No. _____

In The
Supreme Court of the United States

CHAD CHRONISTER, in his official capacity as the Sheriff of Hillsborough County, State of Florida and Deputy Sheriff MARK CLARK, in his individual capacity,

Petitioners,

v.

ANDREW JOSEPH, JR., as natural father, next friend and personal representative of the Estate of Andrew Joseph, III, deceased,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeal For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED
RULE 14.1.(a)

(1) This Court and several Circuit Courts of Appeals have held that federal courts should not reach the merits of a case, including issues such as sovereign or qualified immunity, without first determining whether a "case or controversy" exists under Article III. *Steel v. Citizens*, 523 U.S. 83, 94-95 (1998); *Webb v. Dallas*, 314 F.3d 787, 790-791 (5th Cir. 2002); *Price v. Akaka*, 3 F.3d 1220, 1223-1224 (9th Cir. 1993). The question presented is:

> Should the Supreme Court require the Eleventh Circuit to follow Supreme Court precedent and resolve challenges to Article III standing before resolving other issues such as sovereign or qualified immunity?

(2) This Court has held that, to determine whether an officer had probable cause for an arrest, courts should examine the events leading up to the arrest, and then decide whether the totality of the circumstances, including relevant historical facts, viewed from the standpoint of an objectively reasonable officer, amount to probable cause. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (quoting *Ornelas v. U.S.*, 517 U.S. 690, 696 (1996)). Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. *Illinois v. Gates*, 462 U.S. 213, 243-244 n. 13 (1983). Probable cause is not a high bar. *Kaley v. U.S.*, 571 U.S. 320, 338 (2014).

QUESTIONS PRESENTED
RULE 14.1.(a) – Continued

District of Columbia v. Wesby, 138 S.Ct. 577, 586 (2018). The question presented is:

> Did the Circuit Court properly evaluate the existence of probable cause or arguable probable cause that a criminal statute had been violated when the Circuit Court added additional elements to the criminal statute and failed to properly evaluate the totality of the circumstances?

LIST OF PARTIES TO THE PROCEEDINGS RULE 14.1.(b)(i)

The Petitioners in this case are Chad Chronister, in his official capacity as Sheriff of Hillsborough County, State of Florida and Deputy Sheriff Mark Clark, who were Defendants-Appellants below.

The Respondent in this case is Andrew Joseph, Jr., who was the Plaintiff-Appellee below.

The Florida State Fair Authority, an instrumentality of the State of Florida, was a Defendant-Appellant below.

Deputy Sheriff Henry Echenique, in his individual capacity and Deputy Sheriff Stephen Jones, in his individual capacity, were Defendants-Appellees in the original matter before the district court. However, the claims against these Defendants were dismissed pursuant to summary judgment granted by the District Court.

CORPORATE DISCLOSURE STATEMENT RULE 14.1.(b)(ii)

In compliance with Supreme Court Rules 14(1)(b)(ii) and 29(6), the undersigned hereby certifies that there are no parent corporations or publicly held companies as described in the afore-mentioned rules, involved in this matter.

LIST OF ALL PROCEEDINGS
RULE 14.1.(b)(iii)

Middle District of Florida, Case Number 8:16-CV-00274-MSS-TBM. Case Caption: Andrew Joseph, Jr., as natural father, next friend and personal representative of the Estate of Andrew Joseph, III, deceased v. Chad Chronister, in his official capacity as the Sheriff of Hillsborough County, State of Florida; The Florida State Fair Authority, an instrumentality of the State of Florida; Deputy Sheriff Henry Echenique, in his individual capacity; Deputy Sheriff Mark Clark, in his individual capacity; Deputy Sheriff Stephen Jones, in his individual capacity. Date of Entry of Judgment: February 21, 2020 *Order (Granting in Part and Denying in Part Motions for Summary Judgment)*. (App. B).

Eleventh Circuit Court of Appeals Case Number 17-12185-E. Case Caption: Andrew Joseph, Jr., as natural father, next friend and personal representative of the Estate of Andrew Joseph, III, deceased v. Chad Chronister, in his official capacity as the Sheriff of Hillsborough County, State of Florida; The Florida State Fair Authority, an instrumentality of the State of Florida; Deputy Sheriff Henry Echenique, in his individual capacity; Deputy Sheriff Mark Clark, in his individual capacity; Deputy Sheriff Stephen Jones, in his individual capacity. Date of Mandate: February 8, 2018 (*Mandate*).

