

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2479

DANIEL NEWBERG

v.

PENNSYLVANIA DEPARTMENT OF CORRECTIONS;
JAMIE SORBER, Superintendent SCI Phoenix;
STEPHEN WIENER, M.D., Medical Director SCI Phoenix;
SCI PHOENIX CORRECTIONAL OFFICERS JANE/JOHN DOE #'s 1-15;
WELLPATH, INC.;
CHRISTINE STICKNEY, SCI Phoenix Health Care Provider;
JENNIFER FERNANDEZ, SCI Phoenix Health Care Provider;
MHM SERVICES, INC/WELLPATH, INC., NURSES JANE/JOHN DOE #'s 1-15;
MHM SERVICES/WELLPATH, INC., AND DR. JANE/JOHN DOE #'s 1-5

Christine Stickney and Jennifer Fernandez,
Appellants

On Appeal from the U.S. District Court, E.D. Pa.
Judge John M. Younge, No. 2:22-cv-00304

Before: SHWARTZ, CHUNG, AND FISHER, Circuit Judges
Submitted: Oct. 1, 2026; Filed: Oct. 5, 2026

PER CURIAM.

Christine Stickney and Jennifer Fernandez appeal the District Court's order denying their motion for summary judgment based on qualified immunity. Insofar as this appeal presents factual disputes, we will dismiss for lack of jurisdiction. On the legal questions of whether the District Court properly defined the right at issue and whether it was clearly established, we will vacate and remand.

*This is not an opinion of the full Court and, under 3d Cir. IOP 5.7, is not binding precedent.

I¹

A

Three days into his term of imprisonment, Daniel Newberg was transferred to the State Correctional Institution at Phoenix from another facility. Newberg v. Pa. Dep’t of Corr., No. 22-CV-0304-JMY, 2025 WL 1839490, at *1 (E.D. Pa. July 2, 2025). During his intake interview at Phoenix, Newberg told Psychological Services Specialist (“PSS”) Stickney² that he (1) had been taking three psychotropic medications for the past ten years, (2) was feeling “down,” “depressed,” or “anxious,” but that his medications helped, (3) had a history of depression and suicide attempts, (4) attempted suicide after going off of his medications two years earlier, and (5) had last received medications the day before the interview. Id. Newberg was told that he could not get his medications without meeting the prison psychiatrist, so he requested an immediate appointment, but he was told it would be days before he could see the psychiatrist. Id.

Newberg informed corrections officers nightly that he needed to see a doctor because he was suicidal and needed his medication. He said the same to medical or

¹ The following facts are largely drawn from the District Court’s statement of facts, which we must accept “as given” in this interlocutory appeal. Walker v. Horn, 286 F.3d 705, 707 (3d Cir. 2002). “[W]e will review ‘the record to determine what [other] facts the [D]istrict [C]ourt . . . likely assumed.’” James v. N.J. State Police, 957 F.3d 165, 167 (3d Cir. 2020) (second, third, and fourth modifications and omission in original) (quoting Johnson v. Jones, 515 U.S. 304, 319 (1995)); see also Perez v. Suszczynski, 809 F.3d 1213, 1221 (11th Cir. 2016) (relying on plaintiff’s undisputed facts in determining facts likely assumed by the District Court).

² Stickney holds a master’s degree in counseling psychology and is a licensed professional counselor in Pennsylvania. Her duties as a PSS included doing rounds, providing mental health counseling, and serving on teams that discuss a particular inmate’s care.

mental health staff members, which may have included Appellants. Id. at *2. Six days after his arrival, Newberg met with PSS Fernandez,³ who reviewed the intake form Stickney prepared, which included Newberg’s history of suicidality when unmedicated. Id. In the “Individual Recovery Plan” created at this meeting, Fernandez wrote that Newberg’s top personal goal was to “get back on . . . medication.” Id. at *1.⁴ Later that day, Newberg attempted suicide by jumping from the second-floor tier onto the concrete floor below. Id. at *2. He did not see a psychiatrist or receive his medication before this incident.

