No. 20-283

IN THE

Supreme Court of the United States

AUSTIN J. BASS,

Petitioner,

v.

PATRICK M. GREVE, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION FOR RESPONDENT PATRICK M. GREVE

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QUESTIONS PRESENTED

After working late into the evening to help produce an event at a nightclub, Respondent Patrick Greve found himself locked out of the club while his belongings were still inside. Greve waited outside in the cold for someone to let him in. When Petitioner, Officer Austin Bass, arrived in response to a dispatch about a burglar alarm, Greve greeted Bass enthusiastically and explained the situation. Refusing to listen to Greve's account or consider any innocent explanation for Greve's presence outside the club, Bass handcuffed Greve and arrested him for attempted burglary and public intoxication. Viewing the facts in the light most favorable to Greve, the Sixth Circuit held in an unpublished opinion that the district court overlooked genuine disputes of material fact, as well as reasons to doubt Bass's credibility, as to whether Bass had probable cause to arrest. The court also held that Bass was not entitled at the summary judgment stage to qualified immunity on Greve's false-arrest claim. The questions presented are:

1. Whether disputes of material fact precluded determining at summary judgment that Bass had probable cause to arrest Greve.

2. Whether decisions from this Court and the Sixth Circuit involving similar circumstances clearly establish that probable cause determinations must consider all inculpatory and exculpatory information known to the officer.

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INTRODUCTION

In its unpublished decision below, the Sixth Circuit applied settled legal standards to hold that a trial is necessary to determine whether Officer Austin Bass lacked probable cause to arrest Patrick Greve. Bass's petition for certiorari takes issue with the Sixth Circuit's evaluation of the summary judgment record, but his disagreement with the application "of a properly stated rule of law" to the particular facts of this case fails to identify any question worthy of this Court's review. S. Ct. Rule 10. To the extent the petition gestures toward legal issues that have broader implications, it invents holdings that the decision below did not adopt. The petition falls far short of identifying a circuit split or question of law with implications beyond this case, and it does not demonstrate any error in the Sixth Circuit's application of the law to the summary judgment record.

This lawsuit under 42 U.S.C. § 1983 arises from Bass's decision to arrest the first person he saw outside a nightclub where a possible break-in was reported, "without considering the circumstances, listening to that person's … explanation, or conducting any further investigation into the situation." Pet. App. 24. Responding to a report of an activated security alarm, Bass encountered Greve outside the club. Greve greeted Bass cordially and explained that he had been locked out of the club, where he had been working as a videographer, and his belongings were still inside. Bass ignored that explanation and refused to speak with Greve further. He instead handcuffed Greve and arrested him on charges of public intoxication and attempted burglary, which a judge later

dismissed. Greve sued for false arrest, contending that Bass lacked probable cause to arrest him and that the arrest violated clearly established law.

Beyond the basic facts recounted above, the parties vigorously dispute the circumstances of Bass's investigation and Greve's arrest, as well as Greve's supposed intoxication. The district court nonetheless granted summary judgment to Bass, holding that he had probable cause to arrest as a matter of law. On appeal, the Sixth Circuit held that factual disputes precluded summary judgment in Bass's favor and faulted the district court for "cho[osing] to decide the disputed facts for itself." Pet. App. 17. The court also noted that a jury could decline to credit anything Bass would testify to at trial, given Bass's evasive and implausible deposition testimony, including his after-the-fact and uncorroborated claim that he saw Greve holding a glass of alcohol—an assertion that has no support in any contemporaneous witness account or other evidence. Pet. App. 12-15.

In seeking this Court's review, Bass entirely ignores the Sixth Circuit's observations about the district court's improper fact-finding. Instead, relying on the same one-sided factual recitation that the Sixth Circuit disapproved, Bass asks this Court to review whether he had probable cause to arrest and whether he was entitled to qualified immunity. Neither of those case-specific, fact-intensive issues warrants this Court's intervention.

First, Bass accuses the Sixth Circuit of creating a "heightened standard of probable cause to arrest" by "requir[ing] a police officer to credit a suspect's

explanation of innocence even in light of contradictory evidence." Pet. 9-10. The court of appeals did no such thing. Rather, it applied the well-settled, holistic standard for probable cause, which requires an officer to consider all the facts before him—both incriminating *and* exculpatory. *See* Pet. App. 29 ("Officer Bass's refusal to consider the totality of facts and circumstances undermines his contention that he had probable cause to arrest Greve."). That is the same rule the Sixth Circuit has consistently applied in published decisions. Pet. 11-12. Only by glossing over disputed facts and the actual reasoning of the decision below can Bass read it as requiring officers to credit suspects' protestations of innocence. And in maintaining that the decision applied a "heightened standard" for probable cause that conflicts with the approaches of other circuits, Pet. 10, Bass overlooks that this nonprecedential decision cannot bind other panels of the Sixth Circuit or create a circuit split where none otherwise exists.

