NO. 20-1668

In the Supreme Court of the United States

CITY OF TAHLEQUAH, OKLAHOMA;
BRANDON VICK; JOSH GIRDNER,

Petitioners,

v.

AUSTIN P. BOND, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF DOMINIC F. ROLLICE, deceased,

Respondent.

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

BRIEF OF AMICUS CURIAE THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF PETITIONERS

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AMICUS CURIAE BRIEF OF THE NATIONAL SHERIFFS' ASSOCIATION

The National Sheriffs' Association respectfully submits this amicus curiae brief.[1]

IDENTITY AND INTEREST OF AMICUS CURIAE

The National Sheriffs' Association (the "NSA") is a non-profit association formed under 26 U.S.C. § 501(c)(4). Formed in 1940 the NSA seeks to promote the fair and efficient administration of criminal justice throughout the United States and in particular to advance and protect the Office of Sheriff throughout the United States. The NSA has over 13,000 members and is the advocate for 3,080 sheriffs throughout the United States.

The NSA also works to promote the public interest goals and policies of law enforcement throughout the nation. It participates in the judicial process where the vital interests of law enforcement and its members are affected.

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[1] Amicus notified all counsel of record of its intent to file this brief more than 10 days before the due date, and consent to file was given by petitioners City of Tahlequah, Oklahoma, et al., but not by respondent Austin Bond. NSA has therefore filed a Motion for Leave to File this Brief of *amicus curiae* along with the attached brief. This brief was not authored in whole or in part by counsel for any party. No person or entity other than amicus made a monetary contribution to this brief's preparation or submission.

FACTUAL BACKGROUND

On August 12, 2016, Joy Rollice called 911. App.2.[2] She told the dispatcher: "my ex-husband is in the garage, he will not leave, he's drunk and it's going to get ugly real quick." App.2. She confirmed that she wanted her ex-husband sent to jail and informed the dispatcher that "he doesn't live here. He's a registered sex offender and lives in Park Hill. He's my ex-husband. He's still got tools in the garage. He doesn't live here." App.2-3. Petitioners—Officers Brandon Vick and Josh Girdner—responded, along with Officer Chase Reed. App.3. It is undisputed that petitioners knew that Rollice was Joy's ex-husband, that he was intoxicated, and that Joy was afraid of what he might do if he remained in her home. App.3.

Upon the officers' arrival, Joy led them to the side entrance of the garage. App.3. There they met Rollice and began speaking with him. App.3-4. The officers told him that they did not intend to take him to jail and only wanted "'to get him a ride out of there.'" App.3-4. Rollice was "fidgeting with something in his hands." App.4. He also appeared "nervous and fidgety" to Officer Girdner, who "asked [Rollice] to step outside so [Officer Girdner] could pat him down for officer safety." CA10. Aplt. Appx. 000198; *see* App.4. Rollice refused. App.4. Officer Girdner testified that Rollice "did not step outside but backed further into the garage," and "then turned and began to walk away

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[2] "App." refers to the petitioners' appendix. "CA10. Aplt. Appx." refers to the Appellant's appendix in the U.S. Court of Appeals for the Tenth Circuit.

from me. I stepped into the garage and ordered him to stop and turn around." CA10. Aplt. Appx. 000198.

Based on body camera footage, the district court agreed that Rollice "backed up and then turned and walked away from Girdner to the back of the garage. All three officers followed [Rollice] into the garage." App.39. The Tenth Circuit, however, posited that a jury could view the video as showing that "Officer Girdner took the first step toward Dominic, and Dominic took a step back only after Officer Girdner moved toward him." App.4 n.9. In any event, there is no dispute that Officer Girdner ordered Rollice to stop, and he refused. App.5.[3]

Upon reaching the back of the garage, Rollice grabbed a hammer and stood facing the officers holding it with both hands at shoulder level. App.5; CA10. Aplt. Appx. 000198. The officers backed up, drew their guns, ordered Rollice to drop the hammer, and explained that they only wanted to talk to him—but "he repeatedly refuse[d], saying 'No.'" App.6; *see* CA10. Aplt. Appx.000198. Rollice spun the hammer around so that its claws were facing Officer Girdner. CA10. Aplt. Appx. 000198; CA10. Aplt. Appx. 000297. Rollice then moved to his right, creating a clear path between himself and the officers. App.6. He stood eight to ten feet from Officer Girdner. App.6. Officer Reed was even closer. App.21.

