No. 19-____

IN THE
Supreme Court of the United States

MICAH JESSOP; BRITTAN ASHJIAN,
Petitioners,

v.

CITY OF FRESNO; ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether it is clearly established that the Fourth Amendment prohibits police officers from stealing property listed in a search warrant.

PARTIES TO THE PROCEEDING

Micah Jessop and Brittan Ashjian, petitioners on review, were the plaintiffs-appellants below.

The City of Fresno, Derik Kumagai, Curt Chastain, and Tomas Cantu, respondents on review, were the defendants-appellants below.

Ken Dodd, Bob Reynolds, Paul Zarausa, Anette Arellanes, David Garza, Curtis Bunch, Robert Fry, and Does 1-10 were defendants below, but are not parties to this petition.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Jessop v. *City of Fresno*, No. 1:15-cv-00316-DAD_SAB (E.D. Cal. Aug. 1, 2017) (available at 2017 WL 3264039), *aff'd*, No. 17-16756 (9th Cir. Mar. 20, 2019) (reported at 918 F.3d 1031), *withdrawn and superseded* (9th Cir. Sept. 4, 2019) (reported at 936 F.3d 937), *reh'g denied* (9th Cir. Oct. 17, 2019).

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Micah Jessop and Brittan Ashjian respectfully petition for a writ of certiorari to review the judgment of the Ninth Circuit in this case.

INTRODUCTION

One would think that some questions answer themselves. This case presents one of them: Would a reasonable police officer believe that the Fourth Amendment permits him to steal property that is listed in a search warrant?

The plain text of the Fourth Amendment, this Court's well-established precedents, and common sense answer that question "no." Theft by a police officer is the paradigmatic "unreasonable *** sei-

zure[]": It effects a permanent dispossession of property for no law enforcement purpose whatsoever. U.S. Const. amend. IV. And the theft of property listed in a search warrant is especially "unreasonable." It misappropriates property to which the government is entitled, impairs rather than aids the warrant's execution, and replicates one of the very abuses that the Fourth Amendment was adopted to prevent. *See Wilson* v. *Layne*, 526 U.S. 603, 611-612 (1999).

Remarkably, however, the Ninth Circuit answered "yes." It held that it is open to debate whether "officers violate the Fourth or Fourteenth Amendment when they steal property seized pursuant to a warrant." Pet. App. 3a. In reaching that conclusion, the Ninth Circuit did not discuss a single Fourth Amendment precedent of this Court. Nor did it purport to identify any lower-court case suggesting that the Fourth Amendment might permit theft of property covered by a warrant. Rather, the panel simply held that because it could not identify "a case *directly* on point," police officers credibly accused of stealing $225,000 during a search of petitioners' homes and business were entitled to qualified immunity. *Id.* at 8a-9a (emphasis added and internal quotation marks omitted).

That decision is manifestly—and dangerously—wrong. This Court has repeatedly instructed lower courts that they need not identify "a case directly on point" to find that the law is clearly established. *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 741 (2011). Sometimes, general rules apply "with obvious clarity" to "eas[y] cases." *United States* v. *Lanier*, 520 U.S. 259,

271 (1997) (internal quotation marks omitted). This is one such case: the most basic principles of the Fourth Amendment dictate that stealing property listed in a warrant is impermissible. Until now, every court to consider the question has agreed, and no police officer but the "plainly incompetent" could have thought otherwise. *al-Kidd*, 563 U.S. at 743 (internal quotation marks omitted).

And unlike the typical misapplication of qualified immunity doctrine, this decision will have severely harmful consequences for people well beyond petitioners themselves. Because the panel below did not address the underlying constitutional question, the law in the Ninth Circuit is now that law enforcement officers lack fair notice that stealing property listed in a warrant is unconstitutional. Any police officer in the Ninth Circuit is therefore free to pilfer property listed in a warrant at will and successfully claim immunity if haled into court. The decision below will thus expose more than 60 million individuals in nine States to the arbitrary power of every unscrupulous law enforcement officer who enters their home armed with a warrant—an outcome the founders, who fought a revolution in part to end the petty tyranny of officers wielding warrants, would have shuddered to imagine.

This Court's intervention is urgently needed. The Court should grant certiorari and say what should have been obvious: the Fourth Amendment clearly prohibits police from stealing property listed in a search warrant. At minimum, the Court should summarily reverse the decision below and direct the Ninth Circuit to conduct a proper qualified immunity

analysis. Either way, the decision below should not be allowed to stand.

OPINIONS BELOW

The Ninth Circuit's original decision is reported at 918 F.3d 1031. Pet. App. 15a-23a. The Ninth Circuit's superseding opinion is reported at 936 F.3d 937. Pet. App. 1a-14a. The Ninth Circuit's order denying rehearing en banc is not reported. *Id.* at 60a-61a. The District Court's decision granting defendants' motion for summary judgment is available at 2017 WL 3264039. Pet. App. 24a-59a.

JURISDICTION

The Ninth Circuit originally entered judgment on March 20, 2019. Petitioners timely sought panel rehearing and rehearing en banc, and the panel issued a superseding opinion on September 4, 2019. The Ninth Circuit denied rehearing en banc on October 17, 2019. Justice Kagan granted a 30-day extension of the period for filing this petition to February 14, 2020. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment, U.S. Const. amend. IV, provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the

> place to be searched, and the persons or things to be seized.

The Fourteenth Amendment, U.S. Const. amend. XIV, provides in pertinent part:

> No State shall * * * deprive any person of life, liberty, or property, without due process of law * * * .

STATEMENT

A. Factual Background

Micah Jessop and Brittan Ashjian are former missionaries who started a business operating and servicing automated teller machines. *See* CA9 Excerpts of Record ("EOR") 143, 189-190; Pet. App. 26a. That business required them to keep large sums of cash on hand at their homes and offices to restock their ATMs. *See* Pet. App. 26a.

In 2013, police officers from the City of Fresno, led by detective Derik Kumagai, began investigating whether Jessop and Ashjian possessed and operated coin operated gambling devices, a misdemeanor offense under California law. *Id.*; *see* EOR 86. As part of that investigation, the officers observed Jessop and Ashjian for several months, during which time they saw petitioners transporting large amounts of cash to and from their homes, much of it in connection with their ATM business. EOR 279-283.