Eleventh Circuit Court of Appeals Case Number 20-110730-E. Case Caption: Andrew Joseph, Jr., as natural father, next friend and personal representative

LIST OF ALL PROCEEDINGS
RULE 14.1.(b)(iii) – Continued

of the Estate of Andrew Joseph, III, deceased v. Chad Chronister, in his official capacity as the Sheriff of Hillsborough County, State of Florida; The Florida State Fair Authority, an instrumentality of the State of Florida; Deputy Sheriff Henry Echenique, in his individual capacity; Deputy Sheriff Mark Clark, in his individual capacity; Deputy Sheriff Stephen Jones, in his individual capacity. Date of Order Affirming District Court Order: October 12, 2021. (App. A). Date of Denial of Petition for Rehearing: December 14, 2021. (App. C).

.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

PETITION FOR A WRIT OF CERTIORARI

Petitioners Chad Chronister, in his official capacity as Sheriff of Hillsborough County, State of Florida and Deputy Sheriff Mark Clark respectfully petition for a writ of certiorari to review the judgment of the Eleventh Circuit Court of Appeal.

OPINIONS BELOW

The order of the Court of Appeals denying Petitioners' *Petition for Hearing En Banc* from December 14, 2021 (App. C) is not reported. The opinion of the Court of Appeals from October 12, 2021 (App. A) refusing to consider Petitioners' Article III standing challenge, is reported at 2021 WL 4739608. The opinion of the District Court from February 21, 2020 (App. B) finding that Respondent had established Article III standing and denying Petitioners' *Motion for Summary Judgment* is not reported.

JURISDICTION

The Eleventh Circuit Court of Appeals denied a timely Petition for Rehearing on December 14, 2021. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

(1) The Eleventh Circuit Court of Appeals' panel decision is contrary to decisions of the Supreme Court of the United States and the precedents of other Circuits. *See, e.g.*, *Steel v. Citizens*, 523 U.S. 83, 94-95 (1998) (Rejecting the doctrine of "hypothetical jurisdiction," under which a federal court assumes it has subject-matter jurisdiction for the purposes of deciding the merits of a case, including issues of sovereign and/or qualified immunity); *Webb v. Dallas*, 314 F.3d 787, 790-91 (5th Cir. 2002); *Price v. Akaka*, 3 F.3d 1220, 1223-24 (9th Cir. 1993). The Supreme Court should grant certiorari to secure and maintain uniformity of decisions in the federal courts.

(2) The Eleventh Circuit Court of Appeals' panel decision is contrary to Supreme Court precedent requiring that courts examine the events leading up to an arrest and then evaluate whether the totality of the circumstances, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003); *Ornelas v. U.S.*, 517 U.S. 690, 696 (1996). Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. *Illinois v. Gates*, 462 U.S. 213, 243-44 n. 13 (1983). Probable cause is not a high bar. *Kaley v. U.S.*, 571 U.S. 320, 338 (2014); *District of Columbia v. Wesby*, 138 S.Ct. 577, 586 (2018). The Supreme Court should grant certiorari to address the improper analysis by the Court of Appeals in adding additional

elements to the Florida criminal statute and failing to properly evaluate the totality of the circumstances.

STATEMENT OF THE CASE

This case raises the important and recurring question of whether the Eleventh Circuit should comply with Supreme Court precedent and join other Circuits in requiring a finding of Article III standing before resolving issues of immunity, including Sovereign Immunity and Qualified Immunity, in an interlocutory appeal.

This case also raises the important question of whether the Court of Appeals appropriately evaluated the totality of the circumstances and whether the Court of Appeals added additional elements to the relevant Florida criminal statute in determining whether probable cause or arguable probable cause existed for an arrest.

A. Factual Background

On February 7, 2014, around 6:30 p.m., fourteen year old AJIII was dropped off at the Florida State Fair ("FSF") for Student Day[1] with four friends. (App. 26). They were dropped off at Gate 3, without adult supervision. (App. 26; Middle District Dkt. 226-2, p. 7:15-19).

[1] "Student Day" is a day designated by the FSF for schools to allow their students free admission to attend the Fair. (App. B, p. 2).

AJIII, and some of his friends, had working cell phones and they were to call when ready to be picked up. (Middle District Dkt. 226-2, pp. 15:19-22, 32:12-14). Otherwise, their ride would return to pick them up at Gate 3 around 10:30 p.m. (App. 26; Middle District Dkt. 226-2, p. 32:3-8).

