No. 17-1176

In The

Supreme Court of the United States

HEATH RANKIN,
Petitioner,

v.

CHRISTIAN LONGORIA, *et al.*,
Respondents.

On Petition for Writ of Certiorari To The United States Court of Appeals for the Ninth Circuit

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RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Ninth Circuit correctly apply *Tolan v. Cotton*, 572 U.S. --, 134 S. Ct. 1861, 1866 (2014), finding that genuine issues of material fact exist as to whether Defendant/Petitioner Heath Rankin violated the well-established principle that it is unreasonable under the Fourth Amendment to shoot an unarmed, non-dangerous individual?

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

Petitioner Deputy Heath Rankin shot an unarmed man in the back. His arms were up in surrender.

PER 800, 805.[1]

This Court has repeatedly stated that it is "unreasonable for an officer to 'seize an unarmed, non-dangerous suspect by shooting him dead.'" *Brosseau v. Haugen*, 543 U.S. 194, 197–98, 125 S. Ct. 596, 598 (2004) (quoting *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S. Ct. 1694, 1701(1985)). Applying this well-established principle to the present matter, the Ninth Circuit Court of Appeals correctly concluded:

> A jury must determine Rankin's credibility in light of conflicting accounts from his partner, other officers, Longoria's expert, and

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[1] Plaintiff's Excerpt of Record ("PER"), per Ninth Circuit Rule 30-1.

> the videos in real-time. ... If a jury concluded that Rankin reasonably perceived Longoria to be armed and threatening, it could find he had reason to use deadly force and thus there was no violation of Longoria's clearly established constitutional right. ... However, a reasonable jury could also conclude that Rankin knew or should have known that Longoria was not holding a gun and that he did not assume a "shooter's stance" and could find that Rankin's statements to the contrary were not credible.

Longoria v. Pinal County, 873 F.3d 699, 710–11 (9th Cir. 2017) (citations omitted).

The Ninth Circuit's Opinion is consistent with this Court's instruction "not to define a case's 'context' in a manner that imports genuinely disputed factual propositions." *Tolan v. Cotton*, 572 U.S. --, 134 S. Ct. 1861, 1866 (2014). This case presents no issues worthy of this Court's review - just disputed facts to be decided by a jury. Plaintiff/Respondent Christian Longoria, Manuel Longoria's son, respectfully requests that this Court deny Defendant/Petitioner Rankin's Petition for Writ of Certiorari.

FACTUAL BACKGROUND

On January 14, 2014, Manuel Longoria took his brother-in-law's car and led officers on a circular pursuit through the streets of the town of Eloy, Arizona (2014 pop. 16,590), centered on his

girlfriend's family home. PER 139-40. The stop and go pursuit was at times fast, at times slow and at times stopped, but these facts are uncontradicted: He never shot a gun, he never displayed a gun, he never had a gun, he never ran over a pedestrian, nor did he crash his vehicle into anyone or anything. *See generally* Dashcam Video, Petitioner's Appendix E-1 ("Dashcam Video"). He drove and drove. At times when he was stopped, Longoria held his hands behind his back, as if he might be holding a gun, telling the officers that they would have to shoot him. *Id.* He was never shot because they could see that he didn't have a gun. PER 128, 400, 411, 497-98, 504. The police communicated this over radio and CAD. PER 531, 683. They told the other officers, including Deputy Heath Rankin (the shooter), that Longoria was holding a wallet. *Id.*

Deputy Rankin was driving one of more than nine police cars that tried to stop Longoria as he drove around. Pet. App. E-1, 13:20:15-32. Over time, people began putting lawn chairs out to watch the cat and mouse game. PER 399. Eventually, a Pinal County Sheriff's Office commander ordered its deputies to stand down and let Eloy Police officers resolve the situation. PER 77, 290-91.

Ultimately, the Eloy police disabled the suspect's car by using their car to clip the rear of Longoria's. PER 365. As the car was coming to a rest, Longoria pointed his finger at the officer as if it were a gun. PER 807. Although the nearest officer has his weapon trained on Longoria, he does not shoot, recognizing that Longoria's actions are

consistent with his actions throughout--trying to be shot by a police officer without harming anyone. *Id.*

Thirty seconds elapse from the time Longoria exits the car until Rankin shoots and kills him. iPhone Video, Pet. App. E-3 ("iPhone Video").