The officers continued ordering Rollice to drop the hammer, but he again said "No." App.6. He then pulled the hammer back behind his head. App.6. Officer

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[3] All three officers testified that Rollice told them, "One of us is going to fucking die tonight." App.5 n 10. Respondent disputed that claim, and neither court below considered it. *Id.*

Girdner testified that Rollice "took a stance which made me believe he was going to charge at me or throw the hammer at me or the other officers present.

At that time, I was in fear for my life and the lives of the other officers present because [Rollice] posed an immediate threat of serious bodily injury or death to me and the other officers." CA10. Aplt. Appx. 000199.

The body camera footage confirmed that Rollice "raised the hammer still higher as if he might be preparing to throw it, or alternatively, charge the officers." App.40. "In response to Dominic's movement with the hammer, Officers Girdner and Vick fire[d] multiple shots," fatally wounding Rollice. App.6. Officer Reed fired his Taser but missed. App.40.

SUMMARY OF ARGUMENT

In this case under review, the Tenth Circuit inappropriately applied the "provocation rule" holding that actions of officers in lawfully seizing a suspect for investigation rendered the otherwise reasonable use of force unreasonable. In so holding, the Tenth Circuit ignored this Court's decision in *Cty. of Los Angeles v. Mendez* finding the "provocation rule" to be invalid. In addition, contrary to this Court's holding in *Terry v. Ohio*, the Tenth Circuit's decision makes unconstitutional a law enforcement officer's seizing a suspect for investigation based on reasonable suspicion of a crime. Further, the circuit below, contrary to the principles enunciated by this Court in *Graham v. Connor*, held an otherwise objectively reasonable use of deadly force by officers was unreasonable. Lastly, the decision below failed to apply qualified immunity where a constitutional right allegedly violated was not clearly established.

Amicus prays that this Court reaffirm the invalidity of the provocation rule; that officers may seize a suspect for investigation based on reasonable suspicion of a crime; that *Graham v. Conner* is the well-established "objective reasonableness" standard for use of force; and, that qualified immunity applies where the constitutional right allegedly violated was not clearly established.

ARGUMENT

I. THE PROVOCATION DOCTRINE HAS ALREADY BEEN INVALIDATED BY THIS COURT.

This Court in *Cty. of Los Angeles v. Mendez*, 137 S.Ct. 1539 (May 30, 2017), clearly held that the "provocation rule" adopted by the court below cannot be used to analyze a claim of excessive use of force. Specifically, this Court held, "[T]hat the Fourth Amendment provides no basis for such a rule. A different Fourth Amendment violation cannot transform a later, reasonable use of force into an unreasonable seizure." *Id.* at 1544.

In *Mendez*, deputies from the Los Angeles County Sheriff's Department were searching for a parolee-at-large named Ronnie O'Dell. A felony arrest warrant had been issued for O'Dell, who was believed to be armed and dangerous and had previously evaded capture. Deputies received word from a confidential informant that O'Dell had been seen on a bicycle at the home of Paula Hughes. Deputies were informed that a man named Angel Mendez lived in the backyard of the Hughes home with Jennifer Garcia.

When the officers reached the Hughes residence, they learned that O'Dell was not in the house. Deputies searched the rear of the residence which included a one-room shack made of wood and plywood. The shack had a single doorway covered by a blue blanket.