B

Newberg sued Appellants and others under 42 U.S.C. § 1983, alleging violations of the Eighth Amendment and the Fourteenth Amendment’s Due Process Clause. Appellants moved for summary judgment, arguing that the evidence was insufficient to show they violated his rights and that they were entitled to qualified immunity. The District Court denied the motion because the constitutional right to protection from vulnerability to suicide was clearly established and factual disputes remained over whether (1) Newberg had “a ‘strong likelihood’ of being vulnerable to attempting suicide,” and (2) Appellants knew of Newberg’s potential suicide risk and the need for intervention. Newberg, 2025 WL 1839490, at *2-4. The Court reasoned that, if a jury

³ Fernandez holds a master’s degree in clinical psychology. Her duties included meeting with new inmates “on the mental health roster” to develop individual recovery plans, reviewing psychology documents, conducting mental health evaluations, and generally providing mental health care. App. 126.

⁴ Fernandez observed, from her meeting with Newberg that he had “some risks” of suicide, App. 126, and, from his intake form, that he had an increased risk for suicide.

found that Newberg had, and Appellants knew of, such a vulnerability, it could find them liable for being deliberately indifferent to Newberg's suicide risk in violation of the Eighth Amendment, and they were therefore not entitled to qualified immunity. Id. at *5.

Appellants appeal.

II⁵

A

An order denying summary judgment is not a final order over which we have jurisdiction under 28 U.S.C. § 1291. Under the collateral order doctrine, however, we may review such orders if they “finally determine claims of right too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.” Forbes v. Township of Lower Merion, 313 F.3d 144, 147 (3d Cir. 2002) (internal quotation marks and alteration omitted). Orders denying summary judgment motions on qualified immunity grounds are immediately appealable under the collateral order doctrine because qualified immunity “is an immunity from suit rather than a mere defense to liability and is effectively lost if a

⁵ The District Court had jurisdiction under 28 U.S.C. § 1331. We have jurisdiction “to determine [our] own jurisdiction,” United States v. Ruiz, 536 U.S. 622, 628 (2002). To the extent we have jurisdiction, we exercise plenary review over an order resolving a motion for summary judgment. Ellis v. Westinghouse Elec. Co., LLC, 11 F.4th 221, 229 (3d Cir. 2021).

case is erroneously permitted to go to trial.” Id. (internal quotation marks, alterations, and emphasis omitted).

Qualified immunity shields government officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Pearson v. Callahan, 555 U.S. 223, 231 (2009) (internal quotation marks and citation omitted). To overcome an assertion of qualified immunity at summary judgment, a plaintiff must show “(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct,” Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011) (internal quotation marks and citation omitted), meaning the right was “sufficiently clear that every reasonable official would have understood that what he is doing violates that right,” Mullenix v. Luna, 577 U.S. 7, 11 (2015) (per curiam) (quoting Reichle v. Howards, 566 U.S. 658, 664 (2012)).

Interlocutory appeals of orders denying summary judgment based on qualified immunity, however, are permitted only “to the extent that [a claim of qualified immunity] turns on an issue of law.” Forbes, 313 F.3d at 147 (alteration in original) (quoting Mitchell v. Forsyth, 472 U.S. 511, 530 (1985)). On interlocutory appeal, we may not “consider whether the district court correctly identified the set of facts that the summary judgment record is sufficient to prove,” id. (quoting Ziccardi v. City of Philadelphia, 288 F.3d 57, 61 (3d Cir. 2002)), or entertain an argument “that a trial judge erred in denying a qualified-immunity summary-judgment motion because the judge was mistaken as to the facts that are subject to genuine dispute,” id. We may review, however, “whether the set

of facts identified by the district court is sufficient to establish a violation of a clearly established constitutional right.” Id. (quoting Ziccardi, 288 F.3d at 61); In re Montgomery County, 215 F.3d 367, 377-78 (3d Cir. 2000) (“Our review on interlocutory appeal is strictly limited to determining whether the right alleged to have been violated was clearly established at the time of the act in question.”).

B

The Eighth Amendment protects prisoners from prison officials’ “deliberate[] indifferen[ce] to a prisoner’s serious medical needs.” Mullin v. Balicki, 875 F.3d 140, 158 (3d Cir. 2017). This includes protection from vulnerability to suicide. Id. More specifically,

to hold a prison official liable for failing to prevent a detainee’s suicide, . . . a plaintiff must show: (1) that the individual had a particular vulnerability to suicide, meaning that there was a “strong likelihood, rather than a mere possibility,” that a suicide would be attempted; (2) that the prison official knew or should have known of the individual’s particular vulnerability; and (3) that the official acted with reckless or deliberate indifference, meaning something beyond mere negligence, to the individual’s particular vulnerability.