In September 2013, Kumagai obtained a search warrant for Jessop and Ashjian's business, homes, and vehicles. *See* Pet. App. 26a; EOR 273-286. The warrant authorized the officers to seize

> all monies, negotiable instruments, securities, or things of value furnished or intended to be furnished by any person in connection to illegal gambling or money laundering that may be found on the premises * * * [and] [m]onies and records of said monies derived from the sale and or control of said machines.

Pet. App. 3a.

Upon executing this warrant, the officers initially seized several thousand dollars from petitioners' business and homes. *See id.* 3a-4a. During the search of Jessop's home, an officer also "observed" a set of rare coins valued at over $125,000. EOR 111; *see* EOR 69. The officer consulted Kumagai and Curt Chastain, who instructed her "[t]o not seize them," and to instead "leave [the coins] there." EOR 69, 112, 169. Later that morning, however, Kumagai returned by himself to Jessop's home when only Jessop's wife was present. EOR 43-44. After informing Jessop's wife that he needed to search the house again, Kumagai went alone to the Jessops' bedroom, where Jessop stored the coin collection the officer had previously observed. *Id.*; *see* Pet. App. 3a, 36a. Kumagai spent several minutes in their bedroom alone, then announced that he had completed his investigation and left. EOR 44.

Following the search, Jessop and Ashjian determined that the police had taken over $275,000 in currency and coins, including Jessop's rare coin collection. *See* EOR 176-178, 233, 523, 528-529. But when petitioners went to the police station and asked to see the property that had been taken, the police provided an inventory claiming that they had seized

only $50,000 in currency. *See* Pet. App. 36a; EOR 164-165, 222-224, 529. When petitioners asked where the remaining $225,000 was, Kumagai "shrugged." EOR 165-166, 223. The department never produced the missing property. *See id.*

No criminal charges were ever filed against Jessop or Ashjian. *See* EOR 529. Kumagai, however, was later convicted of extorting bribes from drug dealers and sentenced to two years in federal prison. *See* EOR 37-42, 53; *see also* Mem. of Plea Agreement 13-16, *United States* v. *Kumagai*, No. 1:14-cr-00061-AWI-BAM (E.D. Cal. Feb. 20, 2015); First Am. Judgment 1-2, *Kumagai*, No. 1:14-cr-00061-AWI-BAM (E.D. Cal. May 28, 2015). Tomas Cantu, who also participated in the search, was later reassigned from a sergeant in Vice to a patrol officer. *See* EOR 82-83.

B. Procedural History

1. In 2015, Jessop and Ashjian brought a 42 U.S.C. § 1983 suit against the City of Fresno and the officers who conducted the search, claiming that respondents violated the Fourth and Fourteenth Amendments by engaging in the "unlawful seizure and theft" of approximately $225,000 of their property. Pet. App. 25a; EOR 530. Specifically, petitioners argued that respondents had "unquestionably * * * exceeded the legitimate scope of the search warrant" by stealing coins and currency from their business and Jessop's home. Pet. App. 38a (brackets and internal quotation marks omitted). In response, respondents asserted that they were entitled to qualified immunity and moved for summary judgment. *See id.*

The District Court granted the motion. *See id.* at 24a-25a. It reasoned that because the warrant was valid and the property seized by the Officers "was within the scope of the property described in the warrant as authorized for seizure," the property had been lawfully seized. *Id.* at 37a. The court further concluded that "[t]o the extent that plaintiffs allege defendant Officers engaged in the subsequent theft of property that had lawfully been seized pursuant to the warrant," that "conduct does not violate any Fourth Amendment right that was clearly established at the time in question." *Id.* at 39a.[1]

2. The Ninth Circuit affirmed. *See id.* at 23a. Writing for the panel, Judge Milan Smith stated that "[w]e need not—and do not—decide whether the City Officers violated the Constitution." *Id.* at 16a. Rather, the court held that "[a]t the time of the incident, there was no clearly established law holding that officers violate the Fourth or Fourteenth Amendment when they steal property that is seized pursuant to a warrant." *Id.*

In support of that conclusion, the panel pointed to several out-of-circuit cases finding that "the government's failure to *return* property seized pursuant to a warrant does not violate the Fourth Amendment." *Id.* at 20a (emphasis added). The panel reasoned that because there was a split on this "similar"

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[1] Petitioners also brought a *Monell* claim against the City of Fresno related to the Officers' actions. *See* Pet. App. 51a. The District Court granted the defendants' motion for summary judgment on that claim, *see id.* at 59a, and petitioners did not raise the issue on appeal.

question, Kumagai and his colleagues "did not have clear notice" that "the alleged theft of [petitioners'] money and rare coins * * * violated the Fourth Amendment." *Id.* at 20a-21a. The panel thus affirmed the grant of summary judgment on the Fourth Amendment claim. *Id.* at 22a. It found that the Fourteenth Amendment claim "suffers the same fate." *Id.*

3. Petitioners sought rehearing and rehearing en banc. *See id.* at 2a, 61a. In their rehearing petition, petitioners pointed out, among other things, that the out-of-circuit cases on which the panel had rested its decision were irrelevant because they involved the continued *retention* of *lawfully seized* property, whereas this case concerns the *theft* of property, which plainly entails a "seizure" prohibited by the Fourth Amendment. *See* Pet. for Reh'g 12.

In response, the panel issued a substantially revised opinion. *See* Pet. App. 2a. The panel reiterated verbatim its holding, but dramatically changed its reasoning. It eliminated any suggestion that there was a split of authority on the question presented. Instead, the panel stated that it was unable to identify any decision of the Supreme Court or this Court that addressed "th[e] precise question" whether "the theft of property covered by the terms of a search warrant, and seized pursuant to that warrant, violates the Fourth Amendment." *Id.* at 6a-7a.

In reaching that conclusion, however, the panel did not discuss any Fourth Amendment precedents of this Court. Instead, it considered only two lower-court decisions: one unpublished Fourth Circuit case holding that the "fail[ure] to return" property is a

Fourth Amendment violation, *see id.* at 6a (citing *Mom's Inc.* v. *Willman*, 109 F. App'x 629 (4th Cir. 2004) (per curiam)), and one Ninth Circuit decision that postdated the conduct at issue, and whose facts the court found "vary in legally significant ways from those in this case," *id.* at 7a (citing *Brewster* v. *Beck*, 859 F.3d 1194 (9th Cir. 2017)). After surveying those two decisions, the panel concluded that "the constitutional question" is not "beyond debate" because there is no case directly addressing the issue. *Id.* at 8a (internal quotation marks omitted). And it added—without further explanation—that this is not "one of those rare cases in which the constitutional right at issue is defined by a standard that is so 'obvious' that we must conclude *** that qualified immunity is inapplicable, even without a case directly on point.'" *Id.* at 8a-9a (internal quotation marks omitted).