By 7:45 p.m., the FSF midway was "very crowded" and large groups of unsupervised kids were running through the midway trying to rile everybody up. (App. 26; Middle District Dkt. 226-10, p. 43:7; Middle District Dkt. 226-9, p. 55:21-22). There were fights "left and right" along with associated noise and commotion. (Middle District Dkt. 226-9, pp. 51:23-24, 55:4). "There was . . . an awful lot of chaos going on specifically on the midway area with numerous disruptive people that were . . . just acting crazy. They were running up and down the midway in herds of 20, 30, 40 people. They were battering people along the way, that kind of behavior. In some cases, they were even stealing things off of the vendors' booths and just continuing to run. And it was B the number of incidents were continuing to grow at a rapid pace." (App. 62; Middle District Dkt. 226-37, pp. 13:24, 14:7).

At that time, AJIII was on the midway and had separated from some of the friends that he had arrived with. (App. 63-64). According to his friend CT, they saw two other friends being escorted by deputies and AJIII ran after them "like in a hurry." (App. 65). AJIII caught up to the deputies and "got involved." (App. 65). RP was one of the friends being escorted and his hat fell off. (App. 65). AJIII then got close enough to the escort that

he was able to step in and pick up RP's hat. (App. 65-66). RP told the escorting deputy (Petitioner Clark) that AJIII was his "cousin" or "friend." (App. 66).

Because AJIII's actions violated Florida Statute § 616.185 (and the FSF rules),[2] Petitioner Clark escorted AJIII for ejection and trespass, later telling another deputy that AJIII was "running through the midway causing disorderly conduct." (App. 67).

Due to the volume of persons at the FSF,[3] all persons being ejected were taken to a designated processing area near the midway. (App. 66). Once there, Petitioner Clark turned AJIII over to another deputy who filled out an ejection form based on what Petitioner Clark told him, that AJIII was being ejected for "running through the mid-way causing disorderly conduct." (App. 62, 67, 79-80).

AJIII was in the processing area with other ejectees for about 40 minutes, during which time a background check was conducted and he was photographed. (App. 3). At approximately 8:41 p.m., AJIII and others were taken by a van to a drop-off point in the parking lot of Gate 4, and informed that they were trespassed from the FSF. (App. 3-4).

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[2] Florida Statute § 616.185(1)(a), prohibits any act that disrupts the orderly conduct of the Fair or the general public on the fairgrounds. (App. C, p. 38). Posted FSF rules allowed the removal of "any person who is disruptive."

[3] Nearly 100 individuals were trespassed, ejected, or arrested on February 7, 2014. (Middle District Dkt. 114-17, #14).

AJIII did not call his parents at any time after he was ejected, because he was afraid he would get in trouble. (App. 3, 28; Middle District Dkt. 226-10, p. 99:1-10). No member of the Sheriff's Office attempted to release any of the ejected minors to their parents/responsible adult or attempted to contact any of the ejected minors' parents/responsible adult. (App. 3, 28). AJIII declined rides home from friends' parents while at Gate 4. (App. 3; Middle District Dkt. 226-8, pp. 54:13, 55:17; Middle District Dkt. 226-11, pp. 64:5, 65:15). When he and CT asked an officer at Gate 4 if they could reenter the fairgrounds to walk to their prearranged pickup point, the officer told them they could not and that they faced arrest for trespassing. (App. 3-4, 29).

At approximately 9:30 p.m., AJIII and CT left the Gate 4 parking lot and walked down the sidewalk of Orient Road and went under Interstate 4, to the Hard Rock casino. (App. 4, 29).

At approximately 10:35 p.m., AJIII and CT had traveled approximately one mile from Gate 4 when they left the casino property, traversed a fence that separated the casino from the Interstate, and ran across all eight lanes of Interstate 4. (App. 4, 29).

Once on the FSF side of Interstate 4, AJIII received a phone call from his friend, TD, following which he ran back across Interstate 4, with CT following. (App. 4, 29; Middle District Dkt. 226-3, pp. 65:23, 66:20; Middle District Dkt. 226-4, p. 22-depo pp. 80:6, 81:5). At approximately 10:43 p.m., after recrossing seven

lanes and a large grass median, AJIII was struck and killed by a vehicle in the final, outside, westbound lane of Interstate 4. (App. 4, 29; Middle District Dkt. 226-32).