Nor is there any merit to Bass's request for this Court to engage in fact-bound error correction with respect to the Sixth Circuit's qualified immunity holding. The petition faults the Sixth Circuit for ascertaining the "clearly established" law at too high a level of generality. But the court of appeals applied the very standard Bass urges; it looked to precedents considering "a Fourth Amendment violation under similar circumstances." Pet. 17 (quoting *District of Columbia v. Wesby*, 138 S. Ct. 577, 591 (2018)); *see* Pet. App. 20-24 (discussing prior Sixth Circuit decisions addressing an officer's obligation to consider all relevant facts and circumstances, including innocent explanations, in making probable cause determinations); *Wesby*,

138 S. Ct. at 590 (the "clearly established" standard does not require a case "directly on point"). Bass's disagreement with the Sixth Circuit's treatment of those precedents is unfounded and has no significance beyond the "unusual factual scenario" presented in this case. Pet. 18.

The petition should be denied.

STATEMENT OF THE CASE

The key issue in this case is whether Officer Austin Bass had probable cause to arrest Patrick Greve outside a nightclub where Greve had just finished working as a videographer at a private event. As the Sixth Circuit recognized, the answer to that question will turn on a fact finder's resolution of disputes about what Bass knew and saw, as well as Bass's credibility. Pet. App. 3. At this stage of the proceedings, all facts must be viewed in the light most favorable to Greve. *See Taylor v. Riojas*, --- S. Ct. ----, No. 19-1261, 2020 WL 6385693, at *1 n.1 (Nov. 2, 2020).[1]

A. In 2013, Greve began working in the entertainment business for recording artists in Nashville, Tennessee. That work introduced him to Jack Gavin, who managed a country music singer named Erica Nicole. Gavin hired Greve to work as a videographer at a

[1] Bass's statement of the case reproduces verbatim the factual recitation from the district court's summary judgment opinion, even though, as the Sixth Circuit explained, the district court improperly resolved factual disputes on summary judgment. Pet. App. 15-17.

private event on February 24, 2015, that would showcase Nicole at a Nashville nightclub. Pet. App. 5.

Starting in the morning, Greve spent the day of the event helping assemble a stage and setting up audio equipment. *Id.* He went home to clean up and returned to the club by 5:00 p.m. to film the event, which lasted about five hours and ended between 11 and 11:30 p.m. *Id.* While he worked, Greve ate from a complimentary buffet and drank one beer an hour over the course of the performance. *Id.* He was not drunk that night. *Id.*

After Greve helped disassemble the stage and equipment, he worked with a group of men, including Kendal Kramer and Austin Rothrock, to shuttle those items from the club down a ramp to a truck. *Id.*; Rothrock Decl. ¶¶ 4, 8 (R.66-3); Kramer Dep. 11-12 (R.66-12).[2] It was freezing outside, and the men were hurrying to finish because they had been working all day. Greve Aff. ¶¶ 5-7 (R.66-1). By 1:00 a.m., their work was nearly complete. Pet. App. 5-6. But as they attempted to reenter the club one last time to retrieve their personal belongings, they found the door locked. Pet. App. 6. Greve was left outside without his wallet, keys, camera bag, and coat on a "freezing cold" night. Pet. App. 7, 16.

Believing that the club's night manager was still inside, Kramer and Rothrock went around the club knocking on doors and shouting to be let in. Pet. App. 6. Meanwhile, Greve walked away from the club

[2] Record citations in this opposition refer to the district court record below in *Greve v. Bass*, No. 3:16-0372 (M.D. Tenn.).

toward a nearby parking lot, where Gavin (who had given him a ride to the club) had parked his car. *Id.* Greve also repeatedly called Gavin's cell phone. *Id.* Gavin did not answer, and his car was no longer in the lot. *Id.*

When Greve returned to the club, he saw Kramer and Rothrock driving away. *Id.* They yelled to Greve that they had gotten their things and that he could enter through the front door. *Id.* Although Greve did not know this at the time, while Greve had been looking for Gavin, Kramer had pried open the front door with a piece of pipe—breaking the door handle and setting off a security alarm. *Id.* Unaware of Kramer's forced entry, Greve tried to open the front door, but the broken handle fell off in his hand and the door remained locked. *Id.*

Greve gently placed the pieces of the handle on the ground. *Id.* With the temperature well below freezing and his jacket locked inside the club, Greve wrapped himself in the only thing available—a tablecloth the men had used to cover equipment as they loaded the truck. *Id.* Greve continued to call Gavin (nine times in all over roughly 20 minutes) and waited for someone to arrive and let him back into the club. *Id.*; Greve Aff. ¶ 14 (R.66-1). At no point did Greve reenter the nightclub. Pet. App. 6.

