No. 19-1021

IN THE
Supreme Court of the United States

MICAH JESSOP, ET AL.,
Petitioners,

v.

CITY OF FRESNO, CALIFORNIA, ET AL.,
Respondents.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioners Micah Jessop and Brittan Ashjian respectfully petition under Supreme Court Rule 44 for rehearing of the Court's May 18, 2020, order denying their petition for a writ of certiorari. "[I]ntervening circumstances of a substantial or controlling effect" have occurred that merit reconsideration of the denial of certiorari. Sup. Ct. Rule 44.2.

Since the Court denied certiorari in this case, it has repeatedly relisted or rescheduled a series of ten petitions urging the Court to overrule, curtail, or review misapplications of the doctrine of qualified immunity. *See Baxter* v. *Bracey*, No. 18-1287; *Brennan* v. *Dawson*, No. 18-913; *Zadeh* v. *Robinson*, No. 19-676; *Corbitt* v. *Vickers*, No. 19-679; *West* v. *Winfield*, No. 19-899; *Mason* v. *Faul*, No. 19-7790; *Anderson* v. *City of Minneapolis*, No. 19-656; *Cooper* v. *Flaig*, No. 19-1001; *Davis* v. *Ermold*, No. 19-926; *Hunter* v. *Cole*, No. 19-753. Each of those petitions presents a question that, if decided in the plaintiffs' favor, would likely control the disposition of this case:

- Two of the petitions ask the Court to reverse decisions—like the decision below—requiring a "precisely * * * on-point" precedent to overcome qualified immunity. *West* Pet. i; *see Baxter* Pet. i (first question presented).
- Five of the petitions ask the Court to clarify the degree of specificity necessary to render a right "clearly established." *See Anderson* Pet. i, 15-19; *Mason* Pet. i; *Davis* Pet. i; *Hunter* Pet. i; *Brennan* Pet. i, 20-29.

- Four of the petitions ask the Court to "recalibrate or reverse the doctrine of qualified immunity" entirely. *Zadeh* Pet. i; *Corbitt* Pet. i; *see Cooper* Pet. i; *Baxter* Pet. i (second question presented).

If the Court were to grant certiorari in any of these cases, it would be appropriate—and consistent with the Court's ordinary practice—to grant rehearing of this petition and either hold it pending decision in those cases or consolidate it with those cases for consideration on the merits. That is the course the Court has repeatedly taken in the past. For instance, the Court initially denied numerous petitions that challenged the application of the mandatory Sentencing Guidelines, but following the grant of certiorari in *United States* v. *Booker*, 543 U.S. 220 (2005), it granted rehearing of those previously denied petitions and held them pending resolution of *Booker*.[1] In 2016, the Court granted rehearing of the denial of certiorari in *Kent Recycling Services, LLC* v. *U.S. Army Corps of Engineers* after granting certio-

[1] *See, e.g.*, *Hawkins* v. *United States*, 543 U.S. 1097 (2005) (mem.); *Lauersen* v. *United States*, 543 U.S. 1097 (2005) (mem.); *Epps* v. *United States*, 543 U.S. 1116 (2005) (mem.); *Rideout* v. *United States*, 543 U.S. 1116 (2005) (mem.); *Jimenez-Velasco* v. *United States*, 543 U.S. 1116 (2005) (mem.); *Van Alstyne* v. *United States*, 543 U.S. 1116 (2005) (mem.); *Carbajal-Martinez* v. *United States*, 543 U.S. 1116 (2005) (mem.); *McDonnell* v. *United States*, 543 U.S. 1116 (2005) (mem.); *Pearson* v. *United States*, 543 U.S. 1116 (2005) (mem.); *Salas* v. *United States*, 543 U.S. 1116 (2005) (mem.); *Campbell* v. *United States*, 543 U.S. 1116 (2005) (mem.); *Newsome* v. *United States*, 543 U.S. 1116 (2005) (mem.).

rari on a similar issue in *Army Corps of Engineers* v. *Hawkes Co.*, 136 S. Ct. 1807 (2016). *See* 136 S. Ct. 2427 (2016) (mem.). And after initially denying certiorari in *Boumediene* v. *Bush*, the Court granted a petition for rehearing and consolidated the case for consideration on the merits alongside *Al Odah* v. *United States*, No. 06-1195. *See* 551 U.S. 1160 (2007) (mem.). In each of those cases—and several more besides[2]—the Court granted the petitions for rehearing even though they were filed before the Court granted certiorari in the subsequently controlling case.

The Court should follow a similar course here. A decision clarifying when the law is clearly established for purposes of qualified immunity, as requested by seven petitions pending before the Court, would require vacatur of the decision below, which rested on an exceptionally narrow understanding of what constitutes "clearly established" law. *See* Pet. 20-25. And a decision abolishing the doctrine of qualified immunity altogether, as requested by four petitions before the Court, would likewise necessitate vacatur of the Ninth Circuit's decision, which affirmed the dismissal of petitioners' claims on the

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[2] *See, e.g.*, *Hitchcock* v. *Florida*, 505 U.S. 1215 (1992) (mem.) (granting rehearing of petition raising sentencing error after Court granted certiorari to address similar error in *Espinosa* v. *Florida*, 505 U.S. 1079 (1992)); *Florida* v. *Rodriguez*, 461 U.S. 940 (1983) (mem.) (granting rehearing of petition challenging constitutionality of seizure during airport stop after the Court granted certiorari on similar issue in *Florida* v. *Royer*, 460 U.S. 491 (1983)).

basis of that doctrine. *See* Pet. App. 3a. Although petitioners did not specifically request that qualified immunity be overturned in their petition, this Court frequently holds petitions challenging the application of a doctrine pending resolution of a case challenging the doctrine itself—and then grants, vacates, and remands those petitions if and when the doctrine is overturned.[3] In any event, more than half of the relisted or rescheduled petitions currently pending before the Court raise questions concerning the interpretation of the doctrine of qualified immunity rather than challenges to the doctrine itself.

This petition is similarly situated to those cases, and involves a particularly egregious misapplication of the doctrine. In the decision below, the Ninth Circuit granted qualified immunity to police officers accused of stealing property while conducting a search of a suspect's home. That conduct did not involve a split-second decision or an act that a reasonable officer could possibly have believed was lawful. It involved outright theft. This case would accordingly present a suitable opportunity to mark the outer limits of qualified immunity—something

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[3] *See, e.g.*, *Honchariw* v. *County of Stanislaus*, 139 S. Ct. 2772 (2019) (mem.) (holding and then GVR'ing petition challenging the application of *Williamson County Regional Planning Commission* v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), pending resolution of case overturning *Williamson County*); *Chandler* v. *United States*, 135 S. Ct. 2926 (2015) (mem.) (holding and then GVR'ing petition challenging the interpretation of the "residual clause" of the Armed Career Criminal Act pending resolution of case striking down the residual clause as unconstitutional).

that has become particularly urgent in light of recent events. At minimum, the case should be considered and resolved alongside other pending petitions presenting similar or controlling questions of law.

CONCLUSION

The petition for rehearing should be granted.

Respectfully submitted,

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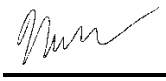
JUNE 2020

CERTIFICATION OF COUNSEL

As counsel of record for Petitioners, I hereby certify that this petition for rehearing is restricted to the grounds specified in Rule 44.2 and is presented in good faith and not for delay.



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June 11, 2020