NO. 20-840

IN THE UNITED STATES SUPREME COURT

KENNETH R. KNOWLES,

Petitioner,

vs.

JASON HART,

Respondent.

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

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

A. Statement of Facts

The District Court's order thoroughly and accurately distilled the undisputed facts from the record, and therefore Respondent reproduces and cites the District Court's fact discussion below, inserting headers for ease of reference.

911 Call From Mrs. Knowles

On July 24, 2014, Lori Knowles[1] called Henry County 911 multiple times. Doc. 45 (District Court Order) at 1. The 911 operator had difficulty understanding Knowles as she was yelling and screaming and somewhat incoherent. Doc. 45 at 1-2. Knowles did not identify herself, but indicated that she had taken too much medicine. Doc. 45 at 2. Henry County Police officers Jason Hart and Charles Goetz were dispatched to the address of the call. *Id.* The dispatcher

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[1] Per the District Court's convention, "Knowles" will refer to Lori Knowles. "Petitioner" will refer to Kenneth Knowles, individually and as administrator of his wife's estate.

informed the officers that the caller was an unknown female who was incoherently yelling and screaming and had reportedly taken too much medication. *Id.*

Officers Hart and Goetz Investigate

Officers Hart and Goetz, in police uniforms, arrived and then knocked on the front door of the house numerous times and loudly announced "police," but no one answered. Doc. 45 at 2. Officer Hart told Officer Goetz that he heard someone screaming inside and Hart believed the female screaming seemed distraught and in danger. *Id.*

Unable to see anything through the front windows, the officers went to the back of the house and Officer Hart knocked on the back door. Doc. 45 at 2-3. The officers heard a female voice from inside, yelling and screaming "f--- you" among other things, but the officers could not comprehend all that was being said or to whom it was directed. Doc. 45 at 3. The officers attempted to open the back door but found it was locked. *Id.*

Officers Make Forced Entry

The officers considered the situation to be an emergency. Doc. 45 at 3. Accordingly, they informed their supervisor, Sergeant Lyle, and he agreed that the officers should make a forced entry. *Id.* Sergeant Lyle advised the officers to wait until the paramedics arrived on the scene. *Id.* When the paramedics arrived, they gave the officers a tool to open the back door. *Id.* The officers and paramedics then went to open the back door, and they could still hear the female yelling and screaming inside. *Id.*

Upon opening the door and entering the house, Officer Hart saw a large, closed gun safe in the living room. Doc. 45 at 4. The officers could hear the woman yelling "f--- you" from down the hallway, and they went down the hallway, toward the sound of the woman's voice. *Id.* As they reached the end of the hallway, Officer Hart stepped toward a bedroom to his right and looked inside; at this point, Hart was in the threshold of the bedroom door and Goetz was behind him. *Id.* Officer Goetz was able to see into the bedroom via a mirror

hanging on the wall. *Id.*

Officers Encounter Knowles Armed With a Gun

Officer Hart saw a female, later identified as Knowles, inside the bedroom, lying face down on the bed, with a black handgun inside a holster strapped on her right hip. Doc. 45 at 4. Officer Hart advised Officer Goetz about the gun and yelled for Knowles to show her hands. *Id.* As he did so, Officer Hart drew his service weapon and held it in a low ready position, with the gun pointing towards the floor, not at Knowles. *Id.*

After Officer Hart told Knowles to show her hands, she got up from the bed. *Id.* at 4-5. Knowles had blood on her face, was yelling and screaming, and, according to both officers, had an "evil" look on her face. Doc. 45 at 5.

Knowles Reaches for Her Gun and Officer Hart Fires

While the parties dispute some of what happened next, it is undisputed that Knowles began reaching for her gun.[2] Doc. 45 at 5.