Just before 2:00 a.m., Bass was dispatched to the club in response to the triggered security alarm. Pet. App. 7. Greve, still waiting for someone to let him in so he could retrieve his belongings, was leaving another voicemail for Gavin and felt relieved when Bass arrived. *Id.* Greve ended his call and walked down the

ramp toward Bass to meet him halfway. Pet. App. 3, 7. He greeted Bass with enthusiasm, offered a handshake, and introduced himself. Pet. App. 7. He explained that he had been working at the club but had been locked out with his belongings still inside and was waiting for someone to let him in. *Id.*[3]

Bass immediately ordered Greve to turn around and place his hands against a wall. *Id.* Bass patted Greve down and handcuffed him very tightly. *Id.* Bass told Greve that he was "detaining" him and pushed him toward his patrol car. *Id.* Bass never asked Greve whether he broke the club's door, set off the alarm, or entered the club. *Id.*

Meanwhile, the club's night manager, Oleg Bulut, arrived, along with six other police officers. Bulut let the officers into the building. Pet. App. 7. The officers inspected the club for damage related to the break-in, but they later provided conflicting testimony about whether they searched for Greve's belongings and what any such search entailed. Pet. App. 7-8; *see* Bulut Dep. 41-42 (R.66-9); Price Dep. 20-21, 24, 52

[3] Although Bass claimed for the first time at his deposition that Greve was holding a glass containing an alcoholic drink, that claim is "wholly unsubstantiated by any of the other officers present at the scene or the evidence collected in connection with this case." Pet. App. 12; *see also* Pet. App. 12-15 (discussing Bass's "suspicious" deposition testimony in this regard, including his stated inability to recall whether he took the glass from Greve, smelled what was inside the glass, or otherwise investigated whether it contained alcohol).

(R.66-14).[4] None of the six other responding officers spoke to Greve. Pet. App. 7.

After the walk-through, Bass escorted Bulut to his patrol car and shined a flashlight on Greve in the backseat. *Id*. Greve could not hear the discussion between Bulut and Bass, and testimony regarding their conversation is conflicting. At his deposition, Bulut recalled telling Bass that he "recognized [Greve] as being there [at the Club] that night" but asserted that Greve was not authorized to be inside the nightclub after hours. Pet. App. 18. He also testified that he was never asked whether he wanted to "press charges" against Greve. Bulut Dep. 45 (R.66-9). Yet Bass told Greve, "[Bulut] doesn't recognize you, none of your stuff is in the building[,] and [Bulut] wants to press charges." Pet. App. 8. Greve asked Bass if he could lead him inside the building to show him the lounge area where his belongings were located, but Bass declined. *Id*.

Bass then drove Greve to the police station, where Bass swore affidavits in support of charging Greve with attempted burglary and public intoxication. *Id*. As to the attempted burglary charge, Bass swore that Greve had entered the building for purposes of committing a felony theft and confessed that "he had broken a door handle attempting to gain entry, thus setting off the alarm." Bass Aff. (Attempted Burglary)

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[4] The following morning, Gavin returned to the club and quickly found Greve's belongings in plain view. Gavin could "not understand how police officers searching for [Greve's] coat and other belongings the night before did not find them as quickly and easily as I did." Gavin Decl. ¶¶ 5-6 (R.66-5).

(R.53-8). As to the intoxication charge, Bass asserted that he had probable cause to believe that Greve was under the influence and a danger to himself and others because he had "watery, bloodshot eyes and the odor of alcohol about his person" and had wrapped himself in the tablecloth to stay warm. Bass Aff. (Public Intoxication) (R.53-6). Based on the accounts in these affidavits, which Greve disputes, a night court judge found probable cause after the fact. Pet. App. 25-26.

Greve spent twelve hours in jail before being released on bond. Pet. App. 10. The next morning, Gavin spoke to the nightclub's general manager and IT manager about the security camera footage from the night before. Both confirmed that the surveillance video proved that Kramer broke into the nightclub. *Id*. Nonetheless, the local prosecutor pursued the case against Greve until a judge dismissed the charges. Pet. App. 11. In the meantime, Greve needed to borrow money to post bond and retain defense counsel, and he had to travel from his home in Cincinnati to Nashville for three court appearances. *Id.*

B. After the charges against him were dismissed, Greve brought this § 1983 action against Bass and other defendants, alleging, *inter alia*, that Bass violated his Fourth Amendment rights by arresting him without probable cause. *Id*. Following discovery, Bass moved for summary judgment, maintaining that the arrest was supported by probable cause and that he was entitled to qualified immunity. *Id.*

The district court granted summary judgment on the basis that Bass had probable cause to arrest

Greve for attempted burglary and public intoxication. In doing so, the court resolved disputed facts in Bass's favor, including that Greve informed Bass that he broke the door handle, that Greve lacked "an articulate reason to be at the club," and that Greve appeared drunk. Pet. App. 55.