Judge Smith specially concurred to explain his view that even if the Ninth Circuit's decision in *Brewster* predated the conduct at issue, it would not change the result. *Id.* at 11a. The Ninth Circuit denied rehearing en banc. *Id.* at 60a-61a.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision is wrong, anomalous, and dangerous. On the merits, it is utterly clear—and would be clear to any officer but the "plainly incompetent"—that the Fourth Amendment's prohibition on "unreasonable *** seizures" bars police officers from stealing property listed in a search warrant. The panel identified no decision of this Court, or any court, that has ever suggested otherwise. Instead, it granted qualified immunity simply because it could not find (after the most cursory

examination) a prior decision that involved "th[e] precise question" presented. Pet. App. 7a. But qualified immunity does not require a decision with identical facts; it merely requires that the law be clear. And theft by police officers is precisely the type of "outrageous conduct" that "obviously will be unconstitutional" even without any case specifically on point. *Safford Unified Sch. Dist. No. 1* v. *Redding*, 557 U.S. 364, 377 (2009).

The decision below is also an outlier. Contrary to the panel's suggestion, several courts have considered cases involving similar facts, and all have concluded that the theft of property listed in a warrant is not only unconstitutional, but obviously so. Other circuits have also found that outrageous conduct at odds with the core principles of the Fourth Amendment is clearly unconstitutional, even in the absence of a case directly on point. The decision below stands alone in departing from these precedents.

Finally, if permitted to stand, the Ninth Circuit's decision will have sweeping and harmful consequences. Because the panel did not resolve the underlying constitutional question, the Ninth Circuit's decision will operate as a prospective grant of immunity to every law enforcement officer in the Ninth Circuit who steals property listed in a warrant. Any unscrupulous officer will be free to steal property listed in a warrant and then claim an absolute shield of immunity if brought into court. That will have predictable and harmful effects for persons within the Ninth Circuit. And it will make it difficult for courts in other circuits to hold that it is

"clearly established" that theft is unconstitutional, now that a panel of the Ninth Circuit has pronounced the question unclear.

The Court should not permit this deeply misguided decision to stand. Certiorari should be granted or the judgment should be summarily reversed.

I. THE NINTH CIRCUIT'S DECISION IS MANIFESTLY INCORRECT.

The doctrine of qualified immunity holds that public officials may only be held liable for conduct that violates "clearly established statutory or constitutional rights." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982). This doctrine ensures that officials have "breathing room to make reasonable but mistaken judgments about open legal questions." *al-Kidd*, 563 U.S. at 743. It does not, however, protect "the plainly incompetent or those who knowingly violate the law." *Id.* (internal quotation marks omitted). In determining whether qualified immunity is appropriate, "'[t]he salient question *** is whether the state of the law' at the time of the incident provided 'fair warning' to the defendants 'that their alleged [conduct] was unconstitutional.'" *Tolan* v. *Cotton*, 572 U.S. 650, 656 (2014) (per curiam) (quoting *Hope* v. *Pelzer*, 536 U.S. 730, 741 (2002)).

At the time of the incidents alleged in this case, no reasonable officer could have claimed that he lacked "fair warning" that the Fourth Amendment prohibits the theft of property listed in a warrant. The text, precedent, and history of the Fourth Amendment plainly prohibit such theft. And those authorities speak with sufficient clarity to render the law "clearly established" even without a case directly on point.

The Ninth Circuit's sole reason for holding otherwise—that it could not locate a case "directly on point" and addressing "this precise question," Pet. App. 7a-8a (internal quotation marks omitted)—is flatly irreconcilable with this Court's qualified immunity precedents.

A. The Fourth Amendment Plainly Prohibits Law Enforcement Officers From Stealing Property Listed In A Warrant.

1. The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. Theft by a police officer straightforwardly violates this command. Theft is a "seizure": It entails a "meaningful interference with an individual's possessory interests," by permanently dispossessing the victim of his property. *United States* v. *Jacobsen*, 466 U.S. 109, 113 (1984); *see California* v. *Hodari D.*, 499 U.S. 621, 624 (1991) ("From the time of the founding to the present, the word 'seizure' has meant a 'taking possession.'" (citation omitted)). And theft is "unreasonable." "[R]easonableness" under the Fourth Amendment requires, at minimum, that a seizure advance some legitimate "governmental interest[]" that "justif[ies] the intrusion." *Tennessee* v. *Garner*, 471 U.S. 1, 8 (1985) (internal quotation marks omitted). Theft serves no valid governmental interest at all; rather, it is itself a crime. Theft is thus the paradigmatic "unreasonable * * * seizure[]": a gross dispossession of a person's property for no public purpose at all.

Theft remains "unreasonable," moreover, if the stolen items were listed in a search warrant, particularly where, as here, the warrant permitted officers to search a person's home. "'At the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion.'" *Kyllo* v. *United States*, 533 U.S. 27, 31 (2001) (quoting *Silverman* v. *United States*, 365 U.S. 505, 511 (1961)); *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals."). Accordingly, when police execute a search warrant of a residence, "the Fourth Amendment * * * require[s] that police actions in execution of a warrant be related to the objectives of the authorized intrusion." *Wilson*, 526 U.S. at 611; *see Maryland* v. *Garrison*, 480 U.S. 79, 87 (1987) ("the purposes justifying a police search strictly limit the permissible extent of the search"). Actions that serve no "legitimate law enforcement purposes," or that are "not in aid of the execution of the warrant," are "a violation of the Fourth Amendment." *Wilson*, 526 U.S. at 612-614.

