No. _____

Supreme Court of the United States

LANDRY ROUNTREE,
Petitioner,

v.

TROY DYSON;
CITY OF BEAUMONT,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Fifth Circuit's opinion in this case causes a circuit split to whether the filing of an amended complaint moots a pending motion to dismiss

2. Whether the Fifth Circuit creates a circuit split with regards to the standards for sua sponte dismissals

3. Whether the enforcement of the Equal Protection Clause as it applies to licenses is inconsistent between the Circuit Courts

4. Whether the Fifth Circuit failed to follow longstanding Supreme Court precedent on wrongful arrest

PARTIES TO THE PROCEEDINGS

Petitioner Landry Rountree was the Appellant; and

Respondents Troy Dyson and the City of Beaumont were the Appellees.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

PETITION FOR WRIT OF CERTIORARI

Petitioner Landry Rountree asks that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit, *Rountree v. Dyson*, No. 17-40443, 892 F.3d 681 (5th Cir. 2018), is attached to this petition in the Appendix.[1] The memorandum and order of the United States District Court for the Eastern District of Texas, *Rountree v. City of Beaumont, Texas*, No. 1:16-CV-26, 2017 WL 5640841 (E.D. Tex. March 27, 2017), is attached to this petition in the Appendix.[2] The District Court's other pertinent orders from the bench are reprinted in the Appendix.[3]

STATEMENT OF JURISDICTION

The Court of Appeals entered judgment on June 11, 2018. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254. The Petitioner has asserted below and is asserting in this petition the deprivation of rights secured by the United States Constitution.

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[1] Pet. App. 2.
[2] Pet. App. 10.
[3] Pet. App. 64.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fourth Amendment to the United States Constitution, which provides, in relevant part that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."
2. This case involves the Fourteenth Amendment to the Unites States Constitution, which provides, in relevant part, that "No state may deprive any person of life [or] liberty. . . without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A. Factual Background

This action is based on two separate incidents involving Appellant Rountree. These incidents, although completely unrelated, are both equally troubling.

1. The City misapplied a local ordinance in a punitive nature due to a vendetta against Mr. Rountree

Landry Rountree has owned a towing business in the Beaumont area for approximately 38 years. During this time, he participated in the rotation system of non-consent tows for the Beaumont Police

Department. These non-consent tows for the Beaumont Police Department constituted roughly two-thirds of his annual income, and Mr. Rountree relied heavily on this rotation system to keep his business profitable. This rotation continued for years until December 2013 when his permit was revoked by the City's police chief for a two-year period. This revocation resulted from a complaint lodged against Mr. Rountree by Gregory Stanley, d/b/a Spanky's Wrecker Service ("Stanley").

Stanley filed the complaint after being and it was approved by the City's police chief, James Singletary, to do so. He complained that three of Mr. Rountree's state-issued licenses lapsed for a total of 89 days during 2013. Ironically, earlier in the same year, Stanley's state-issued storage lot license lapsed for 101 days. Despite Stanley's lapse, no one at the City, including the police chief, tried to persuade anyone to file a complaint against him.

Several other tow companies had similar violations, and no one at the City, including the police chief, tried to persuade anyone to file a complaint against them either. Mr. Rountree's violations were termed "significant violations," however, other companies had strikingly similar violations and nothing was done to them. Further, when the traffic department failed to renew towing company permits in a timely fashion, and a company's city permits expired from two to four months between the years 2014-15, no action was taken by the police department or the chief of police.

The police chief served Mr. Rountree with a suspension letter, revoking his towing permit for two years. The police chief is the City's policymaker when it comes to matters of regulating towing including

charging tow truck drivers and tow truck license suspension.

The applicable ordinance relating to Mr. Rountree's suspension allows for, in a two-year period, a 30-day suspension for a first offense (complaint), a 60-day suspension for a second offense (complaint), and a two-year revocation for a third offense (complaint). Historically at the City, an "offense" has been interpreted as a complaint, so each subsequent "complaint" would render a subsequent "offense."