B. Procedural History

On March 30, 2018, Respondent filed a *Third Amended Complaint* in the Middle District Court alleging the following claims pertinent to this appeal: Count I: State wrongful death against Petitioner Sheriff[4] and Count VI: 42 U.S.C. § 1983 civil rights violation against Petitioner Deputy Sheriff Mark Clark, collectively "Petitioners."

On March 16, 2019, Petitioners filed a *Motion for Summary Judgment* arguing, inter alia, that Respondent failed to establish Article III standing, Petitioner Chronister was entitled to sovereign immunity, and Petitioner Clark was entitled to qualified immunity.

On February 21, 2020, the District Court entered an Order (App. B) granting certain portions of the *Motion for Summary Judgment* but denying summary judgment for Petitioners. In addition, the District Court found that Respondent established standing under Article III.

On March 17, 2020, Petitioners filed a Notice of Interlocutory Appeal, appealing the ruling of the Middle

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[4] Chronister was eventually substituted in place of former Sheriff Gee.

District Court to the Eleventh Circuit Court of Appeals.

C. The Court of Appeals

On October 12, 2021, the Eleventh Circuit affirmed the District Court's denial of summary judgment in Petitioners' favor. (App. A).

On November 2, 2021, Petitioners filed a *Petition for Hearing En Banc* in the Eleventh Circuit.

On December 14, 2021, the Eleventh Circuit denied the *Petition for Hearing En Banc*. (App. C).

REASONS FOR GRANTING THE PETITION

A. Article III Standing

Article III, Section 1, of the United States Constitution provides that "[t]he judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. Art. III, § 1.

Pursuant to the powers alluded to in Article III, Congress has passed legislation detailing the original and appellate jurisdiction of the Supreme Court. *See, e.g.*, 28 U.S.C. §§ 1251-59.

For a dispute to be within the power (the subject-matter jurisdiction) of a federal court, the plaintiff must have standing. *Lujan v. Defenders of Wildlife*, 504

U.S. 555, 559 (1992). To invoke federal court jurisdiction through Article III standing, a plaintiff must point to specific evidence in the record at summary judgment which satisfies the following elements: (1) that he suffered an injury in fact; (2) that the injury was fairly traceable to the challenged conduct of the defendant; and (3) that he is likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Friends of the Earth, Inc. v. Laidlaw Envir. Svcs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000).

"Federal courts have, in the words of the Supreme Court, an 'independent obligation to examine their own jurisdiction, and standing is perhaps the most important of the jurisdictional doctrines.' *U.S. v. Hays*, 515 U.S. 737, 742 (1995)." *Scott v. Taylor*, 405 F.3d 1251, 1258 (11th Cir. 2005) (Concurring opinion, Jordan).

"[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review. . . .' *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 95 (1998) (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)). "And if the record discloses that the lower court was without jurisdiction this court will notice the defect. . . . [When the lower federal court] lack[s] jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 95 (1998) (quoting *U.S. v. Corrick*, 298 U.S. 435, 440 (1936)).

"No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Raines v. Byrd*, 521 U.S. 811, 818 (1997). "The law of Article III standing . . . serves to prevent the judicial process from being used to usurp the powers of political branches, *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 407 (2013), and confines the federal courts to a properly judicial role, *Warth v. Seldin*, 422 U.S. 490, 498 (1975)." *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1546 (2016).

Article III jurisdiction is always an antecedent question to be answered before other questions. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101 (1998). "For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101 (1998). This Honorable Court has implied that Eleventh Amendment questions are excluded from the category of Article III issues that must be addressed before the merits of the case. *Calderon v. Ashmus*, 523 U.S. 740, 745 n. 2 (1998).

Eleventh Circuit cases have typically precluded the review of Article III standing in an interlocutory appeal and instead allowed that Court to address the merits of a case, including sovereign or qualified immunity, under the guise of "hypothetical jurisdiction." *Summit v. Pryor*, 180 F.3d 1326 (11th Cir. 1999); *Moniz v. Ft. Lauderdale*, 145 F.3d 1278 (11th Cir. 1998).

In *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), this Court denounced the doctrine of "hypothetical jurisdiction," a doctrine that, in some circumstances, allowed courts to assume, arguendo, the existence of jurisdiction and to address the merit questions presented by cases.