Palakovic v. Wetzel, 854 F.3d 209, 223-24 (3d Cir. 2017). Appellants argue that (1) they did not violate this right, regardless of whether it was clearly established, and (2) they did not violate any clearly established right.

1

Appellants’ arguments concerning whether they knew Newberg was vulnerable to suicide, or were responsible for acting based on this knowledge, are factual.⁶ See Farmer

⁶ Many of Appellants’ arguments concern only the sufficiency of the evidence.

v. Brennan, 511 U.S. 825, 842 (1994) (“Whether a prison official had the requisite knowledge of a substantial risk is a question of fact”); Harris v. Kellogg Brown & Root Servs., Inc., 724 F.3d 458, 477 (3d Cir. 2013) (characterizing question of knowledge as factual); Armstrong v. Squadrito, 152 F.3d 564, 577 (7th Cir. 1998) (“[W]hether the defendants’ conduct constituted deliberate indifference is a classic issue for the fact finder.”). Because Appellants’ argument that they did not violate Newberg’s rights turns on the resolution of factual disputes, we lack jurisdiction to consider it at this stage. See Forbes, 313 F.3d at 147; see also Ziccardi, 288 F.3d at 63 (characterizing argument that “the summary judgment record is insufficient to prove that [paramedics] acted with subjective deliberate indifference” to plaintiff’s safety as “an evidentiary argument” that this Court lacked jurisdiction to consider on interlocutory qualified immunity appeal); Johnson v. Jones, 515 U.S. 304, 313 (1995) (holding that determinations of evidence sufficiency are not appealable on qualified immunity interlocutory appeals).

That said, we may review on interlocutory appeal arguments concerning whether the law was clearly established and whether the facts identified by the District Court show a violation of a clearly established right. Forbes, 313 F.3d at 147; In re Montgomery County, 215 F.3d at 377-78. A court is required to do two things when determining whether an asserted right was clearly established. First, it “must define the right allegedly violated at the appropriate level of specificity.” Peroza-Benitez v. Smith, 994 F.3d 157, 165 (3d Cir. 2021) (internal quotations and citations omitted). The court

must frame the right “in light of the specific context of the case, not as a broad general proposition.” *Id.* (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)). Second, the court must determine “whether that right was ‘clearly established’ at the time of its alleged violation, i.e., whether the right was ‘sufficiently clear that a reasonable official would understand that what he is doing violates that right.’” *Id.* (italics omitted) (quoting Saucier, 533 U.S. at 202). Although a case explicitly holding the conduct unlawful is not required, “the ‘contours of the right’ must be sufficiently clear such that the unlawfulness of the action is apparent in light of pre-existing law.” Dougherty v. Sch. Dist. of Phila., 772 F.3d 979, 993 (3d Cir. 2014) (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)).

At the relevant time, our precedent recognized an inmate’s right to protection from vulnerability to suicide under the Eighth Amendment. Palakovic, 854 F.3d at 221-24, 230-34 (reviewing this Court’s precedent on vulnerability-to-suicide claims); Mullin, 875 F.3d at 158 (describing “vulnerability-to-suicide claim” as “a more specific articulation of the Eighth Amendment rule that prison officials must not be deliberately indifferent to a prisoner’s serious medical needs”); see also Taylor v. Barkes, 575 U.S. 822, 827 (2015) (characterizing Colburn v. Upper Darby Township, 946 F.2d 1017, 1023 (3d Cir. 1991), as “reiterat[ing] that officials who know of an inmate’s particular vulnerability to suicide must not be recklessly indifferent to that vulnerability”). In other words, the “Eighth Amendment’s proscription of cruel and unusual punishment” protects against deliberate indifference to serious medical needs, and vulnerability to suicide is a serious medical

need. Woloszyn v. County of Lawrence, 396 F.3d 314, 320 (3d Cir. 2005) (quoting Colburn, 946 F.2d at 1023).