Unbeknownst to the officers, Mendez and Garcia were in the shack and were napping on a futon. The deputies did not have a search warrant and did not

knock and announce their presence. When Deputy Conley opened the wooden door and pulled back the blanket, Mendez thought it was Ms. Hughes and rose from the bed, picking up the BB gun so he could stand up and place it on the floor. As a result, when the deputies entered, he was holding the BB gun, and it was pointing towards Deputy Conley. Deputy Conley yelled, "Gun!" and the deputies immediately opened fire. Mendez and Garcia were shot multiple times and suffered severe injuries. O'Dell was not in the shack or anywhere on the property.

Mendez and his wife filed suit under 42 U.S.C. § 1983, against petitioners, the County of Los Angeles and Deputies Conley and Pederson. As relevant here, they pressed three Fourth Amendment claims. First, they claimed that the deputies executed an unreasonable search by entering the shack without a warrant (the "warrantless entry claim"); second, they asserted that the deputies performed an unreasonable search because they failed to announce their presence before entering the shack (the "knock-and-announce claim"); and third, they claimed that the deputies effected an unreasonable seizure by deploying excessive force in opening fire after entering the shack (the "excessive force claim"). 137 S.Ct. at 1545.

After a bench trial, the District Court ruled largely in favor of respondents. The court found Deputy Conley liable on the warrantless entry claim, and the court also found both deputies liable on the knock-and-announce claim. But the court awarded nominal damages for these violations because "the act of pointing the BB gun" was a superseding cause "as far as damage [from the shooting was] concerned." *Id.*

The District Court then addressed respondents' excessive force claim. The court began by evaluating whether the deputies used excessive force under *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). The court held that, under *Graham*, the deputies' use of force was reasonable given their belief that a man was holding a firearm rifle threatening their lives. *Mendez*, 137 S.Ct. 1539, 1545 (2017). But the court did not end its excessive force analysis at this point. Instead, the court turned to the Ninth Circuit's provocation rule, which holds that "an officer's otherwise reasonable (and lawful) defensive use of force is unreasonable as a matter of law, if (1) the officer intentionally or recklessly provoked a violent response, and (2) that provocation is an independent constitutional violation." Based on this rule, the District Court held the deputies liable for excessive force and awarded respondents around $4 million in damages. *Id.*

The Court of Appeals affirmed in part and reversed in part. Contrary to the District Court, the Court of Appeals held that the officers were entitled to qualified immunity on the knock-and-announce claim. But the court concluded that the warrantless entry of the shack violated clearly established law and was attributable to both deputies. *Id.* Finally, and most important for present purposes, the court affirmed the application of the provocation rule. The Court of Appeals agreed with the conclusion that the shooting was reasonable under *Graham*; instead, like the District Court, the Court of Appeals applied the provocation rule and held the deputies liable for the use of force on the theory that they had intentionally and recklessly brought about the shooting by entering

the shack without a warrant in violation of clearly established law. 137 S.Ct. at 1545-1546.

The Court of Appeals also adopted an alternative rationale for its judgment. It held that "basic notions of proximate cause" would support liability even without the provocation rule because it was "reasonably foreseeable" that the officers would meet an armed homeowner when they "barged into the shack unannounced." *Id.* at 1546. This Court granted certiorari.

In *Mendez*, this Court explained that the Ninth Circuit's provocation rule permits an excessive force claim under the Fourth Amendment "where an officer intentionally or recklessly provokes a violent confrontation, if the provocation is an independent Fourth Amendment violation." *Id.* at 1546. The rule comes into play after a forceful seizure has been judged to be reasonable under *Graham*. Once a court has made that determination, the rule instructs the court to ask whether the law enforcement officer violated the Fourth Amendment in some other way in the course of events leading up to the seizure. If so, that separate Fourth Amendment violation may "render the officer's otherwise reasonable defensive use of force unreasonable as a matter of law." 137 S.Ct. at 1546.