During these 30 seconds, Longoria is holding rosary beads in his left hand. PER 434, 802-04, 817. Eloy Police Sergeant Tino Tarango orders officers to fire bean bag rounds at Longoria. PER 81. These rounds strike him and, in the video of the incident, Longoria can be seen jerking in reaction to the bean bags, flailing his arms involuntarily (revealing that he is, as Eloy police believed, unarmed), dropping the rosary beads, turning around, raising his arms above his head--and then being shot and killed by Pinal County Sheriff's Deputy Rankin. Pet. App. E-1, 13:34:33-35. *See also* PER 365 ("Eloy P.D. deployed less than lethal bean bag rounds striking the subject, staggering him").

Notably, of the numerous armed officers on the scene, only Rankin fired his gun.

Rankin shot an unarmed man, in the back, who had his hands raised. Nonetheless, Rankin asserts that he is entitled qualified immunity because he (and he alone) "reasonably" perceived Longoria to be a threat. The Ninth Circuit correctly held that this was a question of fact for the jury, and this case does not merit certiorari.

THIS COURT SHOULD DENY THE PETITION FOR WRIT OF CERTIORARI

1. Rankin's disagreement with the ruling below does not justify certiorari.

The key criteria for this Court's acceptance of certiorari are a split among lower courts or the necessity of addressing an "important federal question." **U.S.Sup.Ct.R. 10**. This case presents neither. Petitioner notes no circuit split and is unable to articulate the "important federal question" that requires this Court's review. Instead, as Rankin's first Question Presented shows, Rankin wants this Court to make factual determinations:

> In finding the use of deadly force unreasonable against a fleeing suspect, who was known to be armed and threatened and attempted to kill officers, did the Ninth Circuit err in rejecting uncontroverted video evidence – depicting the suspect reaching for his waistband and then quickly raising his arms up, chest high, and extending them out in the officers' direction while holding a shiny black object – and instead relying on facts unknown to the officer-defendant and speculation of the suspect's subjective intent to manufacture disputes regarding the threat of immediate harm?

Petition for Certiorari, at i.

Disregarding, for the moment, that this "question presented" would require this Court to misconstrue all facts favorably to Petitioner, in contravention of *Tolan v. Cotton, supra*, this question demonstrates that Rankin simply disagrees with the Ninth Circuit's interpretation of the facts in this case. Rankin seeks nothing more than alleged "error correction." This case does not satisfy this Court's criteria for certiorari.

2. *Kisela v. Hughes* does not apply because Rankin had no reason to believe that Longoria was armed.

This Court's ruling in *Kisela v. Hughes*, -- U.S. --, 138 S. Ct. 1148 (2018), is consistent with the Ninth Circuit's Opinion below. Rankin claims that certiorari is necessary to a claim in which courts "find factual disputes that cast doubt on the officer's perception of the risk of harm," and then "rely on those same factual disputes to avoid addressing whether the asserted constitutional violation was clearly established." *Petition for Certiorari*, at 1. This Court accepted certiorari in *Kisela*, and issued its opinion reversing on April 2 of this year. This issue identified by Rankin has been addressed by this Court, and the present is entirely consistent with *Kisela*.

In *Kisela*, Tucson police officers responded to a call regarding a woman carrying a knife. When they arrived, a woman (Hughes) was holding a knife and acting irrationally. She was standing six feet from another woman and refusing to obey commands

to drop her knife. Further, the officers were separated from Hughes by a chain-link fence which prevented them from using non-deadly force to prevent use of the knife. One of the officers (Kisela) shot Hughes (resulting in non-life threatening injuries) to prevent her from attacking the bystander. The Ninth Circuit held that Kisela was not entitled to qualified immunity on summary judgment.

In reversing, this Court held: "Kisela says he shot Hughes because, although the officers themselves were in no apparent danger, he believed she was a threat to [the bystander].... This is far from an obvious case in which any competent officer would have known that shooting Hughes to protect [the bystander] would violate the Fourth Amendment." *Id.* at 1153. Thus, Kisela was entitled to qualified immunity at summary judgment.

The *Kisela* Court held that the officer's perception of the risk to the bystander was reasonable and, under those circumstances, the officer was entitled to qualified immunity. Here, in contrast, Mr. Longoria's car was disabled, he was surrounded by a dozen officers, he was "armed" with a wallet and rosary beads and not a knife or a gun, he was not bearing down on any of the officers or jeopardizing a bystander, and he was being pelted with bean-bags just prior to turning and raising his hands in surrender before he was shot.

Unlike *Kisela,* the reasonableness of Rankin's alleged "perception" is far from clear. The Ninth

Circuit correctly found that factual disputes precluded summary judgment as to whether Rankin's claim of his perception was accurate or reasonable:

- Longoria's car was disabled;
- Longoria was unarmed, and had never been observed holding a weapon;
- He jerked about consistent with being struck by painful bean bag rounds which in turn exposed his weaponless hands;
- As he was being struck by the beanbag shots, Longoria dropped the only thing in his hands -- his rosary beads;
- Longoria turned his back to the officers and raised his hands over his head.