Police plainly contravene these limits by stealing property listed in a search warrant. The theft of property covered by a warrant not only lacks any "legitimate law enforcement purpose[]," it violates the law. *Id.* at 612. And theft of property listed in a warrant contradicts, rather than advances, the "objectives of the authorized intrusion." *Id.* at 611. By committing theft, an officer misappropriates property that a neutral magistrate has deemed of potential law enforcement value to the government,

and embezzles it for his private benefit. Further, the officer effects a different and more intrusive seizure than what the warrant authorizes. *See United States* v. *Place*, 462 U.S. 696, 705 (1983) ("The intrusion on possessory interests occasioned by a seizure of one's personal effects can vary both in its nature and extent."). Rather than placing property *temporarily* into *police* custody, where it must be returned to the suspect if charges are dropped or the suspect is acquitted, he places the property *permanently* into *private* custody, where the suspect is indefinitely deprived of possession even if he is deemed innocent. Such conduct is "not in aid of the execution of the warrant," but in clear violation of it. *Wilson*, 526 U.S. at 614.

2. Although text and precedent amply resolve this question, founding-era history confirms that theft of property listed in a warrant is barred by the Fourth Amendment. The use of warrants to seize property for private benefit was one of the very abuses that helped inspire the American Revolution and the adoption of the Fourth Amendment. Before the Revolution, courts regularly issued "writs of assistance," which permitted customs officers to search wherever they wished for evidence of illegally imported goods, and to keep for themselves a portion of the seized property. *See* Nelson B. Lasson, History and Development of the Fourth Amendment to the United States Constitution 53-54, 63-64 n.48 (1937). These writs were "reviled" by the colonists. *Riley* v. *California*, 573 U.S. 373, 403 (2014). In a celebrated essay, James Otis wrote that it was intolerable that "a free people should be expos'd to all the insult and

abuse * * * which may arise from the execution of a writ of assistance, *only to put fortunes into private pockets*." James Otis, *Essay on the Writs of Assistance Case*, Boston Gazette (Jan. 4, 1762). He asked: "Is not this peculation?" *Id.*; *see* Oxford English Dictionary (3d ed. 2005) (defining "peculation" as "embezzlement of public funds").

Opposition to the use of writs for private profit reached a climax in the case of *Province of Massachusetts Bay* v. *Paxton*, 1 Quincy 548 (1762). There, Otis sued a customs inspector on behalf of the Massachusetts Bay Colony—over the "strong opposition" of the royally appointed governor, himself a notorious profiteer from seizures—after the Massachusetts legislature discovered that the inspector was retaining a significant portion of the proceeds of his seizures, while the colony "practically never received anything." Lasson, *supra*, at 63-64 n.48; *see id.* at 57 n.24 (quoting contemporaneous account that "[t]he Governor was very active in promoting seizures for illicit trade, which he made profitable by his share in the forfeitures"). The court rejected the suit, holding that the court decree giving the inspector a right to the profits "was conclusive and not open to review in an action at law." *Id.* at 63-64 n.48. This decision "excited the indignation of the people" and exacerbated popular opposition to writs of assistance, *id.*, which became "one of the driving forces behind the Revolution itself," *Riley*, 573 U.S. at 403.

The theft of property listed in a warrant closely resembles the abusive practices denounced by Otis and his fellow colonists. Stealing property listed in a search warrant exposes an individual to an invasive

seizure "only to put fortunes into private pockets," rather than to obtain evidence for public use. Otis, *supra*. And it does so with even less justification than colonial-era customs officers had: whereas the customs officers acted under at least nominal legal authority for their seizures, officers who steal property listed in a warrant are acting in plain violation of the warrant itself. It is inconceivable that the people who rose up in indignation at the abusive use of writs of assistance, and who ratified the Fourth Amendment to end them, would have believed that, more than two centuries later, similar misconduct would remain authorized by their Constitution.

B. It Would Be Clear To Any Reasonable Officer That Stealing Property Listed In A Warrant Is Unconstitutional.

It would be clear to any reasonable officer—now as when respondents stole petitioners' property—that stealing property listed in a warrant is unconstitutional. A right is "clearly established" when, at the time of the challenged conduct, its "'contours * * * are sufficiently clear' that every 'reasonable official would have understood that what he is doing violates that right.'" *al-Kidd*, 563 U.S. at 741 (brackets omitted) (quoting *Anderson* v. *Creighton*, 483 U.S. 635, 640 (2011)). This Court "does not require a case directly on point for a right to be clearly established." *Kisela* v. *Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curiam) (quoting *White* v. *Pauly*, 137 S. Ct. 548, 551 (2017) (per curiam)). Sometimes, "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though 'the very action in question

has not previously been held unlawful.'" *Lanier*, 520 U.S. at 271 (brackets omitted) (quoting *Anderson*, 483 U.S. at 640).

Indeed, "[t]he easiest cases don't even arise." *Id.* (internal quotation marks omitted). "There has never been * * * a section 1983 case accusing welfare officials of selling foster children into slavery; it does not follow that if such a case arose, the officials would be immune from damages [or criminal] liability." *Id.* (internal quotation marks omitted); *see Safford*, 557 U.S. at 377 ("The unconstitutionality of outrageous conduct obviously will be unconstitutional * * * ."). Thus, in *Hope* v. *Pelzer*, the Court had little difficulty concluding that it was clearly established that prison officials could not "handcuff[] [a prisoner] to a hitching post to sanction him for disruptive conduct," even though the issue was "novel." 536 U.S. at 733, 753-754. "[I]n an obvious case," general standards "can 'clearly establish' the answer, even without a body of relevant case law." *Brosseau* v. *Haugen*, 543 U.S. 194, 199 (2004) (per curiam) (citing *Hope*, 536 U.S. at 738).

This is such a case. The general rules governing the question presented are straightforward and longstanding; they can be found in the plain text of the Fourth Amendment and this Court's well-settled precedents. *Supra* pp. 13-15; *cf. Groh* v. *Ramirez*, 540 U.S. 551, 564 (2004) ("[n]o reasonable officer could claim to be unaware of [a] basic [Fourth Amendment] rule, well established by our cases," or a "requirement * * * set forth in the text of the Constitution"). And those principles apply "with obvious clarity to the specific conduct in question." *Lanier*,

520 U.S. at 271. No one could credibly dispute that stealing property listed in a warrant is a "seizure[]," U.S. Const. amend IV, that it is "unreasonable," *id.*, and that it lacks any "legitimate law enforcement purpose[]" or relationship "to the objectives" of the warrant, *Wilson*, 526 U.S. at 611-612. The Court's precedents "'clearly establish' the answer" to the question presented; there is no need for a greater "body of relevant case law" to fill in any gaps. *Brosseau*, 543 U.S. at 199; *see Browder* v. *City of Albuquerque*, 787 F.3d 1076, 1082-83 (10th Cir. 2015) (Gorsuch, J.) ("[S]ome things are so obviously unlawful that they don't require detailed explanation * * *.").