C. The Sixth Circuit reversed in an unpublished decision. At the outset, the court of appeals took issue with the district court's treatment of the summary judgment record, holding that the lower court erred by improperly resolving genuine disputes of material fact against the non-moving party (Greve). Pet. App. 15-17, 20-21. Most significantly, the court of appeals faulted the district court for accepting Bass's version of the "most disputed material fact of the entire case"—whether Greve had "an articulate reason to be at the club." Pet. App. 16. The Sixth Circuit also identified reasons why a jury could disregard Bass's entire account as lacking credibility. *See* Pet. App. 13-15.

The court then held that a reasonable jury could find that Bass lacked probable cause to arrest Greve for attempted burglary. Pet. App. 20-25.[5] The court began by stating the established rule that a probable cause determination "must be founded on both the inculpatory and exculpatory evidence known to the arresting officer, and the officer cannot simply turn a blind eye toward potentially exculpatory evidence." Pet. App. 21 (quotation marks omitted). It concluded

[5] The Sixth Circuit further faulted the district court for suggesting that Greve could have been arrested for vandalism (Pet. App. 53 n.5) because—contrary to the district court's view—Greve did not "admit to" breaking the club's front door. Pet. App. 18.

that a jury could find that Bass unjustifiably ignored Greve's legitimate explanation for being at the club and multiple pieces of corroborating evidence, "such as Greve's waiting in the freezing cold while the alarm sounded and then greeting Bass enthusiastically on arrival rather than fleeing the scene when the alarm sounded." Pet. App. 16.

The court of appeals further held that if a jury resolved all factual disputes in favor of Greve, Bass would not be entitled to qualified immunity. The court compared this case to prior circuit decisions addressing the duty to consider available inculpatory and exculpatory evidence in the specific context of the scene of a suspected burglary or trespass. Based on that analysis, the court determined that the applicable legal principle was clearly established: Bass could not refuse to consider material exculpatory evidence in concluding that he had probable cause to arrest. Pet. App. 21-25. The court addressed this Court's decision in *Wesby*, 138 S. Ct. 577, and explained why *Wesby* only reinforced its conclusion. Pet. App. 26-29.

Judge Griffin concurred in part and dissented in part. As relevant here, he concluded that the summary judgment record could sustain a finding of probable cause to arrest Greve on the attempted burglary charge. Pet. App. 38. Judge Griffin agreed with the key legal principle driving the majority's analysis—that "[a] probable cause determination must be founded on both the inculpatory and exculpatory evidence known to the arresting officer." *Id.* (quotation marks omitted). He took issue only with how that standard applied to the particular facts of this case.

REASONS FOR DENYING CERTIORARI

I. In Concluding That A Trial Is Necessary To Determine Whether Bass Had Probable Cause To Arrest, The Sixth Circuit Did Not Create A Circuit Split, Impose A Heightened Standard, Or Err.

A. The Sixth Circuit did not create a new probable cause standard.

Bass's first Question Presented asserts that the Sixth Circuit's probable cause holding "conflicts with previous decisions of this Court, other Circuit Courts of Appeals, and even previous decisions of the Sixth Circuit itself." Pet. 9. Even if this contention were accurate, that would not provide a reason for this Court to grant certiorari. A nonprecedential opinion like the one below is incapable of binding other Sixth Circuit panels or creating a circuit split.

At any rate, the opinion below did not apply the "heightened standard of probable cause" that Bass ascribes to it. Pet. 10. The petition repeatedly contends that the Sixth Circuit announced an inflexible rule "requiring officers to credit a suspect's statements even in the face of contradictory evidence." *Id.*; *see also* Pet. 8-9, 14-15. But the Sixth Circuit did no such thing. Rather, the court stated and applied the universally accepted standard for probable cause, which asks whether all "the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed." Pet. App. 20 (citing *Carroll v. United States*, 267 U.S. 132, 162 (1925)). That standard does not require officers to *credit* a

suspect's exculpatory account, but they must at least *consider* it. This Court and all the circuit decisions Bass cites agree on that point.[6]

Nor is there any divergence between the Sixth Circuit's decision and the approach this Court took in *Wesby*. *Wesby* held that "probable cause does not require officers to rule out a suspect's innocent explanation for suspicious facts" where "a reasonable officer could conclude—considering all of the surrounding circumstances, including the plausibility of the explanation itself—that there was a 'substantial chance of criminal activity.'" 138 S. Ct. at 588 (quoting *Illinois v. Gates*, 462 U.S. 213, 244 n.13 (1983)). That's the