This Court in *Mendez* was adamant that "[t]he provocation rule, which has been 'sharply questioned' outside the Ninth Circuit, *City and County of San Francisco v. Sheehan*, 135 S.Ct. 1765, 1777 n.4, 575 U.S. 600, 191 L.Ed.2d 856, 869 (2015), is incompatible with our excessive force jurisprudence. The rule's fundamental flaw is that it uses another constitutional violation to manufacture an excessive force claim

where one would not otherwise exist." *Mendez*, 137 S.Ct. 1539, 1546.

In *Sheehan*, officers were confronted with a barricaded mentally ill suspect armed with a knife. They first made entry into the room where she was located, but when she attacked officers, they quickly exited the room. Concerned that she may escape out a window or further arm herself, officers made entry again. The suspect attacked officers again holding a knife and officers were force to shoot her. There, the Ninth Circuit attempted to invoke the "provocation rule" to hold officers liable. This Court reversed and remanded the case. 135 S.Ct. 1765 (2015).

This Court in *Mendez* explained that the reasonableness of the use of force is evaluated under an objective inquiry that pays careful attention to the facts and circumstances of each particular case. *Graham*, at 396, 109 S.Ct. 1865, 104 L.Ed.2d 443. *Mendez*, 137 S.Ct. 1539, 1546. And the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Id.* Excessive force claims are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred. *Id.* That inquiry is dispositive: When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim. *Id.* at 1547.

This Court in *Mendez* reasoned that "[t]he basic problem with the provocation rule is that it fails to stop there. Instead, the rule provides a novel and unsupported path to liability in cases in which the use of force was reasonable." *Id.* "Specifically, it instructs courts to look back in time to see if there was a

different Fourth Amendment violation that is somehow tied to the eventual use of force. That distinct violation, rather than the forceful seizure itself, may then serve as the foundation of the plaintiff's excessive force claim." *Id.*

Using a common-sense approach, this Court in *Mendez* provided, "This approach mistakenly conflates distinct Fourth Amendment claims. Contrary to this approach, the objective reasonableness analysis must be conducted separately for each search or seizure that is alleged to be unconstitutional." Further, "[a]n excessive force claim is a claim that a law enforcement officer carried out an unreasonable seizure through a use of force that was not justified under the relevant circumstances. It is not a claim that an officer used reasonable force after committing a distinct Fourth Amendment violation such as an unreasonable entry." *Id.*

In *Mendez*, this Court concluded that the Ninth Circuit was "wrong" to apply the "provocation rule." *Id.* at 1547. Further, this Court made clear the framework for analyzing excessive force claims is set out in *Graham*. If there is no excessive force claim under *Graham*, there is no excessive force claim at all. *Mendez*, 137 S.Ct. 1539, 1547. To the extent that a plaintiff has other Fourth Amendment claims, they should be analyzed separately. *Id.*

In *Mendez*, this Court explained that the Court of Appeals also held that "even without relying on [the] provocation theory, the deputies are liable for the shooting under basic notions of proximate cause." 815 F.3d at 1194. In other words, the court apparently concluded that the shooting was proximately caused by the deputies' warrantless entry of the shack. This

Court explained that the proper analysis of this proximate cause question required consideration of the "foreseeability or the scope of the risk created by the predicate conduct," and required the court to conclude that there was "some direct relation between the injury asserted and the injurious conduct alleged." 137 S.Ct. 1539, 1548-1549, citing, *Paroline v. United States*, 134 S.Ct. 1710, 1719, 572 U.S. 434, 188 L.Ed.2d 714, 725 (2014).

This Court in *Mendez* concluded:

> Unfortunately, the Court of Appeals' proximate cause analysis appears to have been tainted by the same errors that cause us to reject the provocation rule. The court reasoned that when officers make a "startling entry" by "barg[ing] into" a home "unannounced," it is reasonably foreseeable that violence may result. 815 F.3d, at 1194-1195 (internal quotation marks omitted). But this appears to focus solely on the risks foreseeably associated with the failure to knock and announce, which could not serve as the basis for liability since the Court of Appeals concluded that the officers had qualified immunity on that claim. By contrast, the Court of Appeals did not identify the foreseeable risks associated with the relevant constitutional violation (the warrantless entry); nor did it explain how, on these facts, respondents' injuries were proximately caused by the warrantless entry. In other words, the Court of Appeals' proximate cause analysis, like the provocation rule, conflated distinct Fourth Amendment claims and required only a murky causal link

> between the warrantless entry and the injuries attributed to it.