In this isolated situation, however, the police chief interpreted the four separate violations within the one complaint as four separate "offenses." This gave the chief justification to skip over the 30-day and 60-day suspensions for first and second offenders and penalize Mr. Rountree with the heaviest penalty available— a two-year suspension.[4]

Although, according to the ordinance and its previous application, the chief should have only given Mr. Rountree a 30-day suspension for the first offense/complaint. This complaint was his first within a 6-year period and his second complaint in 33 years as a permitted company. To make matters worse, when initially contacted by the police department, Mr. Rountree had already corrected the licensing problems and paid his renewal fees and penalties. License status and history for all Texas license tow companies were then and now readily available to the police department and to the public on the internet.

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[4] To Mr. Rountree's knowledge, no towing company has had more than a 30-day suspension with the exception of one company which had a 60-day suspension in 2010 for having a second complaint filed in a six-month period. Mr. Rountree knows of no towing company that ever had its permit revoked over 60-days in 43 years.

Mr. Rountree appealed the revocation due to its vindictive and punitive nature, and the fact that it did not comply with the ordinance or the City's implementation of that ordinance. Despite the egregious misapplication of the ordinance, the Beaumont City Council and Mayor backed the police chief's decision. Mr. Rountree continuously brought up the matter in city council meetings and he sent numerous petition letters asking for a rehearing to correct the improper revocation that singled him out. To date, no rehearing has been granted by the mayor or city council.

Further, the City, through its legal department and reportedly at the direction of city attorney, Tyrone E. Cooper, filed 390 unwarranted municipal court summons against Mr. Rountree with fines totaling over $145,000. According to police department sources, this is unprecedented, and no action has been taken against any individual or towing company under same or similar circumstances.

2. Mr. Rountree was arrested without probable cause

On March 26, 2014, around 11:30 a.m., a customer of Mr. Rountree's was involved in an accident and called him to the scene. Because his city permit revocation was still in effect, he could not tow his customer's vehicle. Thus, Mr. Rountree called a permitted tow truck driver to service his customer but stayed on the scene to speak to his customer. Beaumont Police Sergeant Troy Dyson, who arrived approximately 15-20 minutes later, ordered Mr. Rountree to move his tow truck and leave the scene. Fully aware of City ordinance authorizing him to be at

the scene due to the owner request provision of the ordinance, Mr. Rountree declined to follow Dyson's direction to leave the scene. After all, it is not a crime to appear on scene without a permit, as the permit only relates to the tow itself requested by the Beaumont Police Department.

During the incident, Mr. Rountree's tow truck was parked approximately 150 feet away from the accident. He was not interfering with the police investigation, and neither Dyson or any other officer informed him he was interfering in any way. He did not shout, argue with anyone, physically get in the way of anyone or make exaggerated or threatening gestures or statements. Moreover, during the incident, a non-emergency, nongovernment vehicle parked in front of Mr. Rountree, closer to the accident.

Despite this, Dyson placed Mr. Rountree under arrest, transported and booked him into the Jefferson County jail, and charged him with stopping within 1000 feet of an accident and having no valid tow truck permit. Mr. Rountree posted bond, was held over trial, and was forced to appear at the courthouse until the case ended in his favor by dismissal without being required to do, or forfeit, anything in exchange for the dismissal.

Approximately one-week post arrest, Mr. Rountree requested in writing a copy of the squad car videos of the scene of his arrest, but the City requested a Texas Attorney General ruling pursuant to the Texas Public Information Act claiming an investigation privilege which was upheld. Later after the City finished the investigation they did keep the video and when Landry asked a second time for the video the City informed Landry they had destroyed the video.