"A panel should not . . . have the discretion to bypass a core 'case or controversy' requirement like Article III standing just because the appeal is interlocutory in nature . . . Like other circuits, [the Eleventh Circuit] should ensure that there is Article III standing before resolving issues of Eleventh Amendment, sovereign, absolute, or qualified immunity in interlocutory appeals." *Scott v. Taylor*, 405 F.3d 1251, 1260-61 (11th Circuit 2005) (Concurring opinion, Jordan).

A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them. *Lyng v. Northwest Indian Cemetary Protective Ass'n.*, 485 U.S. 439, 445-46 (1988) (citing *Jean v. Nelson*, 472 U.S. 846, 854 (1985); *Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138, 157-58 (1984); *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981); and *Ashwander v. TVA*, 297 U.S. 288, 346-48 (1936)). This is a "fundamental rule of judicial restraint." *Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138, 157-58 (1981). As this Honorable Court has stressed, "[i]f there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not pass on questions of constitutionality . . . unless such adjudication is unavoidable."

Spector Motor Co. v. McLaughlin, 323 U.S. 101, 105 (1944).

To establish an injury in fact, Plaintiff will have to show that he personally suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 74 U.S. 506, 514 (1868)).

As evidenced by the undisputed facts of this case, Respondent failed to satisfy the first and second elements of standing. Therefore, Respondent lacked standing to invoke the jurisdiction of the federal Courts. As a result, the Eleventh Circuit should have noted the jurisdictional defect and dismissed this suit pursuant to *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 84 (1998).

The Eleventh Circuit inappropriately failed to address Respondent's lack of Article III standing because it acknowledged that Petitioners challenged Respondent's Article III standing, but asserted that Petitioners did not discuss the pertinent cases in their brief. As a result of that erroneous conclusion, the Eleventh Circuit inappropriately declined to address Respondent's lack of Article III standing.

Petitioners' *Initial Brief* to the Eleventh Circuit contained several pages of argument devoted to Respondent's lack of standing. The *Initial Brief* argued that the relevant Supreme Court case was applicable in that, "[w]ithout jurisdiction, the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. *Steel v. Citizens*, 523 U.S. 83, 94 (1998) (*quoting Ex parte McCardle*, 74 U.S. 506, 514 (1868))."

In addition, at the Eleventh Circuit's request, Petitioners submitted a *Response to Jurisdictional Questions*, which contained several additional pages of argument challenging Respondent's Article III standing. Said *Response* argued that "[w]ell established jurisprudence regarding both qualified and sovereign immunities outline certain threshold issues that must be, or at least necessarily should be, addressed before proceeding to the immunity analysis. [Petitioners] submit Article III standing, specifically the causation element, is one such issue because if there is no jurisdiction, then the case does not proceed to a review on the merits of the application of potential immunities." Furthermore, the *Response* argued that "[u]nlike prior Eleventh Circuit cases which may have found against permitting interlocutory review of Article III standing . . . the present matter is somewhat unique in that any and all arguably justiciable issues are entangled with the immunity considerations. . . ." The standing and causation issues are intertwined with

Respondent's state law claim and civil rights claim because Respondent essentially argues that the liability of Petitioners originate from the initial detention and eventual ejection of AJIII.

Based on the arguments in the *Initial Brief* together with the *Response to Jurisdictional Questions*, including the argument that Respondent's causation claim is too attenuated since the injury is the result of several intervening, independent actions, (*See, e.g.*, *Loggerhead Turtle v. County Council*, 148 F.3d 1231 (11th Cir. 1998)), it is clear that Petitioners challenged Respondent's Article III standing and disputed the applicability of previous Eleventh Circuit cases.

Accordingly, the Eleventh Circuit inappropriately avoided addressing Respondent's lack of Article III standing and this issue should be reviewed and corrected by this Court.

Courts of Appeals have typically followed Supreme Court precedence on this issue, as follows:

(1) United States Court of Appeals, First Circuit:

Akebia Therapeutics v. Azar, 976 F.3d 86, 91-92 (1st Cir. 2020): "Although hypothetical jurisdiction is generally disfavored, *see Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998), such a barrier is insurmountable only when Article III jurisdiction is in issue, *see First State Ins. Co. v. Nat'l Cas. Co.*, 781 F.3d 7, 10 n. 2 (1st Cir. 2015)."