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[2] The District Court handled Petitioner's assertions relating to Officer Hart's account of Knowles reaching for her gun as

After Knowles reached toward the handgun, Officer Hart fired his weapon at Knowles one time; Hart fired approximately 15 seconds after his first command for Knowles to show her hands. Doc. 45 at 5-6. Knowles then fell to the floor, and Officer Hart rushed to her in an attempt to secure the handgun. Doc. 45 at 6. Knowles began kicking, fighting, refusing to cooperate, and screaming. *Id.*

follows:

> Plaintiff disputes whether and how Knowles reached for or touched her gun by citing to allegedly contradictory statements by Officer Hart. ECF 32-9, ¶ 44 (citing ECF 32, at 4–11). While Officer Hart's statements show a conflict over whether Knowles touched her gun, he always reported that she reached for it. In his incident report, Officer Hart stated that he "observed [Knowles] several times reaching down at her waistband where the handgun was located." ECF 32-2, at 2. During the GBI interview the next day, Officer Hart stated that he "noticed her right hand going down towards the gun" and he "noticed her going down for the weapon several times." ECF 32-7 (Hart GBI Recorded Statement), at 8:25–8:40. In his deposition, Officer Hart stated that she "kept reaching down for the firearm." ECF 26 (Hart Dep. Tr.), at 72:14–15. When asked if he would say Knowles actually touched the weapon, he replied, "I would say that. Yes, sir." *Id.* at 75:20–21. However, in his declaration, Officer Hart states, "her hand reached toward the handgun located on her side; from my angle, I could not tell for sure if she was touching it." ECF 25-1, ¶ 31.

Doc. 6 at 5 n. 32.

Officer Goetz came into the room to help Officer Hart get Knowles under control, but she continued to fight with and scream at the officers. *Id.* Eventually, the officers handcuffed Knowles and removed the handgun from the holster on her side. *Id.*

Medical Care and Knowles' Death From Causes Other than the Gunshot

Officer Hart asked Knowles if she had been hit and she said yes. Doc. 45 at 6. A paramedic located a gunshot wound on her right breast. Doc. 45 at 6. Knowles continued to fight while the paramedics strapped her onto a stretcher to be transported to a hospital, but ultimately they began transporting Knowles by ambulance to a local hospital. *Id.* While en route, the paramedics gave Knowles anti-psychosis medication, after which she began having seizure-like activity and became unresponsive. *Id.* Knowles had no vital signs by the time she arrived at the hospital and she was pronounced dead. Doc. 45 at 7.

An autopsy revealed that the gunshot had entered Knowles'

right breast near the center of the chest, and exited in the armpit area. Doc. 45 at 7. The bullet went through the right breast, from left to right, but did not enter the chest cavity or travel through the ribs. Doc. 25-3 at ¶ 4. The medical examiner found that "to a reasonable degree of medical certainty" the gunshot wound was not an independently lethal injury. *Id.* Thus, with appropriate care, the gunshot wound would not have been life-threatening. *Id.* The medical examiner determined that many factors contributed to Knowles's cardiac dysrhythmia and death, including mixed drug intoxication, physical restraint based on her being handcuffed and strapped to the medical stretcher, and a history of bipolar and panic disorders. *Id.*

The medical examiner opined that the gunshot wound was a possible complicating factor because it would have increased the stress Knowles was already experiencing as a result of her drug-induced psychosis or psychotic episode, but "it is impossible to determine the degree or level of any increased stress or what effect, if any, it would have had on [her] physiological condition." *Id.* at 7-8.[3]

[3] The District Court's factual discussion ends here.

Expert Testimony

Petitioner recites the arguments of his purported police expert Mr. Harmening. Mr. Harmening thinks that Officer Hart should have rushed Mrs. Knowles as she moved into a corner and reached for her gun, and he should have tried to wrestle her gun away. Alternatively, Mr. Harmening thinks that Officer Hart should have fired more than once. Finally, Mr. Harmening wonders why Mrs. Knowles—who was experiencing a psychotic episode—was unable to get her gun out of the holster.

Mr. Harmening's opinions are naïve and strain credibility, at best. Mr. Harmening's proposed alternative tactics run contrary to the Court's decision that a plaintiff "cannot establish a Fourth Amendment violation based merely on bad tactics that result in a deadly confrontation that could have been avoided." *City & Cty. of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765, 1777 (2015) (quoting *Billington v. Smith*, 292 F.3d 1177, 1190 (9th Cir. 2002), *abrogated on*

other ground by Cty. of Los Angeles, Calif. v. Mendez, 137 S. Ct. 1539 (2017)).