Furthermore, theft by police officers is precisely the type of "outrageous conduct" that "obviously will be unconstitutional" even without any case specifically saying so. *Safford*, 557 U.S. at 377. Theft is a foundational crime in human society, barred by Hammurabi's Code and the Ten Commandments as well as the laws of every State. It contravenes one of the core aims of the Fourth Amendment—protecting a person's property and his home from the "arbitrary power" of "every petty officer." *Boyd* v. *United States*, 116 U.S. 616, 625 (1886) (quoting James Otis, *Against Writs of Assistance* (1761)). No law enforcement officer could plausibly claim that he made a "reasonable but mistaken judgment[]" that theft is permissible. *al-Kidd*, 563 U.S. at 743. And the irrefutable criminality of such conduct would have placed any reasonable officer on notice that it is "unreasonable" under the Fourth Amendment. *Cf. Hope*, 536 U.S. at 745 ("The obvious cruelty inherent

in this practice should have provided respondents with some notice that their alleged conduct violated Hope's constitutional protection against cruel and unusual punishment.").

Nor is this a case in which officers need "breathing room" to ensure that they are not chilled in the proper execution of their law enforcement duties. *al-Kidd*, 563 U.S. at 743. The prohibition on theft does not turn on "split-second judgments" or "require[] careful attention to the facts and circumstances of each particular case." *Kisela*, 138 S. Ct. at 1152 (quoting *Graham* v. *Connor*, 490 U.S. 386, 396-397 (1989)). It is not "difficult for an officer to determine how the relevant legal doctrine * * * will apply to the factual situation the officer confronts," or to navigate a "hazy border" between lawful and unlawful conduct. *Id.* at 1152-53 (quoting *Mullenix* v. *Luna*, 136 S. Ct. 305, 308, 312 (2015) (per curiam)). Officers cannot steal property listed in a warrant—period. No officer but the "plainly incompetent" would ever have thought otherwise. *al-Kidd*, 563 U.S. at 743 (internal quotation marks omitted).

C. The Ninth Circuit Severely Misapplied Qualified Immunity Doctrine.

The Ninth Circuit gave no legally viable reason for nonetheless granting respondents qualified immunity. It held that "[a]t the time of the incident, there was no clearly established law holding that officers violate the Fourth * * * Amendment when they steal property seized pursuant to a warrant." Pet. App. 3a. But in reaching that conclusion, the panel did not discuss any of this Court's Fourth Amendment precedents. Nor did it claim that the lower courts

are split on the issue; although it made that claim in its initial opinion, it conspicuously removed that assertion after petitioners informed them that the cases it cited were irrelevant to the question presented. *See id.* at 20a-21a. Instead, the panel reasoned simply that because neither this Court, the Ninth Circuit, nor a "consensus of cases of persuasive authority" had decided "this *precise* question," it was "compel[led]" to conclude that the law was not clearly established. *Id.* at 7a-8a (emphasis added and internal quotation marks omitted).

That analysis was fundamentally misguided. As the Ninth Circuit acknowledged at the opening of its opinion—but, puzzlingly, appeared to overlook by the end—this Court's precedents "do not require a case directly on point" for a right to be clearly established. *Id.* at 5a (quoting *al-Kidd*, 563 U.S. at 741); *see Kisela*, 138 S. Ct. at 1152; *White*, 137 S. Ct. at 551. They require only that "[t]he contours of the right" be "sufficiently clear" that a reasonable official would have fair notice that his conduct was unlawful. Pet. App. 5a-6a (quoting *Anderson*, 483 U.S. at 640). To determine whether that standard was satisfied, the Ninth Circuit needed to analyze this Court's Fourth Amendment precedents and apply them to the facts of this case. Otherwise, it could not possibly determine whether "a general constitutional rule already identified in the decisional law *** appl[ied] with obvious clarity to the specific conduct in question, even though 'the very action in question has not previously been held unlawful.'" *Lanier*, 520 U.S. at 271 (brackets omitted); *see Safford*, 557 U.S. at 377-

378; *Brosseau*, 543 U.S. at 199; *Hope*, 536 U.S. at 740-741; *Anderson*, 483 U.S. at 640.

The Ninth Circuit, however, did not engage in even the rudiments of that inquiry. It did not identify the "general constitutional rule[s]" that govern the seizure of property or the execution of warrants. *See supra* pp. 13-15. Still less did it consider whether those rules leave room for debate as to whether the Fourth Amendment permits the theft of property listed in a warrant. The panel thus had no basis for its cursory assertion that this is not "one of those rare cases in which the constitutional right at issue is defined by a standard that is so 'obvious' that we must conclude * * * that qualified immunity is inapplicable, even without a case directly on point.'" Pet. App. 8a-9a (quoting *A.D.* v. *Cal. Highway Patrol*, 712 F.3d 446, 455 (9th Cir. 2013)). Without analyzing this Court's precedents, that statement was pure *ipse dixit*.[2]

The Ninth Circuit's inattention to this Court's precedents also distorted its inquiry into lower-court precedent. The panel premised that inquiry on the undefended assumption that where property is "covered by the terms of a search warrant," police necessarily seize that property "pursuant to that warrant," and so any alleged "theft" of the property

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[2] This oversight was not attributable to any failure by petitioners to call this Court's precedents to the Ninth Circuit's attention. Petitioners discussed the relevant Fourth Amendment precedents in their opening brief to the Ninth Circuit, *see* Appellant Br. 9-10, their reply brief, *see* Reply Br. 2-3, and their petition for rehearing, *see* Pet. for Reh'g 7-14.

must have occurred at some later time. *Id.* at 6a. Judge Smith, the decision's author, made this assumption explicit in his special concurrence: He stated that because "the warrant permitted the City Officers to seize the money and rare coins," the "initial seizure * * * was lawful," and the "theft of the property" could only have taken place "*after* its initial seizure." *Id.* at 12a (Smith, J., specially concurring). Armed with that understanding, the panel limited its search of lower-court opinions to precedents addressing whether the "fail[ure] to return" property *after it was lawfully seized* violates the Fourth Amendment. *Id.* at 6a-8a (discussing *Mom's Inc.*, 109 F. App'x 629, and *Brewster*, 859 F.3d 1194); *see also id.* at 11a-13a (Smith, J., specially concurring) (same).