B. Procedural Background

Mr. Rountree filed the instant action on January 26, 2016 against the City of Beaumont, Texas and Sergeant Troy Dyson in the district court of Jefferson County, Texas, 60th Judicial District, under cause number B-197799. In the suit, Mr. Rountree asserted federal claims of violation of the Fourth, Fifth and Fourteenth Amendments of the U.S. Constitution. He also asserted state tort law claims. The same day, the City and Sergeant Dyson filed a Petition for Removal in federal court pursuant to 28 U.S.C. §1441. The case was removed to the United States District Court for the Eastern District of Texas, Beaumont Division under cause number 1:16-CV-26. On February 11, 2016, Sergeant Dyson filed a motion to dismiss. On March 30, 2016, the district court granted the motion to dismiss the state law tort claims against Sergeant Dyson. On May 4, 2016, the City of Beaumont and Sergeant Dyson jointly filed a motion to dismiss Mr. Rountree's entire complaint. Mr. Rountree responded to their motion to dismiss on August 17, 2016.

On August 29, 2016, Mr. Rountree amended his complaint, effectively voiding Appellees' August 17, 2016 motion to dismiss. On December 8, 2016, Sergeant Dyson filed another motion to dismiss. The City of Beaumont did not file another motion to dismiss.

On March 27, 2017, the district court dismissed all plaintiff's remaining claims and issued final judgment. Mr. Rountree timely filed a Notice of Appeal on April 25, 2017.

The Fifth Circuit affirmed the district court on June 11, 2018.

REASONS FOR GRANTING THE PETITION

A. The Fifth Circuit's opinion in this case causes a circuit split to whether the filing of an amended complaint moots a pending motion to dismiss

Mr. Rountree filed his original petition on January 26, 2016. Both Respondents filed motions to dismiss. Subsequently, Mr. Rountree filed a first amended complaint on August 29, 2016, but only Sergeant Dyson filed a motion to dismiss on December 8, 2016. The City of Beaumont did not file a motion to dismiss after Mr. Rountree's first amended complaint. Petitioner contends that the City of Beaumont's motion to dismiss became moot upon filing of his amended complaint, but the Fifth Circuit disagreed. The Fifth Circuit ruled that "[i]f some of the defects raised in the original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading." *Rountree*, 892 F.3d at 683-84. Further, "defendants should not be required to file a new motion to dismiss simply because an amended pleading was introduced while their motion was pending." *Id*. at 683. To support its conclusion, the Fifth Circuit cited two district court opinions.[5] This holding creates a deep conflict among the federal circuits. In order to resolve this conflict, this Court's guidance is desperately needed to align the Circuits and clarify the law.

In most Circuit Courts and most District Courts, a motion to dismiss becomes moot upon a filing of an amended complaint. Only in the Fifth Circuit is this not the case. This split is problematic because the law

is unclear. For example, in the Ninth Circuit, it is well established that "amended complaint supersedes the original, the latter being treated thereafter as non-existent." *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir.1997). (internal citation omitted), overruled on other grounds by *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927–28 (9th Cir. 2012); *see also Valadez–Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir.2011). The Ninth Circuit holds the original pleading no longer serves any function. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). As such, any motion to dismiss that targets a complaint that is no longer in effect should be deemed moot and cannot be granted by a district court. *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015).

In the Eleventh Circuit, "[a]n amended pleading supersedes the former pleading, the original pleading is abandoned by the amendment and is no longer a part of the pleader's averments against his adversary." *Pintando v. Miami–Dade Housing Agency*, 501 F.3d 1241, 1243 (11th Cir. 2007), citing *Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER*, 463 F.3d 1210, 1215 (11th Cir. 2006).

Moreover, in the Seventh Circuit, "when a plaintiff files an amended complaint, the new complaint supersedes all previous complaints and controls the case from that point forward. *Massey v. Helman*, 196 F.3d 727, 735 (7th Cir. 1999). This would make any pending motion to dismiss moot. *See id.*

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[5] *See Mire v. Bd. of Supervisors of La. State Univ.*, No. 15-6965, 2016 WL 4761561, at *2 (E.D. La. Sept. 13, 2016); *Davis v. Dallas Cty.*, 541 F.Supp.2d 844, 848 (N.D. Tex. 2008).