In contrast to Mr. Harmening, police expert Joe Key, Sr. opined that "[w]hen [Knowles] quickly jumped up, reached for her firearm, bladed, and moved toward the corner, Hart had no choice but to use lethal force to stop the lethal threat she presented." Doc. 18-1 at 24. He opined that Officer Hart's use of lethal force was "objectively reasonable and consistent with nationally accepted standards of police policies, practices, and training." *Id.*

B. Procedural Background

After a thorough review of the evidence, the District Court granted summary judgment on all claims. The Eleventh Circuit Court of Appeals affirmed, on the basis of qualified immunity regarding the Fourth Amendment excessive force claim, and under Georgia's official immunity regarding the state law battery claim. *Knowles v. Hart*, 825 F. App'x 646 (11th Cir. 2020). Petitioner timely filed her Petition in this

Court.

SUMMARY OF THE ARGUMENT

The Eleventh Circuit's order affirming summary judgment to Defendant Hart should be affirmed because the evidence shows his use of deadly force to protect himself and Officer Goetz was objectively reasonable and did not violate clearly established law. The undisputed evidence shows Officer Hart was confronted by a deranged, agitated woman who refused officer commands to show her hands, and instead, jumped from the bed, took a fighting stance and tried to reach for the gun on her hip. Officer Hart used deadly force at that point.

Under the Fourth Amendment's reasonableness standard, Officer Hart could use deadly force to protect himself and Officer Goetz from what appeared to be Knowles' imminent use of her handgun, a deadly threat. That Knowles had not yet removed the gun from its holster before Officer Hart fired does not diminish the deadly threat reasonably perceived by Officer Hart. Therefore, the lower

courts properly held that Hart's use of force did not violate the Fourth Amendment.

Alternatively, qualified immunity protects Officer Hart because the right was not clearly established under the facts and circumstances. Indeed, numerous circuit court decisions have held that officers can use deadly force preemptively in a dangerous situation where there is cause to believe a suspect is about to use a firearm, even though the suspect either did not brandish the weapon or never had a weapon at all. *See, e.g.*, *Kenning v. Carli*, 648 F. Appx. 763, 765 (11th Cir. 2016); *Loch v. City of Litchfield*, 689 F.3d 961 (8th Cir. 2012); *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010); *Reese v. Anderson*, 926 F.2d 494, 500–01 (5th Cir.1991).

Finally, the District Court's decision to adjudicate Petitioner's state law battery claim, which was premised on the same event underlying the Fourth Amendment claim, was not an abuse of discretion.

REASONS FOR DENYING THE PETITION

A. The Decision Below Did Not Turn on Mere Possession of a Pistol, But Rather Involved a Deranged Person Who Refused Officer Commands to Show Her Hands and Reached For Her Pistol Before Being Shot

Petitioner asks the Court to answer a question that was not presented to the lower courts, and was never—on the facts of this case—presented to Officer Hart. Specifically, Petitioner misguidedly queries whether "mere possession of a lethal weapon that is not being used in a threatening manner is justification for the use of deadly force." *Petition* at 9.

There is no dispute that mere possession of a handgun, standing alone, is insufficient to justify use of deadly force. But, that is not the evidence in this case. The undisputed evidence shows that Knowles, a clearly deranged woman with a gun, "refused to show her hands until she arose from the bed, yelling and screaming with blood on her face, before reaching towards the gun she had holstered on her waist."

Knowles v. Hart, 825 F. App'x 646, 648 (11th Cir. 2020). Officer Hart fired in response to those actions.

Handguns warrant special concern for police officers because they are *immediately* lethal with the flick of a wrist and a pull of a trigger. Usually the wrist flick and trigger pull happen faster than an officer can react. Moreover, the handgun's immediate lethal threat does not turn on the size or skill of the shooter, or on whether the Second Amendment entitles the shooter to possession of the handgun.

Accordingly, lower courts consistently have recognized the need for police officers to use deadly force preemptively against persons like Knowles who appear able and willing to use a handgun in a confrontation. That is what occurred here, and there is no ground for this Court's review.

