregard that knowledge merely because no prior judicial decision addressed the same procedure under materially identical circumstances. The consequences of that approach are particularly significant when the conduct at issue involves irreversible medical treatment of a minor and overriding a parent's legal authority to consent to that treatment. The experiences documented in the HHS Report illustrate why.

II. DETRANSITIONERS' EXPERIENCES ILLUSTRATE THE HARMS OF IRREVERSIBLE MEDICAL INTERVENTIONS AND THE IMPORTANCE OF PARENTAL AUTHORITY

The significance of parental authority in this context is illustrated by the experiences of young people who underwent medical transition and later detransitioned. IWF has interviewed and worked with young people and families who experienced pediatric gender medicine firsthand. Their accounts show how vulnerable young people struggling with adolescent distress, trauma, mental-health concerns, and other underlying issues are pushed toward hormones and surgery while the underlying causes of their distress remain unexplored and ignored. HHS Report, *supra*, at 45–54.

These experiences also illustrate why parental involvement in a minor's medical care has long received constitutional protection. This Court has recognized that parents possess the maturity, experience, and capacity for judgment that children themselves often lack and therefore "retain a substantial, if not the dominant, role" in decisions concerning their children's medical treatment. *Parham v. J.R.*, 442 U.S. 584, 602–04 (1979). The Ninth Circuit likewise recognizes that the constitutional right to family association "includes the right of parents to make important medical

decisions for their children, and of children to have those decisions made by their parents rather than the state." *Wallis v. Spencer*, 202 F.3d 1126, 1141 (9th Cir. 2000). *See also Benavidez v. Cty. of San Diego*, 993 F.3d 1134, 1150–51 (9th Cir. 2021) (recognizing parents' right to notice and consent or judicial authorization before medical examinations of their children, absent exigent circumstances).

Clementine Breen's experience illustrates the consequences of making such decisions at a remarkably young age. Clementine was twelve when she began searching online for an explanation for why she hated being a girl. Years earlier, at age seven, she had been sexually abused, trauma she had not yet processed. As puberty approached, she became increasingly anxious about her changing body. Online, she encountered the concept of gender dysphoria and came to believe that transition offered an escape from a body that felt unsafe to her. HHS Report, *supra*, at 48.

What followed happened quickly. After Clementine confided in a school counselor, her parents were referred to Children's Hospital Los Angeles. Clementine recounts that, at her first appointment, lasting approximately one hour, clinicians told her parents that their twelve-year-old daughter was "100% trans" and at high risk of suicide if they did not affirm her new identity. She was soon placed on puberty blockers. At thirteen, she began testosterone. At 14, she underwent a double mastectomy. No comprehensive evaluation of her childhood sexual abuse occurred before these interventions. *Id.* at 48–49.

Only later did Clementine receive therapy that addressed the trauma she had experienced as a child. As she processed that abuse, she came to understand that

her distress over being female had been intertwined with trauma that had gone unaddressed. At eighteen, she stopped taking testosterone. *Id.* at 49.

Today, Clementine is pursuing breast reconstruction. In contrast with her experience in transitioning, Clementine's difficulties in trying to obtain that surgery is illustrative. She reports being repeatedly questioned about her psychological stability before doctors will reconstruct the breasts that were removed when she was fourteen. She faced no comparable scrutiny before the mastectomy itself. *Id.*

Layla Jane's experience illustrates a related concern: parents themselves must rely on medical professionals when deciding whether to authorize irreversible treatment for their children. Layla was eleven when she began experiencing discomfort with being female. She had entered puberty earlier than other girls in her class and was being bullied. She also struggled with undiagnosed autism, severe anxiety, depression, and suicidal thoughts dating back to elementary school. She increasingly turned to the internet, where she encountered transgender content and came to see becoming a boy as a way out of the distress she was experiencing. *Id.* at 49.

When Layla entered therapy through Kaiser Permanente, she was diagnosed with gender dysphoria. According to the HHS Report, within months, and without a full diagnostic evaluation of her longstanding mental-health conditions, she was recommended for medical intervention. At twelve, she was prescribed a puberty blocker. Testosterone followed. Then, in September 2017, one month after her 13th birthday, Layla underwent a double mastectomy. *Id.* at 49–50.

Her parents were warned that refusing medical transition could mean losing their child. The choice presented to them was stark: a "live son or a dead daughter." Frightened for their daughter's life and trusting the medical professionals advising them, they agreed. *Id.* at 50. At 17, Layla stopped testosterone and detransitioned, but the double mastectomy she underwent cannot be undone.

Parents depend upon physicians to provide complete and reliable information when making consequential medical decisions for their children. But Luke Healy's experience demonstrates something different: the importance of preserving a parent's ability to say no. Luke was ten years old when he first encountered transgender content online. By 13, he believed he was a girl. When he told his parents, they sought professional help through Kaiser Permanente. Luke recalls that while counselors and medical providers treated his new identity as settled, his parents continued asking a more fundamental question: what was causing their son's distress? *Id.* at 53.

When medical intervention was proposed, Luke's parents refused to consent to puberty blockers or hormones while he was a minor. Luke now describes their refusal as one of the bravest things they ever did. *Id.*

Once he could make medical decisions without his parents' consent, Luke began obtaining estrogen and remained on hormones for approximately two-and-a-half years. But medical intervention did not resolve the distress that had led him there. Luke recounts that the physical changes instead left him increasingly feeling like a stranger in his own body, while each intervention seemed to lead toward another. Eventually, he came to understand that becoming a woman was not

the answer to the turmoil he had experienced since adolescence and returned to living as a man. *Id.* at 53–54.

Luke's story is particularly relevant here because his parents were able to do what Petitioner was not: say no. Luke's parents knew their child's history, vulnerabilities, and circumstances, and exercised the judgment the law entrusts to parents when making consequential medical decisions for their minor children. Years later, Luke came to understand the wisdom of the decision he had once opposed. *Id.*

Here, the family court expressly preserved for Petitioner a specific and consequential parental right. Although other medical decision-making authority had been transferred to his former wife, gender-identity-related surgery required Petitioner's written consent or an order from the family court. Pet. App. 152a. Respondents nevertheless performed the procedure without obtaining either. Pet. App. 123a–124a.

The contrast with Luke's experience is important. A parent's legal authority to withhold consent means little if government medical professionals may simply proceed without asking. And that authority is especially important when a minor confronts an irreversible medical decision whose lifelong consequences he may not yet fully appreciate. The constitutional protection afforded parental medical decision-making recognizes precisely this reality: parents bring judgment, experience, and knowledge of their child that the child cannot be expected to possess. Where a court has expressly preserved that authority, government medical professionals cannot render it meaningless by proceeding without the parent's consent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Beth Parlato
INDEPENDENT WOMEN'S LAW CENTER
1802 Vernon St. NW
Suite 1027
Washington, DC 20009
(202) 807-9986

Ilya Shapiro
Counsel of Record
Trevor Burrus
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000

September 9, 2026