Belsito Communications v. Decker, 845 F.3d 13, 21-22 (1st Cir. 2016): "It goes without saying – but we say it

anyway – that federal courts are courts of limited jurisdiction, limited to deciding certain cases and controversies, for example."

Parella v. Ret. Bd. of the R.I. Employees' Ret. Sys., 173 F.3d 46 (1st Cir. 1999): *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998), requires a determination of Article III jurisdiction before reaching the merits of the underlying claims.

(2) United States Court of Appeals, Second Circuit:

Miller v. Metropolitan Life, 979 F.3d 118, 124 (2d Cir. 2020): The Supreme Court has rejected the practice of assuming jurisdiction for the purpose of deciding the merits – the doctrine of hypothetical jurisdiction – because it carries the courts beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

U.S. ex rel. Hanks v. U.S., 961 F.3d 131, 137 (2d Cir. 2020): "Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject-matter before it considers the merits of a case. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998)). 'For a court to pronounce upon [the merits] when it has no jurisdiction to do so is . . . for a court to act ultra vires.' *Steel Co.*, 523 U.S. at 101B102. It is 'hardly novel for a federal court to choose among threshold grounds for denying audience to a case on the merits.' *Ruhrgas*, 526 U.S. at 585, 119 S.Ct. 1563."

(3) United States Court of Appeals, Third Circuit:

Papotto v. Hartford Life, 731 F.3d 265, 269 (3d Cir. 2013): "Before we inquire into the merits of the issues on appeal, we must address the question of our appellate jurisdiction. *See Elliott v. Archdiocese of New York*, 682 F.3d 213, 219 (3d Cir. 2012). (Our jurisdictional inquiry must precede any discussion of the merits of the case for if a court lacks jurisdiction and opines on a case over which it has no authority, goes beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers.) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998))."

Bowers v. National Collegiate Athletic Assoc., 346 F.3d 402 (3d Cir. 2003): A court should "not declare the law where they do not have Article III jurisdiction because any opinion in such a situation would be advisory, thus raising separation of powers problems." *Id.* at 417-18.

(4) United States Court of Appeals, Fourth Circuit:

Sucampo v. Astellas Pharma, 471 F.3d 544, 548 (4th Cir. 2006): Disapproves of the hypothetical jurisdiction clause because it would require courts to address certain ancillary issues before reaching the merits of the action.

Constantine v. Rectors and Visitors, 411 F.3d 474, 480 (4th Cir. 2005): Affirms that the practice of some appellate courts to decide the merits of a case based on

"hypothetical jurisdiction," has been rejected by the Supreme Court in *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998).

(5) United States Court of Appeals, Fifth Circuit:

Whole Woman's Health v. Jackson, 13 F.4th 434, 444-45 (5th Cir. 2021): Rejects the doctrine of hypothetical jurisdiction based on *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998). The Supreme Court declined to endorse such an approach because it carries the courts beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

In re Gee, 941 F.3d 153, 161 (5th Cir. 2019): "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal court jurisdiction to actual cases or controversies. *Simon v. E. Ky. Welfare*, 426 U.S. 26, 37 (1976). And [t]o state a case or controversy under Article III, a plaintiff must establish standing."

Cox v. City of Dallas, 256 F.3d 281, 303-04 (5th Cir. 2001): Standing must be examined before immunity issues, when both are raised by the defendant.

(6) United States Court of Appeals, Sixth Circuit:

In re DePuy Orthopaedics, 953 F.3d 890, 894 (6th Cir. 2020): "In any case, large or small, the exercise of the 'judicial Power' by a court that has not been granted it 'offends fundamental principles of separation of powers.' *Steel Co.*, 523 U.S. at 94, 118 S.Ct. 1003. For that

reason, federal courts must catch jurisdictional defects at all stages of a case, even when substantial resources have already been invested in it."

American Telecom v. Republic of Lebanon, 501 F.3d 534, 537 (6th Cir. 2007): "Subject matter jurisdiction is always a threshold determination. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998) (there is no 'doctrine of 'hypothetical jurisdiction' that enables a court to resolve contested questions of law when its jurisdiction is in doubt'). . . . When a Rule 12(b)(1) motion attacks the factual basis for jurisdiction, the district court must weigh the evidence and the plaintiff has the burden of proving that the court has jurisdiction over the subject matter."