1. There is No Circuit Split in Deadly Force Cases Involving a Non-Compliant Person Armed With and Reaching For a Handgun

In arguing for review, Petitioner submits that some circuit courts

have allowed Fourth Amendment excessive force claims where police shot suspects who had guns but did not present a lethal threat to police or someone else. *See, e.g.*, *Cole Estate of Richards v. Hutchins*, 959 F.3d 1127 (8th Cir. 2020); *Perez v. Suszczynski,* 809 F.3d 1213 (11th Cir. 2016); *George v. Morris*, 736 F.3d 829 (9th Cir. 2013); *King v. Taylor*, 694 F.3d 650 (6th Cir. 2012). Petitioner lumps together cases involving suspects believed to have guns. That is too simple and off base.

Not surprisingly, when the facts are different, the holdings change. For example, numerous circuit courts have held that officers are justified in using deadly force preemptively against persons who appeared to be reaching for guns. Two Eleventh Circuit opinions illustrate the point. In *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010), the court held that an officer's use of deadly force was reasonable "[r]egardless of whether [the suspect] had drawn his gun, [since the] gun was available for ready use, and [the officer] was not required to wait 'and hope[ ] for the best.' " In *Kenning v. Carli*, 648 F.

Appx. 763, 765 (11th Cir. 2016), the court affirmed the use of deadly force against a man who reached toward a gun that was laying in a doorway, even though the man "did not touch the gun, and he had not previously threatened anyone with it." *Id.* at 765.

Cases from other circuits reflect the same basic idea. *See, e.g., Loch v. City of Litchfield*, 689 F.3d 961 (8th Cir. 2012) (holding deadly force reasonable where officer believed suspect was reaching for a gun in his waistband); *Krueger v. Fuhr*, 991 F.2d 435, 439 (8th Cir.1993) (shooting was reasonable where, during a foot chase of an assault suspect, the suspect suddenly reached into his waistband despite having been ordered to freeze; whether suspect was armed was irrelevant); *Reese v. Anderson*, 926 F.2d 494, 500–01 (5th Cir.1991) (shooting was reasonable where officers approached the vehicle of a robbery suspect and, after being ordered to raise his hands, the suspect reached down multiple times but turned out to be unarmed).

The upshot is agreement in the circuit courts that officers have the right to protect themselves preemptively from persons who, in

tense, rapidly developing and dangerous situations, demonstrate an imminent risk of drawing or grabbing a gun within easy reach. This is because it only takes a moment for a person to move from *reaching for a gun* to firing the gun at the officer or someone else. As the Tenth Circuit aptly noted, "[a] reasonable officer need not await the 'glint of steel' before taking self-protective action; by then, it is often . . . too late to take safety precautions." *Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008). By contrast, Petitioner's proposed rule would remove an officer's right to protect himself until the moment or split second before death or serious bodily injury.

The circuit decisions consistently hold that officers who face an imminent, objective threat of deadly harm do not have to wait for a suspect to begin shooting before responding to neutralize the threat. And, the circuits agree that when there is no imminent, objective threat of deadly harm—as with a suspect who happens to have a gun but whose hands are up in clear surrender—there is no probable cause to use deadly force. The cases are remarkably consistent, given the

diverse range of circumstances brought before the courts of appeals.

The Court's precedent recognizes that differing cases with differing circumstances merit differing, case-specific conclusions. As the Court noted in *Scott v. Harris*, 550 U.S. 372, 127 S.Ct. 1769 (2007), excessive force claims are measured by a relatively amorphous "reasonableness" test. There is no precise test or "magical on/off switch" to determine when an officer is justified in using deadly force. *Scott*, 550 U.S. at 382, 127 S.Ct. at 1777; *see also Graham v. Connor,* 490 U.S. 386, 396, 109 S.Ct. 1865, 1872 (1989). Rather, the particular facts of each case must be analyzed to determine whether the force used was justified under the totality of the circumstances. *See Graham*, 490 U.S. at 396, 109 S.Ct. at 1872. "[I]n the end we must still slosh our way through the factbound morass of 'reasonableness.' " *Scott*, 550 U.S. at 383, 127 S.Ct. at 1778.