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[6] *See Royster v. Nichols*, 698 F.3d 681, 688 (8th Cir. 2012) (explaining that, under the totality-of-the-circumstances inquiry, "an officer need not conduct a 'mini-trial' before effectuating an arrest," but "he cannot avoid 'minimal further investigation' if it would have exonerated the suspect"); *Sennett v. United States*, 667 F.3d 531, 535 (4th Cir. 2012) ("Probable cause exists if the 'facts and circumstances within the officer's knowledge … are sufficient to warrant a prudent person … in the circumstances shown, [concluding] that the suspect has committed, is committing, or is about to commit an offense.'" (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979))); *Ramirez v. City of Buena Park*, 560 F.3d 1012, 1023-24 (9th Cir. 2009) (applying "the rule that the police may rely on the totality of facts available to them in establishing probable cause, [but] they also may not disregard facts tending to dissipate probable cause"); *Marks v. Carmody*, 234 F.3d 1006, 1010 (7th Cir. 2000) (suspect's attorney's legal arguments did not preclude arrest where the officers had facts sufficient to establish a prima facie violation of the Illinois deceptive practices statute); *see also Brinegar v. United States*, 338 U.S. 160, 171 (1949) (probable cause consideration must include all "facts within the knowledge of the investigators"); *Carroll*, 267 U.S. at 162 (same); *Stacey v. Emery*, 97 U.S. 642, 645 (1878) (same).

same standard the decision below explicitly applied. The Sixth Circuit expressly disclaimed any "overly-burdensome duty to investigate," Pet. App. 20, and acknowledged that probable cause does not require taking a suspect's innocent explanations at "face value," Pet. App. 26. The Sixth Circuit heeded *Wesby*'s teachings by considering whether the "*totality* of facts and circumstances," including Greve's explanation, "reasonably support a substantial likelihood that Greve had committed a crime." Pet. App. 29. Bass may well disagree with the Sixth Circuit's assessment of the record, but that disagreement does not create a "conflict[] with *Wesby*" that would merit this Court's review. Pet. 10.

Similarly, Bass's charge that the Sixth Circuit departed from its own precedent, even if valid, would not support certiorari review of an outlier nonprecedential opinion. That is all the more true given that Bass acknowledges Sixth Circuit precedent reflecting the very rule he advocates. Pet. 11-12. And to the extent there is any disagreement within the Sixth Circuit, that is ordinarily a reason for this Court to decline review to afford the court of appeals an opportunity to harmonize its case law.

In any event, there was no such departure here. Relying on circuit precedent, the court acknowledged that officers "need not investigate independently every claim of innocence" before making a probable cause determination. Pet. App. 21 (quoting *Logsdon v. Hains*, 492 F.3d 334, 341 (6th Cir. 2007)). But "the initial probable cause determination must be founded on both the inculpatory and exculpatory evidence known to the arresting officer, and the officer cannot

simply turn a blind eye toward potentially exculpatory evidence." Pet. App. 21 (again quoting *Logsdon*, 492 F.3d at 341, and citing three other Sixth Circuit cases standing for the same proposition).[7] Although Judge Griffin, writing in dissent, took issue with the majority's evaluation of the summary judgment record,[8] he agreed that officers must consider available exculpatory evidence in their initial probable cause determination. Pet. App. 38.

In the end, Bass can point to no portion of the Sixth Circuit's opinion that requires an officer to *credit* a suspect's innocent explanation. Indeed, the petition recognizes that the crux of the majority's holding was Bass's "failure" and "refusal" "to consider all of the facts and circumstances readily and reasonably within his knowledge." Pet. 14 (quoting Pet. App. 25). That holding applied the settled probable cause standard, not any "heightened" standard, and does

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[7] The cases the petition cites are in accord. *See, e.g.*, *Crockett v. Cumberland Coll.*, 316 F.3d 571, 582-83 (6th Cir. 2003) (holding that the officer had no duty to *seek* exculpatory evidence from a suspect, but not addressing the duty to consider exculpatory evidence presented to the officer); *Ahlers v. Schebil*, 188 F.3d 365, 371-72 (6th Cir. 1999) (officers who have "knowledge of some evidence which [i]s inculpatory and other evidence which [i]s exculpatory" may not "simply conclude[]" that probable cause exists "without conducting further investigation").