(7) United States Court of Appeals, Seventh Circuit:

Leibovitch v. Islamic Republic of Iran, 697 F.3d 561, 573 (7th Cir. 2012): " . . . [A] court may not presume hypothetical jurisdiction in order to decide a question on the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998) ('Hypothetical jurisdiction produces nothing more than a hypothetical judgment – which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning.')."

Kennedy v. Nat'l Juvenile Detention Ass'n, 187 F.3d 690, 696 (7th Cir. 1999): Immunity is not a jurisdictional issue and therefore requires no determination if the case can be decided on nonconstitutional grounds.

(8) United States Court of Appeals, Eighth Circuit:

Outdoor Cent. v. GreatLodge.com, Inc., 643 F.3d 1115, 1119 (8th Cir. 2011): "[A] court may not assume 'hypothetical jurisdiction' to decide 'contested questions of law when its jurisdiction is in doubt.' . . . quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998)."

Balogh v. Lombardi, 816 F.3d 536 (8th Cir. 2016): Although there is confusion among the Circuit Courts as to whether Article III standing should be determined prior to immunity, the Eighth Circuit chose to err on the side of caution in light of this Honorable Court's precedence in *Calderon v. Thompson*, 523 U.S. 538, 745 (1998), by determining the issue of standing first.

(9) United States Court of Appeals, Ninth Circuit:

Center for Food Safety v. U.S. FDA, 854 Fed.Appx. 865, 867 (9th Cir. 2021): "Whether a party has standing to sue is a 'threshold issue' concerning an 'essential and unchanging part of the case-or-controversy requirement of Article III.' . . . 'Without jurisdiction, the court cannot proceed at all in any cause; it may not assume jurisdiction for the purpose of deciding the merits of the case.' "

Fleck and Associates, Inc. v. Phoenix, 471 F.3d 1100, 1107 (9th Cir. 2006): No matter how important the constitutional issue presented, "a court lacking

jurisdiction is powerless to reach the merits under Article III of the Constitution."

(10) United States Court of Appeals, Tenth Circuit:

U.S. v. Limon, 757 Fed.Appx. 737, 739 (10th Cir. 2018): "[I]t is not permissible to assume jurisdiction 'because it carries the courts beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers.' *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998)."

Colorado Outfitters Ass'n v. Hickenlooper, 823 F.3d 537, 543 (10th Cir. 2016): "[A] federal court can't 'assume' a plaintiff has demonstrated Article III standing in order to proceed to the merits of the underlying claim, regardless of the claim's significance. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998)."

Since this Court has already found that standing is a fundamental jurisdictional issue that should be ruled on before resolving issues of sovereign immunity or qualified immunity, this Court should remand this case to the Eleventh Circuit and require that Court to follow Supreme Court precedent and resolve Petitioners' challenge to Respondent's Article III standing before resolving other issues, including sovereign or qualified immunity.

B. Probable Cause Finding

The Eleventh Circuit erroneously interpreted the undisputed facts and mistakenly found that there was

no probable cause or arguable probable cause for a violation of Florida Statute § 616.185. This is especially significant in this case due to the well-established law holding that the existence of probable cause constitutes an absolute bar to a 42 U.S.C. § 1983 claim under the Fourth Amendment due to qualified immunity. *Lee v. Ferraro*, 284 F.3d 1188 (11th Cir. 2002); *Wood v. Kesler*, 323 F.3d 872 (11th Cir. 2003). Qualified immunity is an immunity from suit rather than a mere defense to liability and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial. *Saucier v. Katz*, 533 U.S. 194, 200-01 (2001); *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).

It is not disputed that, at the summary judgment stage, the evidence must be viewed in the light most favorable to the non-moving party. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014). However, this does not mean that other undisputed or stipulated evidence should be ignored. *See, e.g.*, *Celotex v. Catrett*, 477 U.S. 317 (1986); *Scott v. Harris*, 550 U.S. 372 (2007); *Makro v. UBS*, 372 F. Supp. 2d 623, 627 (S.D. Fla. 2005). In this case, the Eleventh Circuit misinterpreted or ignored pertinent facts, and failed to objectively analyze whether there was, at least, arguable probable cause that Florida Statute § 616.185(1)(a), had been violated.