Petitioner takes one frame from a video taken from a distance and argues that Longoria took a shooter's stance. In its summary judgment exhibits, Petitioner artificially froze the video for one second to make it seem like the image is more than a sliver in time and part of a continuous action by Longoria. As the Ninth Circuit noted, "The two videos show that anyone who saw the events in real-time, including Rankin, would not have seen Longoria adopt what would have appeared to be a 'shooter's stance.'" *Longoria*, 873 F.3d at 710. "[N]or can our analysis at summary judgment change simply because the videos that show these disputed events

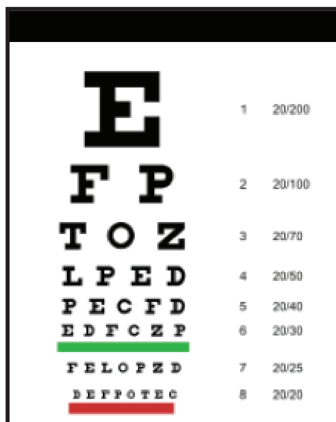
unfolding in real-time may be called into question by a single frozen frame that does not represent what an officer actually saw at the time the events unfolded." *Id.* at 711.

Further, as the Ninth Circuit noted, "no one else saw Longoria assume a 'shooter's stance,' including [Rankin's partner] Rice, who was just behind him at the time." *Id.* at 710. In *Tolan*, this Court held:

> The witnesses on both sides come to this case with their own perceptions, recollections, and even potential biases. It is in part for that reason that genuine disputes are generally resolved by juries in our adversarial system.

Tolan, 134 S.Ct. at 1868.

Rankin has 20/20 vision. **PER 190.** He stood less than 30 feet from Longoria -- a first down in football. It was midday. His "20/20" vision means that, in using the Snellen eye test chart, he could read line 8 at a distance of 20 feet.



PER 807. The letters in line 8 are only 8.86 millimeters tall. 30. Rankin's 20/20 vision means he could read line 8 at 20 feet. If he could do that, he could also see that Longoria was unarmed.

A police officer's claim of what he perceives must be considered in light of all of the circumstances of the case. *Cf. Tolan*, 134 S.Ct. at 1866-67 (reversing summary judgment where Court of Appeals accepted statements of shooting officer as true, notwithstanding evidence to the contrary). So too, here, whether Rankin had a reasonable objective perception of the alleged threat is an issue of fact which must be resolved by the finder of fact.

3. Petitioner's extended discussion regarding the pursuit is irrelevant.

Rankin devotes many pages in his petition to a discussion of the circular pursuit of Longoria through the city streets of Eloy. *Petition for Certiorari,* at 4-7. But, by the time Rankin shot Longoria, the pursuit was over. Eloy officers had disabled Longoria's car. Longoria was out of the vehicle, standing next to the driver's side door. Eloy officers surrounded Longoria and fired bean bag rounds at him, causing Longoria to jerk and flail about; at least three times his hands were up in a position where they could be clearly seen not to contain a weapon. At the very end, he turns, raises his hands over his head, and is shot.

While this Court has approved of deadly force to terminate a pursuit, *see, e.g., Plumhoff v. Rickard*, 572 U.S. --, 134 S. Ct. 2012, 2021 (2014), *Scott v. Harris*, 550 U.S. 372, 378, 127 S. Ct. 1769, 1775 (2007), it has never approved the use of force following a pursuit where there was no longer an immediate threat to officers or bystanders. Rather, as this Court held in *Tennessee v. Garner*:

> Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.... A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.

Tennessee v. Garner, 471 U.S. 1, 11, 105 S. Ct. 1694, 1701(1985); *see also Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872 (1989) (critical factor in use-of-force analysis is "whether the suspect poses an immediate threat to the safety of the officers or others"). "We do not think it requires a court decision with identical facts to establish clearly that it is unreasonable to use deadly force when the force is totally unnecessary to restrain a suspect or to protect officers, the public, or the suspect himself." *Weigel v. Broad*, 544 F.3d 1143, 1154 (10th Cir. 2008).

Rankin was not entitled to qualified immunity as a matter of law. *See, e.g., Thompson v. City of Lebanon, Tennessee*, 831 F. 3d 366, 371-72 (6th Cir. 2016) (no qualified immunity on summary judgment

where officer shot suspect who was sitting in car following pursuit-ending crash); *Green v. Taylor*, 238 Fed.Appx. 952, 2007 WL 2478663 (6th Cir. 2007) (unpublished) (factual dispute regarding qualified immunity where pursuit had ended and suspects had raised arms or placed on steering wheel in act of surrender).