But, of course, the very proposition that this Court's Fourth Amendment precedents clearly establish is that where an officer steals property listed in a warrant, the initial seizure is *not* lawful. A search warrant makes it lawful for a police officer to seize property *for the government*—that is, it permits him to book the property into evidence and retain it during the pendency of criminal proceedings for use by law enforcement. It does not make it lawful for an officer to seize property *for himself*—*i.e.*, to personally take custody of the property and retain it indefinitely for his own use. The Fourth Amendment plainly bars the latter conduct, which lacks any "legitimate law enforcement purpose[]," does not act "in aid of * * * execution of the warrant," and effects a different and more severe seizure than what the warrant authorizes. *Wilson*, 526 U.S. at

612, 614; *see supra* pp. 13-15. And that is exactly what petitioners allege occurred here: They claim that respondents decided not to seize certain property pursuant to the search warrant and instead "stole" that property from their homes and businesses, failed to book that property into evidence or otherwise place it in government custody, and failed to produce the property when petitioners asked to see the government's inventory. *See supra* pp. 6-7.[3]

The panel's misapprehension of the basic legal question presented by this case thus led it to examine the wrong body of lower-court precedent. Rather than focusing myopically on lower-court cases involving the failure to return lawfully seized property, the panel should have examined cases addressing the constitutionality of stealing property during a search and of executing a warrant in a manner that lacks any legitimate law enforcement purpose. Had it

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[3] Even on its own flawed premise, the panel's analysis was clearly incorrect. This Court held in *Jacobsen* that "a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on 'unreasonable seizures,'" such as where an officer unreasonably converts "what had been only a temporary deprivation of possessory interests into a permanent one." 466 U.S. at 124-125 (citing *Place*, 462 U.S. at 707-709). Even assuming (incorrectly) that any seizure of property listed in a warrant is necessarily "lawful at its inception," the subsequent theft of that property would plainly be unconstitutional, because it would convert a "temporary" seizure of the property "into a permanent one," *id.*, and place that property in private rather than government custody, for no legitimate law enforcement purpose whatsoever.

done so, it would have identified several cases—which petitioners called to its attention—holding that it is clearly established that theft of property while executing a search is unconstitutional. *See infra* pp. 26-28. It would also have found Ninth Circuit precedent, likewise cited by petitioners, holding that the seizure of property covered by "the literal terms of [a] warrant" is unconstitutional where the manner or execution of the seizure is not "'necessary to execute [the] warrant[] effectively'" or fails to advance the warrant's "limited purpose." *San Jose Charter of Hells Angels Motorcycle Club* v. *City of San Jose*, 402 F.3d 962, 973-974 (9th Cir. 2005) (quoting *Liston* v. *County of Riverside*, 120 F.3d 965, 979 (9th Cir. 1997)).

Those precedents would have confirmed what this Court's decisions on their own make clear: stealing property listed in a warrant is clearly unconstitutional. By refusing to conduct that inquiry, and insisting on a precedent "directly on point," the Ninth Circuit severely misapplied this Court's qualified immunity doctrine and reached a conclusion plainly foreclosed by the Fourth Amendment.

II. THE DECISION BELOW SPLITS FROM THE OVERWHELMING WEIGHT OF AUTHORITY IN THE LOWER COURTS.

The Ninth Circuit's holding and analysis of the "clearly established" question are not simply wrong. They also render the Ninth Circuit a clear outlier among the lower courts, which have consistently held both that theft of property during a search is clearly unconstitutional, and that comparably outrageous violations of the Fourth Amendment are clearly

established even in the absence of a case directly on point.

1. Until now, every court to consider the question has held—not surprisingly—that it is clearly established that stealing property violates the Fourth Amendment.

In *Nelson* v. *Streeter*, the Seventh Circuit held that public officials were not entitled to qualified immunity when they "st[ole]" property from a private individual during a search. 16 F.3d 145, 151 (7th Cir. 1994). There, city officials conducted a search of an art exhibition and absconded with a painting on display. *Id.* at 147. Writing for the court, Judge Posner explained that the public officials "violated [the plaintiff's] rights under the Fourth Amendment" by engaging in "the theft of [his] property," and that this violation was "[s]o obvious * * * that we do not think the absence of case law can establish a defense of immunity." *Id.* at 150-151.

Judge Chhabria reached the same conclusion in *McDonald* v. *West Contra Costa Narcotics Enforcement Team* on facts very similar to this case. No. 14-cv-04154-VC, 2015 WL 13655774, at *1 (N.D. Cal. Mar. 20, 2015). There, local officers executed a search warrant at the plaintiff's store and seized nearly $35,500 in cash. Third Am. Compl. at 10 ¶¶44-46, *McDonald*, No. 14-cv-04154 (N.D. Cal. Jan. 8, 2015). But the officers only recorded about $30,000—the remaining "$5,500 went missing." *Id.* McDonald brought an action under § 1983, alleging that the theft of $5,500 violated the Fourth Amendment's prohibition on unreasonable seizures. *Id.* at 15 ¶¶73, 75. Judge Chhabria denied defendants'

motion to dismiss for qualified immunity, explaining that it is "obviously 'unreasonable' to steal someone's money while executing a search warrant." *McDonald*, 2015 WL 13655774, at *1.

The court in *Mertens* v. *Shensky* came to an identical determination, also on analogous facts. No. CV05-147-N-EJL, 2006 WL 173651, at *1 (D. Idaho Jan. 23, 2006). Mertens alleged that during a search of his home and office—executed pursuant to a warrant—law enforcement officers stole currency and other personal property. *Id.* The court determined that, "[t]o the extent that Plaintiff asserts that Defendants intentionally stole his personal property during execution of a search warrant, a qualified immunity defense is not applicable." *Id.* at *6. "No reasonable officer would think that stealing personal property under the guise of a search warrant was lawful," the court explained, and "[q]ualified immunity is not intended to protect 'those who knowingly violate the law.'" *Id.* (quoting *Hunter* v. *Bryant,* 502 U.S. 224, 227 (1991) (per curiam)).