In summary, there is no circuit court split about whether an officer can fire at a deranged woman who is refusing officer commands and who appears to be reaching for her holstered gun. Consequently,

there is no pressing reason for the Court to grant review.

2. Qualified Immunity Applies, Regardless of Any "Clarification" Provided by the Court

Petitioner argues that the Court should "clarify the law on whether mere possession of a deadly weapon justifies an immediate escalation to the use of deadly force when other options are available." *Petition* at 19. However, established law is reasonably clear that "mere possession of a deadly weapon" does not justify deadly force. Also, the law is reasonably clear that officers have probable cause to use deadly force when faced with a deranged person who appears to be trying to draw her gun from its holster, after the officer has ordered her to show her hands. There is no "clarification" required in this case.

Even if the Court were to clarify some previously undecided point of law, the Eleventh Circuit's qualified immunity ruling still would be dispositive. Because Officer Hart had to make a split-second decision in 2014, any "clarification" now would be irrelevant to qualified immunity. Qualified immunity " 'gives government officials

breathing room to make reasonable but mistaken judgments' by 'protect[ing] all but the plainly incompetent or those who knowingly violate the law.' " *City & Cty. of San Francisco, Calif. v.* Sheehan, 575 U.S. 600, 135 S. Ct. 1765, 1774 (2015) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743, 131 S. Ct. 2074 (2011)).

To meet his burden to overcome qualified immunity, Petitioner must show that "existing precedent … placed the statutory or constitutional question ***beyond debate***." *Stanton v. Sims*, 571 U.S. 3, 6, 134 S.Ct. 3, 5 (2013) (emphasis added); *Brosseau v. Haugen*, 543 U.S. 194, 201, 125 S.Ct. 596 (2004) (qualified immunity applied where prior precedents were fact-specific and none of them "squarely govern[ed] the case … ."). That is, Petitioner bears the burden to identify binding authority that clearly established—beyond debate—that the Fourth Amendment prohibited Officer Hart from using deadly force under the facts and circumstances he faced. Where binding precedent ***supports*** the reasonableness of an officer's conduct, then qualified immunity plainly applies. Likewise, if the law was not clear

as to the facts and circumstances (*i.e.* debatable), then qualified immunity applies.

Here, no binding precedent obviously applied to these facts and circumstances and clearly told Officer Hart that, beyond debate, he would violate the Fourth Amendment by deciding to use deadly force to protect himself. To the contrary, binding caselaw existing at the time told Officer Hart he *could* use deadly force. "It is reasonable, and therefore constitutionally permissible, for an officer to use deadly force against a person who poses an imminent threat of serious physical harm to the officer or others." *Martinez v. City of Pembroke Pines*, 648 F. Appx. 888, 893 (11th Cir. 2016) (citing *Robinson v. Arrugueta,* 415 F.3d 1252, 1256 (11th Cir.2005)).

The Eleventh Circuit repeatedly has held that an officer can fire in self defense where a resisting or deranged suspect appears to be reaching for a gun, or has a gun readily available. *Garczynski v. Bradshaw,* 573 F.3d 1158 (11th Cir.2009); *Kenning v. Carli*, 648 F. Appx. 763, 765 (11th Cir. 2016); *Jean-Baptiste v. Gutierrez*, 627 F.3d

816 (11th Cir. 2010). In light of binding precedent, there is no basis for an argument that Officer Hart had clear and fair warning that using deadly force under these circumstances would violate the Fourth Amendment in 2014. Plainly the law was not settled "beyond debate" in Petitioner's favor on the date of the incident.

3. The Lower Courts Properly Viewed the Record

Petitioner contends that the lower courts erred in crediting Officer Hart's testimony that Knowles refused to show her hands and instead was reaching for her gun. Petitioner argues that since Hart could not recall definitively whether Knowles touched the gun, the summary judgment standard requires rejection of Hart's undisputed testimony that Knowles was reaching for her gun.