[8] Judge Griffin based his probable cause analysis on facts that the majority viewed as disputed. *See, e.g.*, Pet. App. 42 (assuming that Greve was "visibly intoxicated" at the time of his encounter with Bass); Pet. App. 41 (crediting Bass's testimony that Bulut "chose to lie" to him about Greve, despite conflicting testimony as to what Bulut told Bass when he first arrived at the club, and Bass's inability to recall that conversation).

not give rise to any conflict meriting this Court's review.

B. Bass's fact-bound disagreements with the Sixth Circuit's probable cause analysis misapprehend the record and lack merit.

Unable to identify any error in the Sixth Circuit's articulation of the probable cause standard, the petition contends that the court erred in how it applied that standard to the facts of this case. Such a contention merits certiorari review, if at all, in only the rarest of circumstances. *See Taylor*, 2020 WL 6385693, at *2 (Alito, J., concurring) (an application of a settled legal standard that "turns entirely on an interpretation of the record in one particular case" "is a quintessential example of the kind [of question] that we almost never review"). Error correction of that nature is plainly unwarranted here, where the petition fails even to engage with the court of appeals' understanding of the summary judgment record, and falls far short in demonstrating an incorrect application of law to the facts as the court of appeals understood them.

The petition argues that Bass had probable cause to arrest Greve based on a list of "facts known to Officer Bass at the time of Greve's arrest," which include the undisputed points that Bass was responding to an activated burglar alarm late at night and encountered Greve outside in the cold wrapped in a tablecloth, as well as Bulut's statement that Greve was not authorized to be inside the club after hours. Pet. 12-13. But beyond that, the petition relies on disputed and incomplete facts to establish probable cause.

For example, the petition misleadingly states that Greve "admitted to pulling the door knob off" the club's front door, a phrasing that suggests that Greve broke the handle off the door. Pet. 12. But "Greve did not admit to breaking the door of the Club; he repeatedly denied it." Pet. App. 18; *see also* Greve Dep. 70 (R.53-1).

In addition, the petition asserts that Bulut did not identify Greve's belongings while walking through the club with Bass and other officers. Pet. 13. But the record contains conflicting testimony as to whether Bulut or the officers actually looked for Greve's belongings. *See* Pet. App. 7-8. The petition also suggests that Bulut refuted Greve's account that he worked at the club that night, Pet. 13, but the testimony in the summary judgment record is conflicting as to whether Bulut corroborated Greve's account, Pet. App. 18.

More generally, the petition contends that Bulut's statements to Bass contradicted Greve's account and provided a substantial basis for Bass to conclude that Greve's story was not credible. Pet. 13-14. But it is disputed whether Bulut actually contradicted Greve. *Supra* 8. And Bass refused even to consider Greve's explanation.

Although the petition's probable cause arguments focus primarily on the attempted burglary charge, Bass also asserts in conclusory terms that he had probable cause to arrest Greve for public intoxication, an offense requiring proof that Greve was so intoxicated as to risk danger to himself. But the only purportedly undisputed fact Bass cites in this regard is that "Greve had bloodshot, watery eyes"—a debatable

assertion, *see* Greve Mugshot (R.53-7), and one that is just as consistent with Greve's exhaustion after working all day and night and being locked out in the freezing cold without a coat. Whether Greve appeared intoxicated (let alone dangerously so) is plainly disputed, given Greve's unequivocal denial that he was drunk or appeared to be drunk, and testimony from the co-workers with whom Greve loaded heavy equipment onto a truck for two hours that at no point did Greve appear intoxicated or impaired. *See* Pet. App. 5; 2d Greve Aff. ¶ 2 (R.66-2); Rothrock Decl. ¶¶ 4, 8 (R.66-3); Kramer Dep. 11-12 (R.66-12). The district court also relied on Bass's assertion that Greve "smelled like alcohol." Pet. App. 55. But as the Sixth Circuit explained, Bass's testimony regarding Greve's supposed intoxication was riddled with obvious evasions and inconsistencies, including an uncorroborated and unsupportable accusation that Greve had a glass of alcohol in his hand. Pet. App. 12; *see supra* 7 n.3.

Indeed, from its review of Bass's deposition testimony, the Sixth Circuit observed that he "would appear to be either mentally deficient or dishonest." Pet. App. 12. As such, the court of appeals was "loath to credit Officer Bass's deposition testimony about even undisputed issues, much less disputed issues." Pet. App. 15. Bass's petition acknowledges none of this. The Sixth Circuit did not err in holding that a jury should resolve credibility disputes and reconcile conflicting testimony as to whether Bass appropriately considered all relevant evidence available to him. Bass's disagreement with that conclusion simply does not present an issue fit for certiorari review.

II. The Sixth Circuit's Conclusion That Bass Violated Clearly Established Law Was Faithful To This Court's Qualified Immunity Precedents And Does Not Present A Certworthy Issue.