Several other courts have likewise recognized that it is "patently unconstitutional" for an officer to execute a search warrant, seize some property pursuant to the warrant, and "steal[]" other "personal property" for his own gain—albeit in different contexts. *See United States* v. *Webster*, 809 F.3d 1158, 1161-62, 1170 (10th Cir. 2016) (internal quotation marks omitted); *see also Ayeni* v. *CBS Inc.*, 848 F. Supp. 362, 368 (E.D.N.Y. 1994) (finding it clear that qualified immunity would be unavailable to "a rogue policeman using his official position to break into a home in order to steal objects for his own profit or

that of another"); *Fox* v. *Bay City*, No. 05-CV-73510-DT, 2006 WL 2711820, at *7 (E.D. Mich. Sept. 21, 2006) (denying qualified immunity where the defendant allegedly stopped the plaintiff for no reason and "destroyed some of his personal property"); *Haskins* v. *Kay*, 963 A.2d 138, 2008 WL 5227187, at *2 (Del. 2008) (unpublished) (rejecting a claim of qualified immunity under a state statute where plaintiff alleged the "theft of thousands of dollars of collectibles and electronics," which, "[i]f proven, * * * could present a meritorious basis for relief by overcoming [the officer's] assertion of qualified immunity").

2. The Ninth Circuit's application of the "clearly established" inquiry also renders it a severe outlier. Other courts have held that public officials violated clearly established law when they engaged in similarly egregious violations of the Fourth Amendment, even in the absence of precedent directly on point. And unlike here, those courts have held that this Court's general precedents are sufficient to make "obvious" that such conduct is unconstitutional.

In *Simon* v. *City of New York*, 893 F.3d 83 (2d Cir. 2018), for example, the Second Circuit held that "a person who is arrested on a warrant requiring her production to court at a fixed date and time" clearly "has a right not to be detained for ten hours outside of court supervision." *Id.* at 97. Although the Second Circuit acknowledged that no prior case had addressed this circumstance, it found it clearly established that "[a]ny warrant must be executed in reasonable conformity with its terms—a rule so integral to Fourth Amendment doctrine that we are

untroubled that no case has previously applied it to a material witness warrant." *Id.* at 98.

Likewise, in *Schneyder* v. *Smith*, 653 F.3d 313 (3d Cir. 2011), the Third Circuit held that it was "obvious," even without a case directly on point, that a prosecutor violated the Fourth Amendment by unilaterally holding a material witness in jail for weeks on end, without informing a judge. *Id.* at 330. It explained that "the point[] of the Fourth Amendment is to require that decisions involving citizens' security from searches and seizures be made wherever practicable by a neutral and detached magistrate." *Id.* (internal quotation marks omitted). And it observed that it required "little thought about [this Court's] cases" to extrapolate that the novel circumstance before it was also unlawful. *Id.*

Other circuits have denied qualified immunity in similarly egregious circumstances without requiring precedent directly on point. The Seventh Circuit denied qualified immunity to a government employer who engaged in a "flagrant Fourth Amendment violation" by installing hidden cameras to film female employees in a changing area. *Gustafson* v. *Adkins*, 803 F.3d 883, 892 (7th Cir. 2015). And the Fourth Circuit denied qualified immunity where officials "affronted the basic protections of the Fourth Amendment" by obtaining a search warrant "authorizing photographs of [a 17-year-old]'s naked body," *Sims* v. *Labowitz*, 885 F.3d 254, 258, 264 (4th Cir. 2018), or intentionally facilitated a private search beyond the scope of a search warrant, thereby infringing rights manifestly "within 'core' Fourth

Amendment protection," *Buonocore* v. *Harris*, 65 F.3d 347, 357 (4th Cir. 1995).

The Ninth Circuit's approach was markedly different. It did not consider any of this Court's precedents, let alone the rules "integral to Fourth Amendment" doctrine that should have governed this case. *Simon*, 893 F.3d at 98. And it did not apply even a "little thought" to reason from established Fourth Amendment law to the outrageous factual circumstances before it. *Schneyder*, 653 F.3d at 331. Instead, it insisted on a precedent "directly on point" and, finding none, granted qualified immunity. *See* Pet. App. 9a (internal quotation marks omitted). In reasoning and result, this decision stands alone.

III. THE DECISION BELOW WILL HAVE GRAVE PRACTICAL CONSEQUENCES.

If left uncorrected, the decision below will have dire consequences for persons within the Ninth Circuit and beyond. Because the Ninth Circuit refused to resolve the underlying Fourth Amendment question, its decision now stands for the legal proposition that, as of 2013 (when the events at issue took place), there was "no clearly established law" holding that stealing property covered by a search warrant violates the Constitution. Pet. App. 3a. The decision also makes clear that, in the Ninth Circuit's view, no prohibition on theft has been clearly established in the interim. The panel expressly considered the most relevant case decided since 2013, *Brewster* v. *Beck*, and concluded that its "facts *** vary in legally significant ways from those in this case." *Id.* at 7a-8a. Those words, almost tailor-made to defeat

a § 1983 claim, would plainly foreclose an argument that developments since 2013 have placed it "beyond debate" that theft is unconstitutional. *al-Kidd*, 563 U.S. at 741.

Consequently, the law in the Ninth Circuit is that, now and going forward, law enforcement officers lack fair notice that stealing property covered by a search warrant is unconstitutional. Any law enforcement officer in the Ninth Circuit who engages in such conduct—from the cop in Reno to the narcotics agent in San Diego—is entitled to qualified immunity for stealing property listed in a warrant, and will be until this precedent is overturned or the Ninth Circuit resolves the underlying constitutional question. In effect, the decision below has granted prospective immunity to any officers in the Ninth Circuit who wish to steal property listed in a search warrant.

