No. 20-1082

IN THE

Supreme Court of the United States

RAYMOND GARDNER,
Petitioner,

v.

MATTHEW T. MGLEJ, INDIVIDUALLY,
Respondent.

On Petition for a Writ of Certiorari To the United States Court of Appeals for the Tenth Circuit

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REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REPLY ARGUMENT

I. The Brief in Opposition Focuses On Several Issues Not In Dispute.

The question presented to this Court is simple: "Whether it was clearly established in 2011 that an arrest under Utah Code Section 76-8-301.5 for refusal to hand over an identification document violates the Fourth Amendment."

Much of the Brief in Opposition addresses issues outside that question. To clarify:

Petitioner does not claim there is a circuit split. As is ordinarily the case with an improper denial of qualified immunity, the issue is the lower court's misapplication of the law, not whether other circuits happened to have applied the law correctly. *See, e.g.,* *City of Escondido, Cal. v. Emmons*, 139 S.Ct. 500 (2019) (per curiam) *and* *Kisela v. Hughes*, 138 S.Ct. 1148 (2018) (per curiam).

Petitioner also does not dispute that it is possible for a criminal statute that has never been interpreted to be so clear that an officer is not entitled to qualified immunity for an arrest based on it. As is always the case with qualified immunity, "the clearly established law must be 'particularized' to the facts of the case." *White v. Pauly*, 137 S. Ct. 548, 552 (2017). The issue is whether the government's conduct was so unreasonable in this specific case so as to not be entitled to qualified immunity, not whether it could be sufficiently clear in some general category of cases. *See id.*

Nor does Petitioner disagree that there are other facts in this case, outside the question presented, that are relevant to the overall dispute when it proceeds later in the trial court. As explained in the petition, this case seeks review of a central claim in the dispute below but is not seeking review of several others that remain. See Petition for Certiorari at 7 n.2.

In contrast to the claim in the Brief in Opposition, The petition accurately presented the facts for the Court to answer the issue on which the petition seeks review. The simple relevant facts are that Petitioner asked for Respondent's name and identification (license) during an investigatory stop and Respondent declined to provide it and was arrested. The Utah statute allowed for an arrest for the failing to provide a name and was silent regarding whether a license could be requested. Up to that time, no court had ever construed the statute.

The issue is correctly and simply stated in the petition. As the petition explains, it was not clearly established in 2011 that an officer was violating the Fourth Amendment when the officer arrested a person for failing to provide his driver's license when the statute allowed for an arrest for failing to provide his or her name.

II. It was not unreasonable for Gardner to believe the statute's use of the word "name" meant he could demand a driver's license.

Respondent argues that it was facially improper, by a simple reading of the relevant statute, for Gardner to believe he could demand a driver's license from Mglej. Petitioner disagrees. At the time of Mglej's arrest in 2011, Utah law stated:

> A person is guilty of failure to disclose identity if during the period of time that the person is lawfully subjected to a stop as described in Section 77-7-15:
>
> (a) a peace officer demands that the person disclose the person's name;
>
> (b) the demand described in Subsection (1)(a) is reasonably related to the circumstances justifying the stop;
>
> (c) the disclosure of the person's name by the person does not present a reasonable danger of self-incrimination in the commission of a crime; and
>
> (d) the person fails to disclose the person's name.

Utah Code Ann. § 76-8-301.5 (1) (2011). Of course, the statute does use the word "name" and not the phrase "driver's license." However, the statute uses the phrase "Failure to disclose identity" three times, including once in the title. The concept of disclosing one's identity is synonymous with providing a driver's license.

This is common sense. An officer who asks a suspect to state his name, and is told some name in response, cannot know if the name offered is genuine. Without asking for identification such as a driver's license, an officer cannot know of the suspect failed to disclose his identity in violation of the statute (by providing a false name) or disclosed his identity in compliance with it (by providing his real name.) In the absence of any authority interpreting the statute, it is understandable that an officer would think that the way to determine if the suspect disclosed his identify is to ask for his identification.

It is easy to contrast this with the Nevada statute in *Hiibel v. Sixth Judicial District Court*, 542 U.S. 177 (2004) which states:

> The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself but may not be compelled to answer any other inquiry of any peace officer.

Hiibel, 542 U.S. at 181-82 (*quoting* Nev. Rev. Stat. § 171.123(3)). While the Nevada statute uses the word "identify" and not "name" like the Utah statute, the Nevada Supreme Court interpreted the Nevada statute "to require only that a suspect disclose his name." *Id.* at 185. Despite the requirement that only a name be requested, this Court found that the *Hiibel* officer's actions did not violate the Fourth Amendment or the Nevada statute, even though a driver's license was requested. *Id.* at 185-189.

This precedent from *Hiibel* then shows Gardner's interpretation of the Utah statute to require producing a driver's license was not unreasonable. *See Heien v. North Carolina*, 135 S. Ct. 530, 539 (2014). (As long as it "was reasonable for an officer to suspect that the defendant's conduct was illegal," even based on a mistaken interpretation of the law thought to make it illegal, "there was no violation of the Fourth Amendment in the first place.")

CONCLUSION

Petitioner respectfully asks the Court to grant the petition for a writ of certiorari and summarily reverse the lower court's ruling that Officer Gardner was not

entitled to qualified immunity for the arrest. Petitioner respectfully asks the Court to then remand for further proceedings not inconsistent with its opinion. In the alternative, Petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted this 24th day of March, 2021.

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