An overwhelming amount of District Courts follow the Ninth, Eleventh and Seventh Circuit Courts. *See American Med. Distributors, Inc. v. Saturna Group Chartered Accountants, LLP*, No. 15–cv–6532, 2016 WL 3920224, at *1 (E.D.N.Y. July 15, 2016) (defendants' motions to dismiss the complaint were rendered moot by plaintiff's filing of an amended complaint); *Due Forni LLC v. Euro Rest. Solutions, Inc.*, No. PWG-13-3861, 2014 WL 5797785, at *2 (D.Md. Nov. 6, 2014) (stating a second amended complaint generally moots a motion to dismiss the first amended complaint because the first amended complaint is superseded); *Reyna v. Deutsche Bank Nat'l Tr. Co.*, 892 F. Supp. 2d 829, 834 (W.D. Tex. 2012) (the filing of an amended complaint moots motions to dismiss); *Bisson v. Bank of Am.*, N.A., No. C12-0995JLR, 2012 WL 5866309, at *1 (W.D. Wash. Nov. 16, 2012) (filing of the First Amended Complaint moots the motion to dismiss); *Mata–Cuellar v. Tennessee Dept. of Safety*, No. 3:10–0619, 2010 WL 3122635, at *2 (W.D.Tenn. Aug.6, 2010) ("because a properly filed amended complaint supersedes and replaces all previous complaints, the filing of an amended complaint generally moots a pending motion to dismiss."); *Griggs v. Jornayvaz*, 2009 WL 1464408 at *1 (D.Colo. May 22, 2009) (filing of an amended complaint moots a motion to dismiss directed at the complaint that is supplanted and superseded); *AJB Props., Ltd. v. Zarda Bar–B–Q of Lenexa, LLC*, No. 09–2021–JWL, 2009 WL 1140185, at *1 (D. Kan. April 28, 2009) (finding that amended complaint superseded original complaint and "accordingly, defendant's motion to dismiss the original complaint is denied as moot"); *Yates v. Applied Performance Techs., Inc.*, 205 F.R.D. 497, 499 (S.D.Ohio 2002) (stating the filing of

an amended complaint generally moots a pending motion to dismiss).

Here, the Fifth Circuit is an outlier and its decision in *Rountree* creates a Circuit split to whether a motion to dismiss becomes moot upon the filing of an amended complaint. Also, the Fifth Circuit creates precedent that allows defendants to reply to complaints that are no longer valid. This gives value to complaints that the law has made clear should hold no value at all. It is critical for this Court to set a consistent standard among Circuit Courts as to whether a motion to dismiss becomes void upon amending a complaint to ensure that District Courts may not dismiss claims without having the power to do so.

B. The Fifth Circuit creates a circuit split with regards to the standards for sua sponte dismissals

Given that the City of Beaumont's motion to dismiss failed to directly link to a complaint before the court, Mr. Rountree argued the District Court dismissed his claims sua sponte. While a district court has the power to dismiss a complaint sua sponte in certain situations, the standard by which the Circuit Courts permit them to do so is not entirely consistent. Generally, the Circuits agree that the procedure employed must be fair and that fairness entitled a plaintiff some degree of notice. *Carroll v. Fort James Corp*., 470 F.3d 1171, 1177 (5th Cir. 2006), *see also* Charles Allen Wright & Arthur Miller, Federal Practice and Procedure § 1357 (3d ed.2004). The Fifth Circuit has not set a bright-line rule, but generally

requires both notice of the court's intention to dismiss sua sponte and an opportunity to respond." *Lozano v. Ocwen Fed. Bank*, FSB, 489 F.3d 636, 643 (5th Cir. 2007).

Unfortunately, the Fifth Circuit has decided to bypass the issue altogether in this particular instance. *Rountree*, 892 F.3d at 683. The court held that, because it had previously held that amending the original complaint did not nullify the motion to dismiss, the district court had not dismissed the complaint sua sponte. *Id.* This position is inconsistent with other Circuits and warrants this Court's intervention.