The prospect that some officers will take advantage of that shield of immunity is, regrettably, neither remote nor hypothetical. This Court observed over 35 years ago that "[i]t is not unheard of for persons employed in police activities to steal property taken from arrested persons." *Illinois* v. *Lafayette*, 462 U.S. 646, 646 (1983). In the intervening decades, there have been hundreds of reported instances of police theft during searches, *see* Philip Matthew Stinson, Sr., et al., *Police Integrity Lost: A Study of Law Enforcement Officers Arrested* 142-143, 314 (Jan. 2016) (unpublished final technical report),[4]

[4] *Available at* https://tinyurl.com/ydbyomvh.

numerous convictions of police officers for stealing property seized during searches,[5] and "widespread" reports of revenue-based policing practices that include "egregious and well-chronicled abuses," *see Leonard* v. *Texas*, 137 S. Ct. 847, 848 (2017) (statement of Thomas, J., respecting the denial of certiorari). If the decision below stands, all of the persons engaged in this misconduct will be immunized from liability, and an unscrupulous minority of officers will undoubtedly take advantage of the opportunity to pilfer property listed in the warrants they are charged with executing.

Private individuals will suffer real and obvious harms to their liberty as a result. Section 1983 often provides the exclusive means of redress for theft from law enforcement officers. Many states, including California, afford police officers broad immunity from tort liability for acts taken during criminal investigations. *See, e.g.*, *Amylou R.* v. *County of Riverside*, 34 Cal. Rptr. 2d 319, 321 (Ct. App. 1994) (holding that any "actions taken in preparation for formal [criminal] proceedings," including the "investigation of a crime," are "cloaked with immunity"

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[5] *See, e.g.,* German Lopez, *8 cops allegedly used an elite Baltimore police team to plunder the city and its residents*, Vox (Feb. 13, 2018), https://tinyurl.com/y9pv92et (describing conviction of several officers for seizing money and then underreporting the amount seized); Jason Meisner, *Federal jury convicts 2 Chicago cops of stealing cash and drugs with bogus search warrants*, Chi. Trib. (Oct. 22, 2019), https://tinyurl.com/y4ofdu7o (describing conviction of two police officers for stealing portions of cash and drugs seized during raids).

(internal quotation marks omitted) (citing Cal. Gov. Code § 821.6)). And because property that is stolen by police officers for their personal enrichment will, by definition, never be introduced as evidence against a criminal defendant, a suppression motion does not provide an avenue for testing the legality of that conduct. *See Pearson* v. *Callahan*, 555 U.S. 223, 236 (2009) (explaining that addressing the merits of a constitutional claim in § 1983 cases is "especially valuable with respect to questions that do not frequently arise in cases in which a qualified immunity defense is unavailable"). The Ninth Circuit's decision will thus, as a practical matter, subject plaintiffs to the unconstrained and arbitrary power of any officer who executes a warrant to seize for himself the property listed therein—one of the very abuses the founders adopted the Fourth Amendment to end.

In addition, the harmful effects of the decision below will not be cabined to the Ninth Circuit. Lower courts are required to examine decisions from other circuits to determine whether law is "clearly established," and typically may not find a question is beyond reasonable debate if another circuit has disagreed. *See id.* at 245 ("[I]f judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy." (internal quotation marks omitted)). That means that courts across the country will likely be constrained to rely on the decision below to grant qualified immunity in similar cases. In fact, at least one out-of-circuit court already has. *See Roberts* v. *Unknown Wichita Police Officers*, No. 19-3044-SAC, 2019 WL 1790050, at *3 (D. Kan. Apr. 24,

2019) (relying on decision below for proposition that "the law regarding the loss of property" is not clearly established).

IV. THE COURT SHOULD GRANT CERTIORARI OR SUMMARILY REVERSE.

This Court's intervention is urgently warranted. The decision below is manifestly incorrect, at odds with the decisions of other circuits, and likely to spawn dramatic and widespread negative consequences. This Court has not hesitated to grant certiorari to review decisions granting qualified immunity for obviously unconstitutional conduct, particularly where the lower courts applied overly restrictive standards in assessing whether the law was "clearly established." *See Hope*, 536 U.S. at 733 (granting certiorari to review the Eleventh Circuit's holding that officials were entitled to qualified immunity for tying a prisoner to a hitching post because there was no case with "'materially similar' facts"); *Lanier*, 520 U.S. 261 (granting certiorari to review the Sixth Circuit's holding that a judge who sexually assaulted several women in his chambers was entitled to the criminal-law equivalent of qualified immunity because of the absence of a case with "fundamentally similar facts"). The illegality in this case is no less clear than in those instances, and the Ninth Circuit's misapplication of qualified immunity law was equally mistaken. And here, unlike in prior cases, the costs of the decision are likely to sweep far beyond the individual plaintiffs.

This Court should not wait to address the issue. This case cleanly presents the question presented: The Ninth Circuit expressly and unambiguously held

that there is "no clearly established law holding that officers violate the Fourth or Fourteenth Amendment when they steal property that is seized pursuant to a warrant." Pet. App. 3a. That conclusion does not rely on any factual details of this case, in which plaintiffs clearly and plausibly alleged that officers engaged in "the unlawful seizure and theft" of their property. EOR 523, 530. Nor would percolation be helpful or even likely, given that other courts will probably find themselves constrained by the decision below to deem the legal issue not clearly established. And as long as this Court waits to decide the question, law enforcement officers throughout the Ninth Circuit will enjoy the blanket shield of immunity granted by the opinion below.

At minimum, this Court should summarily reverse. The Ninth Circuit plainly erred by failing to conduct any analysis of this Court's Fourth Amendment case law before pronouncing that there is no clearly established law. *See* Pet. App. 5a-9a. And the Ninth Circuit further erred by premising its highly truncated analysis of lower-court case law on the undefended and erroneous assumption that *any* seizure of property listed in a warrant is necessarily lawful, regardless whether an officer seizes the property for himself or for the government. *See id.* at 6a-7a.

The Court has previously exercised its supervisory authority to summarily reverse decisions granting qualified immunity where lower courts so dramatically failed to engage in the proper mode of analysis. *See Sause* v. *Bauer*, 138 S. Ct. 2561, 2562-63 (2018) (per curiam) (summarily reversing the Fifth Circuit's decision granting qualified immunity where it failed

to consider whether any "legitimate law enforcement interests" justified "an officer's order to stop praying"); *Tolan*, 572 U.S. at 651 (summarily reversing the Fifth Circuit's decision granting qualified immunity where it failed to draw reasonable inferences in favor of the nonmoving party). At the least, it should do so again here, to ensure that the Ninth Circuit's manifest errors do not subject individuals in the Ninth Circuit and throughout the country to brazen acts of theft that the Fourth Amendment clearly bars.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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