The second Question Presented asks this Court to determine whether it was clearly established that Bass lacked probable cause to arrest Greve under the "precise circumstances that he faced." Pet. 15. That question, which relies on the same distorted account of the summary judgment record discussed above, implicates no circuit split or question of exceptional importance. The Sixth Circuit's unpublished, fact-bound decision articulated and applied the settled rule of law for deciding whether a constitutional right is clearly established for qualified immunity purposes. As with its probable cause arguments, the petition's claim that the court erred in applying that "clearly established" standard is both wrong on its own terms and unworthy of review.

A. The Sixth Circuit's unpublished decision applied the proper standard for determining whether an officer's conduct violated clearly established law.

Bass does not meaningfully argue that the Sixth Circuit recited the wrong legal standard in determining that, if a jury resolved factual disputes in Greve's favor, Bass's conduct would violate clearly established law. Nor could he. Viewing the record in the light most favorable to Greve, the Sixth Circuit followed this Court's precedents and analyzed whether established law "clearly prohibit[ed] the officer's conduct in

the particular circumstances before him." *Wesby*, 138 S. Ct. at 590.

The Sixth Circuit began by noting that Greve bore "the burden of overcoming the qualified immunity defense." Pet. App. 19. It explained that to do so, Greve needed to establish that, taking the facts in his favor, Bass violated a "clearly established right." *Id.* And it analyzed whether such a right was clearly established by articulating the right at the proper degree of specificity. The court focused on the precise circumstances at issue here—whether it was clearly established that an officer responding to a suspected burglary must consider a suspect's explanation and other exculpatory evidence when making a probable cause determination. Pet. App. 20. Relying on its own precedent, including cases applying that rule in similar scenarios, and cases from this Court, the Sixth Circuit found that rule clearly established. Pet. App. 20-24 (discussing *Carroll*, 267 U.S. at 162; *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 310 (6th Cir. 2005); *Logsdon*, 492 F.3d at 341; *Wesley v. Campbell*, 779 F.3d 421, 431 (6th Cir. 2015); *Courtright v. City of Battle Creek*, 839 F.3d 513, 522 (6th Cir. 2016)).

Bass faults the Sixth Circuit for failing to "identify a single precedent finding a Fourth Amendment violation under similar circumstances to those" that he confronted. Pet. 17; *see also* Pet. 18 (noting the "unusual factual scenario" here). But as discussed below (*infra* 24-25), the Sixth Circuit cited and closely analyzed numerous cases holding that an officer assessing probable cause cannot ignore material exculpatory information in making his determination, including in the precise context of responding to a

suspected burglary. Bass disputes whether those cases were truly similar, but he cannot claim that the Sixth Circuit asked the wrong question.

This is not a case where the court of appeals defined clearly established law "at a high level of generality." Pet. 16. The Sixth Circuit instead identified a clearly established rule "particularized" to the circumstances of this case. *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (*per curiam*); *cf. City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019) (*per curiam*) (vacating in part and reversing in part the denial of qualified immunity and remanding for further proceedings where the court of appeals "sa[id] only that the 'right to be free of excessive force' was clearly established"). The Sixth Circuit might have committed such an error if, for example, it had defined the clearly established law as the "right to be free from arrest without probable cause," and left it at that. But the Sixth Circuit drilled down further, looked to the Fourth Amendment principle that officers must consider the totality of the circumstances in determining probable cause, and examined prior applications of that principle in analogous factual circumstances.

Moreover, this Court's precedents recognize that there are limits to how much specificity is required for law to be "clearly established." As *Wesby* reaffirmed, there need not be "a case directly on point." 138 S. Ct. at 590 (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)). Differences in immaterial details do not preclude a constitutional violation from being clearly established. Thus, cases addressing how officers should assess conflicting information need not involve Nashville nightclubs, tablecloths, or broken door handles

to clearly establish that Officer Bass's conduct here was unlawful.[9]

B. Bass's request for error correction does not merit this Court's review.

1. No one doubts that qualified immunity is an important area of law requiring clear governing standards. *See* Pet. 18-19. This Court has thus reviewed lower courts' qualified immunity applications where it "appeared that the lower court had conspicuously disregarded governing Supreme Court precedent." *Taylor*, 2020 WL 6385693, at *3 (Alito, J., concurring). Typically, those interventions have occurred where the lower court issued a precedential opinion that this Court believed would lead other courts in that circuit down a misguided path. *See, e.g.*, *id.*; *Mullenix v. Luna*, 577 U.S. 7 (2015) (*per curiam*); *Taylor v. Barkes*, 575 U.S. 822 (2015) (*per curiam*); *Carroll v. Carman*, 574 U.S. 13 (2014) (*per curiam*).