The District Court articulated the right at issue as the “the right against deliberate indifference to inmates’ vulnerability to suicide,” Newberg, 2025 WL 1839490, at *4. This articulation, however, is inadequately specific. Several cases demonstrate that the right must be more specifically articulated than the right to protection from deliberate indifference to a vulnerability to suicide. Williams v. Sec’y Pa. Dep’t of Corr., 117 F.4th 503, 517 (3d Cir. 2024) (observing that it was clearly established that “a death row prisoner[] with a known preexisting serious mental illness” had a right “not to be placed and held in prolonged solitary confinement . . . without penological justification”), cert. denied sub nom. Wetzel v. Williams, 146 S. Ct. 91 (2025); see Mammaro v. N.J. Div. of Child Prot. & Permanency, 814 F.3d 164, 169 (3d Cir. 2016), as amended (Mar. 21, 2016) (holding that the “right to be free from the temporary removal of [one’s] child” absent reasonable suspicion of abuse is “too broad for purposes of qualified immunity”).

In Thomas v. City of Harrisburg, we held that, given the “right to medical care for persons in custody of law enforcement,” it was sufficiently clear that officers who knew that an arrestee had ingested a dangerous amount of narcotics, and thus placed himself in danger, should have taken reasonable steps to provide medical care. 88 F.4th 275, 283-85 (3d Cir. 2023). Here, we have something like the flipside of Thomas as we must determine whether it was clearly established that mental health providers who (1) know an inmate who engaged in self-harm in the past when unmedicated and was not provided the drugs he claimed to need to protect against a risk of suicide, but (2) fail to take steps

to address this situation, are recklessly or deliberately indifferent to the inmate's vulnerability to suicide in violation of the Eighth Amendment.⁷ The framing endorsed in Thomas reveals that the District Court's recitation of the right here was too general.

Because we are a court of review and typically do not determine questions in the first instance, see In re Maiden Holdings, Ltd. Sec. Litig., 153 F.4th 354, 368 (3d Cir. 2025), we leave to the District Court on remand to frame the right at the correct level of specificity based on the controlling caselaw and to determine whether the right is clearly established. It may be that, when articulated at the correct level of specificity, the right will be determined to not be clearly established at the relevant time. See, e.g., Taylor v. Barkes, 575 U.S. 822, 825 (2015) (“[A]n incarcerated person’s right to the proper implementation of adequate suicide prevention protocols . . . was not clearly established . . .”), but we leave this to the District Court to decide.

Appellants’ recitation of the right also misses the mark. Appellants claim that the right should be articulated based on whether they were obligated to “go beyond their authority” to address Plaintiff’s medical needs. Appellant Br. at 32. Appellants’ articulation requires “inquiry into the nature of the responsibilities and the function of a given position,” and is thus “fact-specific.” Armour v. County of Beaver, 271 F.3d 417, 428 (3d Cir. 2001); see also Boyle v. County of Allegheny, 139 F.3d 386, 397 (3d Cir.

⁷ The parties’ agreement that “[c]hanging or stopping medications’ is at least a warning sign of potential concern for suicide,” Newberg v. Pa. Dep’t of Corr., No. 22-CV-0304-JMY, 2025 WL 1839490, at *3 (E.D. Pa. July 2, 2025), may be relevant to the determination whether it was clearly established that these facts show an Eighth Amendment violation.

1998) (“The question of whether an employee [is a policymaker] is generally one of fact.” (citations omitted)). Appellants’ framing of the right attempts to “disguis[e] [it] as a legal argument,” which is an impermissible “attempt to circumvent” the jurisdictional bar on interlocutory review of factual issues. See Ziccardi, 288 F.3d at 63 (observing that Court lacked jurisdiction over evidentiary issue on collateral-order review of qualified immunity). Thus, Appellants’ articulation of the right is improper.

Because the District Court defined the right too generally and Appellants’ proposed framing is impermissibly fact specific, we will remand to the District Court to determine whether the right identified herein was clearly established.⁸

III

For the foregoing reasons, we will dismiss in part and vacate in part and remand for further proceedings.

⁸ If Newberg has a different articulation of the right, he may present it so that the District Court may evaluate it.