There is not a consensus between the Circuits over exactly what counts as fair and what counts as sufficient notice. Other Circuits require a court meet higher standards for sua sponte dismissal than those in the Fifth Circuit. Under the rule in the First Circuit, a district court would not be able to sua sponte dismiss the complaint in the present case. The First Circuit allows sua sponte dismissal without notice only if a claim is premised upon "an indisputably meritless legal theory" or "factual allegations [that] are clearly baseless." *Fredyma v. AT&T Network Sys., Inc.*, 935 F.2d 368 (1st Cir. 1991). In the present case, absent Dyson's notice to dismiss, the Fifth Circuit did not notify Rountree that it was considering dismissal. Rountree neither relies on an indisputably meritless legal theory, nor factual allegations that are clearly baseless. The discrepancy between the First and Fifth circuit undoubtably merits review.

The Second Circuit agrees that a district court may sometimes dismiss a case sua sponte for failure to state a claim on which relief can be granted but holds that it may not do so without giving the plaintiff a

chance to be heard. *Perez v. Ortiz*, 849 F.2d 793, 797 (2d Cir.1988). The Second Circuit even rejected a district court's sua sponte dismissal of a pro se case simply because the district court did not deem it frivolous. *Thomas v. Scully*, 943 F.2d 259 (2d Cir. 1991).

The Fifth Circuit has decided in the present instance to bypass the issue of whether or not the district court dismissed the case sua sponte. *Rountree*, 892 F.3d at 683. But were the Fifth Circuit to visit the issue, it would rely on precedent inconsistent with that of other circuits. In the First Circuit, by contrast, Rountree would not have met the standard for sua sponte dismissal without notice because he does not rely on either meritless legal theory nor on clearly baseless factual allegations. *Fredyma*, 935 F.2d 368. Here, this Court's guidance is needed to standardize the rule for sua sponte dismissals.

C. The enforcement of the Equal Protection Clause as it applies to licenses is inconsistent between the Circuit Courts

In the present case, Rountree alleges that the City did not grant him the necessary due process before it took his permit away from him. In the Fifth Circuit, a license or permit cannot be removed by the State without due process because permits and licenses relate directly to one's ability to make a livelihood. *Bowlby v. City of Aberdeen*, 681 F.3d 215, 220 (5th Cir. 2012). To determine specifically what process is due in a particular situation, courts balance three factors: "(1) the private interest that will be affected by the official's actions, (2) the risk of an erroneous deprivation of that private interest and the probable

value, if any, that additional procedural protections would provide, and (3) the interest that the government seeks to achieve." *Sys. Contrs. Corp. v. Orleans Parish Sch. Bd.*, 148 F.3d 571, 575 (5th Cir. 1998).

The Fifth Circuit has stated that, "[a]t a minimum, due process requires that notice and an opportunity to be heard be granted at a meaningful time and in a meaningful manner." *Gibson v. Tex. Dep't of Ins.*, 700 F.3d 227, 239 (5th Cir.2012). By these standards, the Fifth Circuit upheld the district court's determination that Rountree received sufficient protections before the deprivation of his protected property interest in his towing license. In Section 1983 suits, a plaintiff must establish that the defendant was either personally involved in the alleged deprivation or that the official's wrongful actions were casually connected to the deprivation. *Jones v. Lowndes County, Miss.*, 678 F.3d 344, 349 (5th Cir. 2012). Here, the court held that Rountree's pleading had not sufficiently met the Fifth Circuit's standard overall.

The Fifth Circuit is not an outlier, per se. Though the other Circuits articulate similar standards to protect procedural due process, some nuances are inconsistent. In the Second Circuit, to succeed on a procedural due process claim, "a plaintiff must first identify a property right, second show that the state has deprived him [or her] of that right, and third show that the deprivation was effected without due process." *Local 342, Long Island Pub. Serv. Emps., UMD, ILA, AFL-CIO v. Town Bd. of Huntington*, 31 F.3d 1191, 1194 (2d Cir. 1994) The Second Circuit considers, in a Section 1983 suit brought to enforce procedural due process rights, whether a property interest is implicated, and, if it is, what process is due

before the plaintiff may be deprived of that interest." *Nnebe v. Daus*, 644 F.3d 147, 158 (2d Cir. 2011).