Mendez, 137 S.Ct. 1539, 1549.

Accordingly, this Court vacated the judgment and the case was remanded for further proceedings consistent with this opinion. *Id.*

Based on this Court holding in *Mendez*, the provocation rule is invalid and cannot be used by the court below to hold petitioners liable for excessive force.

II. *TERRY V. OHIO* ESTABLISHED OFFICERS' RIGHT TO CONFRONT AND SEIZE ROLLICE.

The Tenth Circuit did not find that there was a triable issue of fact as to whether lethal force was a reasonable response to the threat Rollice posed. In the Tenth Circuit's view that question was not "determinative." App.28. Instead, what mattered was not the reasonableness of the force used in Rollice's actual seizure, but whether the officers' earlier missteps may have "recklessly created the situation that led to the fatal shooting," App.26—*i.e.*, "whether the officers approached the situation in a manner they knew or should have known would result in escalation of the danger," App.11. The Tenth Circuit's inquiry into whether officers contributed to the danger, without regard to whether those prior actions were themselves unconstitutional, is even more problematic than the provocation rule this Court unanimously rejected in *Mendez*.

This Court, in *Terry v. Ohio*, 392 U.S. 1 (1968), already established the constitutionality of an officer seizing or detaining a suspect for investigation based on reasonable suspicion of a crime. The officers' actions

in the present case were just that. Seizing or detaining a suspect believed to be trespassing and endangering his ex-wife.

In *Terry*, this Court explained that in order to assess the reasonableness of an officer's conduct as a general proposition, it is necessary first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interest of the private citizen, "for there is no ready test for determining reasonableness other than by balancing the need to search or seize against the invasion which the search or seizure entails." *Id.* at 20-21. (Emphasis added.) Further, "[a]nd in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.*

Applying these principles to the case in *Terry*, this Court considered first the nature and extent of the governmental interests involved. This Court provided, "One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Id.* at 22.

Additionally, in *Terry*, this Court recognized that during this investigative seizure of a suspect, the safety of the officer is paramount. This Court provided:

> The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior,

> but rather, whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of that investigation. *Id.* at 23. We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded.

Id.

Most importantly, in *Terry*, this Court recognized the need for law enforcement to take action to protect themselves and victims of violence as follows:

> In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether

> the person is in fact carrying a weapon and to neutralize the threat of physical harm.

Id. at 24.

This Court concluded in that case that "the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so." *Id.* at 28.

Here, officers were confronted with a drunk ex-husband in his petrified ex-wife's garage who refused to leave and who was a potential danger to his ex-wife and the officers.[4]

Further, the decedent willfully refused to comply with the lawful commands of the officers and instead intentionally elected to continue to threaten the officers, was fidgeting with something in his hands and appeared to be nervous. Officers asked the decedent to step outside the garage so officers could pat him down for weapons for officer safety and decedent refused. Decedent walked away further into the garage, disobeying orders to stop and turn around.

As in *Terry*, based on reasonable suspicion of a potential crime and/or danger to his ex-wife, officers approached the suspect to seize him and pat him down for weapons for officer safety consistent with the suspect's Fourth Amendment rights. Accordingly, officers did nothing unconstitutional to "provoke" decedent into threatening officers with deadly force which was the sole cause of decedent's death.

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[4] Rollice was a registered sex offender and he did not live there. App.2-3. Further, Joy was afraid of what he might do if he remained in her home. App.3.