The District Court and the Eleventh Circuit properly rejected Petitioner's contention. The lower court opinions are fully consistent with *Tolan v. Cotton*, 572 U.S. 650, 134 S. Ct. 1861 (2014), which simply reiterates the well-worn rule that nonmovants are entitled to all favorable inferences at the summary judgment stage. On the other

hand, *Tolan* does not direct courts to reject a defendant officer's testimony whenever the plaintiff claims inconsistency in the officer's account of the incident. Nor does *Tolan* direct that wrongful death cases warrant disposal of a defendant's testimony because the decedent cannot testify.

Rather, the courts only reject witness testimony where there is contradictory forensic evidence or material inconsistencies in the witness's testimony. *See, e.g.*, *Brown v. Nocco*, 788 F. App'x 669, 675 (11th Cir. 2019). Petitioner offers no evidence of that type. It remains undisputed that Knowles ignored Officer Hart's instructions to show her hands, and that she got up off the bed, was yelling and screaming, took a fighting posture, and then reached towards her gun. Only then did Officer Hart fire in self defense. That has been Officer Hart's unwavering testimony, and the lower courts had no basis to reject it.

B. The District Court Did Not Abuse Its Discretion In Exercising Supplemental Jurisdiction Over State Law Claims Pursuant To 28 U.S.C. § 1367

Petitioner argues that the trial court abused its discretion by

exercising supplemental jurisdiction over his state law tort claims pursuant to 28 U.S.C. § 1367(c). Petitioner relies primarily upon *Estate of Owens v. GEO Grp., Inc.*, 660 F. App'x 763, 765 (11th Cir. 2016), and more generally on principles of comity and federalism.

Estate of Owens represents a general federal preference for dismissal of state law claims where there is no viable federal claim. Yet that preference is only triggered when all federal claims are dismissed and a state claim *remains viable*. That was the situation in *Estate of Owens*, where the district court dismissed the federal claims but held that jury issues remained on a state law wrongful death claim. *Estate of Owens*, 660 F. App'x at 765. In other words, the federal court was faced with trial to adjudicate only a state law claim over which the district court had no original jurisdiction.

Here, by contrast, the District Court adjudicated all claims in its summary judgment order. Therefore, the District Court was never faced with a decision whether to entertain a viable state law claim following dismissal of federal claims.

Here, in ruling on Plaintiff's objection to exercise of supplemental jurisdiction, the Eleventh Circuit held that the District Court had discretion to rule on the state law claims. The court pointed out that the factors identified in *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130 (1966), are in play only where a district court declines supplemental jurisdiction based on "exceptional circumstances" under 28 U.S.C. § 1367(c)(4).

By contrast, the *Gibbs* factors "do not govern a court's decision whether to exercise supplemental jurisdiction after dismissing federal claims under § 1367(c)(3)," which is the situation in play here. *Knowles v. Hart*, 825 F. App'x 646, 650 (11th Cir. 2020) (citing *Ameritox, Ltd. v. Millennium Labs., Inc.*, 803 F.3d 518, 532 (11th Cir. 2015); *Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 745 (11th Cir. 2006)).

Consequently, the District Court had discretion over whether to decide the state law claims in the same order disposing of the federal claim. *See Lucero v. Trosch*, 121 F.3d 591, 598 (11th Cir. 1997) (supplemental jurisdiction decisions are reviewed for abuse of

discretion). The general rule is that "[f]ederal courts should permit the adjudication of pendent state claims in conjunction with federal claims between the same parties if the claims derive from a common nucleus of operative facts and a plaintiff would normally be expected to try them in one proceeding." *Nelson v. Greater Gadsden Hous. Auth.*, 802 F.2d 405, 407 (11th Cir. 1986). Here, the federal and state law claims arose from the same incident, so the District Court did not abuse its discretion.

Last, Petitioner engages in an extensive discussion of Georgia's official immunity doctrine, which the District Court and the Eleventh Circuit held to dispose of Plaintiff's state law claims. It is sufficient to say that the Court has never in recent history expressed a federal need to review pure matters of state tort immunity, particularly where no federal question is presented. This case presents no occasion to deviate from that policy.

CONCLUSION

For the foregoing reasons, the Petition does not present any

issue that merits the Court's review. There is no circuit split, there is no undecided issue of great importance, and there is no error in the Eleventh Circuit's opinion. Respectfully, the Court should deny the Petition.

Respectfully submitted,

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