In *Progressive Credit Union v. City of New York*, the Second Circuit viewed a case similar to the present one through this standard. *Progressive Credit Union v. City of New York*, 889 F.3d 40 (2d Cir. 2018). Here, New York City's decision to allow ridesharing apps reduced the value of a taxi medallion and a medallion owner brought suit against the city. Though the court ruled against owner of the licenses, it did so because it believed that licenses themselves do not carry an inherent property interest guaranteeing the economic benefits of using the taxicab license, leaving license holders without "protected property interests in the market value of their licenses." *Id.* at 53. The Second Circuit used that as a justification to defeat the Section 1983 claim. *Id*.

The holding implies that the Second Circuit would disagree with the Fifth Circuit's finding in the present case because it implied that the Second Circuit would have supported the plaintiffs had there been a greater connection between the value of a license and one's economic livelihood. Rountree's license, under *Bowlby*, is an inherent property interest and is protected under due process. The Second Circuit differentiated licenses that do and do not constitute an inherent property interest, clearly it would not do so unless one has higher due process considerations than the other. Rountree is not simply objecting to policy that lowers the value of his license; he is objecting to the manner by which the city took his license away. Because of the likelihood that the present case would have had a different, and favorable, outcome in a different Circuit, this Court may wish to standardize this particular rule.

D. The Fifth Circuit failed to follow longstanding Supreme Court precedent on wrongful arrest

Supreme Court precedent clearly establishes the rule for wrongful arrest and the boundaries of a qualified immunity defense. To overcome qualified immunity, a plaintiff must allege the violation of a clearly established constitutional right. *Siegert v. Gilley*, 500 U.S. 226, 231, 111 S.Ct. 1789, 114 L.Ed.2d 277 (1991). And Supreme Court precedent has long precluded an officer from arresting a subject without probable cause. *Gerstein v. Pugh*, 420 U.S. 103, 111–12, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975). Yet, in the present instance, the Fifth Circuit has not followed precedent and has permitted the officer to arrest Rountree without probable cause.

Already, under Supreme Court precedent, facts and circumstances within an officer's knowledge that are sufficient to warrant a prudent person or one of reasonable caution, in believing in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense constitutes probable cause. *Michigan v. DeFillippo*, 443 U.S. 31, 37, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979). To determine reasonableness in suits alleging illegal arrest, a court determines "whether a reasonable officer could have believed the arrest to be lawful, in light of clearly established law and the information the officer possessed." *Gibson v. Rich*, 44 F.3d 274, 277 (5th Cir. 1995) (quoting *Babb v. Dorman*, 33 F.3d 472, 477 (5th Cir. 1994)).

Rountree should have overcome the qualified immunity defense, but the Fifth Circuit has misapplied the Supreme Court's precedent. The Fifth Circuit also cites the wrong ordinance that Rountree was allegedly arrested for. Mr. Rountree was arrested for Section 6.08.002 of City Code of Ordinances which states:

> No person shall stop or park any tow truck within one thousand (1000) feet of the scene or site of any vehicle accident or collision while any vehicle disabled, damaged or wrecked in such accident or collision remains at such scene or site unless: (1) it is licensed and permitted as a tow truck pursuant to state statutes and has been directed by or received the consent of a police officer at the scene to stop or park the tow truck within the one thousand-foot area; or (2) it is a tow truck which has been summoned to the scene or site of a vehicle accident by the owner of a vehicle involved in the accident and does not, in the opinion of any police officer investigating the accident, constitute a safety hazard to vehicles or persons at the scene or obstruct or interfere with the activities of the officers investigating the accident or scene.

As stated in the appellant brief, the officer could not have reasonably believed Rountree constituted a legitimate safety hazard while parked 150 away from the scene behind another non-emergency vehicle. No officer gave Rountree any notice that he was interfering in any way. Rountree's presence caused no injury. Clearly, no reasonable officer could be of the opinion there was interference when no evidence existed that there was interference. As such, the

district court and the fifth circuit erred in applying Supreme Court precedent when they held the officer was entitled to a qualified immunity defense. Here, this Court may wish to grant certiorari in order to correct the Fifth Circuit's misapplication of the law.

CONCLUSION

For the above and foregoing reasons, Petitioners' Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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