III. QUALIFIED IMMUNITY APPLIES WHERE THE CONSTITUTIONAL RIGHT ALLEGEDLY VIOLATED WAS NOT CLEARLY ESTABLISHED.

Government officials sued in their individual capacity in a § 1983 action are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001); *Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 815, 172 L.Ed.2d 565 (2009), quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Accordingly, when a defendant invokes the defense of qualified immunity, the burden is on the plaintiff to demonstrate the inapplicability of the defense. In analyzing a qualified immunity defense, the court must determine: (1) whether a constitutional right has been violated; and (2) whether the right was clearly established when viewed in the specific context of the case. Courts are "permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 555 U.S. at 236.

The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[5] Qualified immunity is an "immunity from suit rather than a mere defense

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[5] *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982).

to liability."[6] In this manner, "[o]ne of the most salient benefits of qualified immunity is protection from pretrial discovery, which is costly, time consuming, and intrusive."[7] Once a defendant invokes the defense of qualified immunity, the plaintiff carries the burden of demonstrating its inapplicability.[8]

In *Saucier v. Katz*, the Supreme Court set forth a two-part framework for analyzing whether a defendant was entitled to qualified immunity.[9] Part one asks the following question: "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?"[10] Part two inquires whether the allegedly violated right is "clearly established" in that "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."[11] The Court does not have to address these two questions sequentially; it can proceed with either inquiry first.[12]

In the present case, the Court does not need to reach the second part of the *Saucier* as the defendants

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[6] *Pearson v. Callahan,* 555 U.S. 223, 237 (2009).

[7] *Blacke v. LeBlanc,* 691 F.3d 645, 648 (5th Cir. 2012).

[8] *Club Retro, L.L.C. v. Hilton,* 568 F.3d 181, 194 (5th Cir. 2009).

[9] *Saucier,* 533 U.S. 194 (2001).

[10] *Id.* At 201

[11] *Id.* At 202

[12] *See Pearson,* 555 U.S. at 236 ("On reconsidering the procedure required in *Saucier,* we conclude that, while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory."); *see also Cutler v. Stephen F. Austin State Univ.*, 767 F.3d 462, 469 (5th Cir. 2014).

have not violated a constitutional right. As addressed *supra*, and again below, the officers' actions in seizing Rollice were constitutional based on *Terry v. Ohio*. However, even if the court would find that the official's conduct violated a clearly established constitutional right, which is denied, the court must then consider whether the official is nonetheless entitled to qualified immunity because his conduct was objectively reasonable in light of the law at the time the conduct occurred. *See Jones v. Collins*, 132 F.3d 1048, 1052 (5th Cir. 1998) citing *Nerren v. Livingston Police Dep't*, 86 F.3d 469, 473 (5th Cir. 1996).

"Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law, and courts will not deny immunity unless existing precedent placed the statutory or constitutional question beyond debate."[13] "Unless all reasonable officers in the defendants' circumstance would have known that the conduct in question violated the constitution, the defendant is entitled to qualified immunity."[14] Considering the facts in this case, both deputies' conduct in pursuing and seizing Rollice to investigate the situation were objectively reasonable entitling both of them to qualified immunity.

Based on the above, officers in the present case, at the very least, are entitled to qualified immunity. Not only was it not clearly established that their actions were unconstitutional, but in fact, the opposite was true. It had been clearly established that their actions

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13 *Whitley v. Hanna*, 726 F.3d 631 (5th Cir. 2013).

14 *Batiste v. Theriot*, 458 F.App'x 351, 354 (5th Cir. 2012) citing *Thompson v. Upshur Cty., TX*, 245 F.3d 447, 457 (5th Cir. 2001).

were clearly constitutional according to *Terry* and *Mendez*.

CONCLUSION

For these reasons, amicus urges this Court to end any ambiguity, grant the petition for certiorari, and clearly state that (1) the provocation rule is invalid; (2) that law enforcement officers have the right to seize a suspect based on reasonable suspicion of a crime; (3) that *Graham* provides the factors to determine whether use of force by officers was objectively reasonable and, (4) that qualified immunity applies where a constitutional right allegedly violated was not clearly established.

Respectfully submitted,

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