Bass also does not (and cannot) contend that the Sixth Circuit's precedential qualified immunity opinions are more broadly out of sync with this Court's

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[9] Bass's suggestion that the existence of a dissenting opinion prevents a plaintiff from demonstrating clearly established law is also meritless. Pet. 17 n.2. Here, the disagreement between the majority and Judge Griffin concerned disputed facts, not legal principles. Moreover, if disagreement among judges foreclosed any possibility that the law was clearly established, there could be no appellate review of a lower court's determination that an official did not violate a constitutional right. *But see Tolan v. Cotton*, 572 U.S. 650, 660 (2014) (*per curiam*) (vacating and remanding for further proceedings on whether the officer was entitled to qualified immunity, even though the district court held that there was no constitutional violation).

cases. In fact, numerous recent precedential decisions from the Sixth Circuit have applied *Wesby* to afford officers qualified immunity where no clearly established law prohibited their precise conduct. *See, e.g.*, *Stewart v. City of Euclid*, 970 F.3d 667, 675 (6th Cir. 2020); *Machan v. Olney*, 958 F.3d 1212, 1215 (6th Cir. 2020); *Ashford v. Raby*, 951 F.3d 798, 803 (6th Cir. 2020). Indeed, the decision below is consistent with the Sixth Circuit's application of qualified immunity to "protect[] all but the plainly incompetent or those who knowingly violate the law." *Siders v. City of Eastpointe*, 819 F. App'x 381, 387 (6th Cir. 2020) (Batchelder, J.) (quotation marks omitted). The problem for Bass is that his conduct, viewed in the light most favorable to Greve, fits that bill.

2. There is no error to correct here; the Sixth Circuit correctly applied the "clearly established" prong of the qualified immunity analysis. As explained, the court of appeals tested Bass's conduct under a well-established legal rule: that "the initial probable cause determination must be founded on 'both the inculpatory *and* exculpatory evidence' known to the arresting officer, and the officer cannot simply turn a blind eye toward potentially exculpatory evidence." *Logsdon*, 492 F.3d at 341 (quoting *Gardenhire v. Schubert*, 205 F.3d 303, 318 (6th Cir. 2000)); *accord Courtright*, 839 F.3d at 521; *see also Wesby*, 138 S. Ct. at 588 (an officer assessing probable cause must consider "all of the surrounding circumstances, including the plausibility of the [suspect's] explanation"). The court then consulted several cases applying that rule in analogous factual circumstances to determine whether "the legal principle clearly prohibit[ed] the officer's

conduct in the particular circumstances before him." *Wesby*, 138 S. Ct. at 590.

First and foremost, the court of appeals discussed *Radvansky*, a case that is strikingly on point both legally and factually. There, the Sixth Circuit held that officers responding to an "unusual" 911 call lacked probable cause to arrest a suspect for the burglary of a house where he voluntarily approached the officers to explain that he lived at the house and urged them to verify his story by looking at his possessions inside the house, but the officers refused to do so and relied on the fact of forced entry to justify their arrest. 395 F.3d at 306-07. The majority opinion below examined the parallels between this case and *Radvansky*, including the "atypical" circumstances of the 911 call, the suspect's voluntarily approaching the police with a detailed claim of right to be on the premises and an easily verifiable alibi, and the officers' refusal to conduct any investigation. Pet. App. 21-23.

The Sixth Circuit also consulted the facts and subsidiary legal rules of three other probable cause precedents: *Logsdon*, *Wesley*, and *Courtright*. Pet. App. 23-24. *Logsdon*, like this case, involved an officer who "refused to listen to an eyewitness account" of the alleged trespass. 492 F.3d at 342. *Wesley* concerned a witness (like Bulut) whose inculpatory account raised significant questions, especially when viewed in the context of other evidence known to the officer. *See* 779 F.3d at 431 ("[T]he implausibility of a witness's accusations is also germane to determining the existence of probable cause."). And *Courtright* noted that probable cause requires more than "a phone call, without any corroborating information," 839 F.3d at 522, a

situation the decision below found functionally equivalent to Bass's choice to detain the first person he saw on the scene and his continued refusal to listen to that person's innocent explanations.

Bass's petition does not so much as cite any of these decisions. In conclusory terms, he criticizes the Sixth Circuit for "cobbl[ing] together" holdings from multiple cases, Pet. 17, without engaging with the facts or law in those cases or explaining why they should not control. But as just explained, *Radvansky* on its own establishes with sufficient clarity the controlling legal principle that Bass violated, and other Sixth Circuit cases further bolster that conclusion. Bass's petition likewise fails even to engage with the Sixth Circuit's view of the summary judgment record or the probable cause precedents it discussed. His unelaborated dissatisfaction with the outcome of the decision below does not warrant this Court's intervention.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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