4. Rankin misstates facts and relies on facts that were unknown to him at the time of the shooting.

Rankin's Petition references numerous irrelevant facts, misstates facts, and improperly construes all inferences favorably to him. For instance, the Petition makes numerous references to facts which Deputy Rankin had no knowledge of at the time he shot Longoria.

Initially, the chronological presentation of defendant's facts starting on page 5 through the middle of page 6 occurs before Rankin arrives and can see anything. *Petition for Certiorari*, at 5 - 6. Facts not known to a shooting officer are irrelevant. *See Hayes v. County of San Diego*, 736 F.3d 1223, 1232 (9th Cir. 2013) ("[W]e can only consider the circumstances which [the officers] were aware when they employed deadly force").

Rankin claims that "Longoria successfully rammed into several police cars, and attempted to collide head-on with even more, causing them to swerve off the road." *Petition for Certiorari*, at 4. In fact, there were two incidents in which contact, at

extremely low speeds, occurred between Longoria's vehicle and Eloy police cruisers, neither of which could be considered "ramming." **Pet. App. E-1**, 13:32:06-18 Further, as the dashcam video demonstrates, Longoria never attempted to collide with police vehicles, as if that had been his intent, he certainly could have succeeded in the effort. **Pet. App. E-1,** 12:31:15, 12:35:54, 12:40:06, 12:52:17, 13:04:02, and 13:11:45. Rather, he toyed with the officers, swerving in their direction but immediately returning to his lane, rarely coming close to making actual contact. *Id.* As one Eloy officer reported, "[t]he suspect stopped his vehicle at the intersection of the alley way and Battaglia Road to avoid a collision with a vehicle…." **PER 127.**

When Pinal County Sheriff's Lieutenant Villegas ordered his deputies to stand down, he stated over the radio: "the only charges we have on him is occupied 10-40 [stolen vehicle]? [unintelligible] Have all our units 10-22 and tell Eloy PD that's -- that's they're area. If they choose to continue, that's fine but we're gonna go ahead and back out at this point." **PER 77.** Respondents are entitled to the reasonable inference that Lieutenant Villegas would not have issued such an order if the pursuit was even close to as perilous as Petitioner now makes it out to be.

Petitioner also claims that Longoria's family members told Eloy police officers that Longoria might have a gun. *Petition for Certiorari*, at 4. Rankin was not privy to this conversation between the family members and Eloy police.

However, early in the pursuit, dispatchers indicated that Longoria might have a gun. But then the officers quickly realized that this was not the case. Not once did he ever brandish or display a gun. At about 46 minutes into the chase, he gets out of the car and interacts with the officers outside of his car for over a minute indicating that they would need to kill him. **PER 399, 400, 410.** He holds something behind his back as if it might be a weapon – trying to bait the officers into deadly force – but Eloy Officer Salazar sees that the object is a wallet. *Id.*

Salazar broadcast this fact twice over the police radio:

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================================================== Narrative Number:
        Date: 01/14/2014                    Time: 13:10:03
Unit: D1076  Notify Message: SOMETHING IN HIS HAND AND ITS BLACK
================================================== Narrative Number:
        Date: 01/14/2014                    Time: 13:10:56
Unit: D1076  Notify Message: WALLET IN HIS BACK NOT A GUN
================================================== Narrative Number:
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PER 509, 531.

As a further justification for being the only officer to perceive a threat justifying deadly force, Rankin claims that, during the pursuit, Longoria passed Rankin's vehicle and threatened to kill him. Petition, at 6. At his deposition, Rankin stated that he pointed his rifle and would have shot then if his partner was not in the way. **PER 743**. The video from the police car immediately behind Longoria records that the officer's speed was 36 mph and his siren was on, Rankin doesn't have a rifle, and Longoria's car is going so fast with a siren in close

proximity that the exchange Rankin claims to have occurred couldn't have. **Pet. App. E-1**, 13:12:40 - 43.

CONCLUSION

It is clearly established that shooting an unarmed, surrendering man in the back violates the Fourth Amendment. Rankin shot and killed an unarmed, surrendering man in the back. Rankin had no reason to believe that Longoria was armed. What remains are fact issues which should be resolved by a jury. Plaintiff-Respondent Christian Longoria respectfully requests that this Court deny Defendant-Rankin's Petition for Writ of Certiorari.

RESPECTFULLY SUBMITTED this 25th day of April, 2018.

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