Florida Statute § 616.185(1)(a), prohibits "committing any act that disrupts the orderly conduct of any

authorized activity of the fair association . . . or the general public on those grounds or facilities."[5]

In affirming the denial of summary judgment for Petitioner Clark, the Eleventh Circuit found that AJIII was not committing a crime or breaking any rule. (App. 7-8). However, there is no requirement in Florida law, as the Eleventh Circuit suggests, that a violation of Florida Statute § 616.185(1)(a), requires than an offender run after the officers, that running to pick up a hat is per se insufficient to violate the statute, or that violating the statute somehow requires obstructing the officers in the performance of their duties. (App. 8).

On the contrary, the plain language of Florida Statute § 616.185(1)(a) requires only that an offender commit *any act* that disrupts the orderly conduct of a fair activity or the general public. The Eleventh Circuit's attempt to add elements to § 616.185(1)(a), underscores the fact that there are no Florida cases interpreting or applying § 616.185(1)(a), that the Eleventh Circuit's analysis was faulty, and that Petitioner Clark could not possibly have known that his actions amounted to a constitutional violation.

At the time AJIII was detained, the FSF midway was very crowded and chaotic, with large groups of unsupervised kids acting "crazy," running through the midway in herds of 20, 30, or 40 people, trying to rile

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[5] In addition, there were rules posted at the venue (Florida State Fair) that allowed the removal of "any person who is disruptive." (Middle District Dkt. 226-20).

everybody up, getting in fights, battering people, and stealing things off vendors' booths.

In the midst of this, AJIII ran after friends who were being escorted by deputies "like in a hurry," caught up to the deputies, and "got involved" by getting close enough to pick up the hat. As a result of these undisputed facts, Petitioner Clark detained AJIII for ejection under Florida Statute § 616.185, because AJIII was "running through the midway causing disorderly conduct."[6]

The Eleventh Circuit's failure to properly analyze the facts of this case applicable to Florida Statute § 616.185, is compounded by its failure to properly appreciate whether Petitioner Clark's actions were "clearly established" as unconstitutional. "A right is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.' *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)." *Rivas-Villegas v. Cortesluna*, 142 S.Ct. 4, 7 (2021). *See also Terrell v. Smith*, 668 F.3d 1244 (11th Cir. 2012).

The Eleventh Circuit inappropriately focused on "how or why a reasonable officer could have believed or thought that picking up a friend's hat and attempting to give it to him was behavior that disrupted the orderly conduct of the FSF. . . ." (App B, p. 8). However, the Eleventh Circuit clearly ignored or misinterpreted many other pertinent facts including the volatile

[6] As stipulated by Respondent. (App. 67).

midway scene and the undisputed actions of AJIII "running through the midway causing disorderly conduct."

The plain language of Florida Statute § 616.185(1)(a), requires only any act that disrupts the orderly conduct of any authorized activity of the fair or the general public. Depending on the circumstances, such an act could include running on the midway, running after officers escorting detainees, or becoming "involved" in a police escort.

This Court has held that, "[t]o determine whether an officer had probable cause for an arrest, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amounted to' probable cause. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (quoting *Ornelas v. U.S.*, 517 U.S. 690, 696 (1996). Because probable cause >deals with probabilities and depends on the totality of the circumstances' *Maryland v. Pringle*, 540 U.S. 366, 371 (2003), it is 'a fluid concept' that is 'not readily, or even usefully, reduced to a neat set of legal rules,' *Illinois v. Gates*, 462 U.S. 213, 232 (1983). It 'requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.' *Illinois v. Gates*, 462 U.S. 213, 243-44 n. 13 (1983). Probable cause 'is not a high bar.' *Kaley v. U.S.*, 571 U.S. 320, 338 (2014)." *District of Columbia v. Wesby*, 138 S.Ct. 577, 586 (2018).

Based on this Court's methodology for analyzing probable cause, as described above, the Eleventh

Circuit failed to appropriately analyze and evaluate the "totality of the circumstances" at the FSF on February 7, 2014.

The Eleventh Circuit failed to properly account for the crowded and chaotic condition of the FSF midway which included herds of people causing fights, acting crazy, battering people, and stealing from vendors. The Eleventh Circuit failed to appreciate the impact of AJIII's actions in running into the middle of a police escort and picking up the hat of a detainee on the escorting law enforcement officers. Finally, it is clear that the Eleventh Circuit failed to properly apply Florida Statute § 616.185(1)(a), which only requires that an offender commit *any act* that disrupts the orderly conduct of a fair activity or the general public.

In failing to acknowledge the uncontested facts, including the testimony of Petitioner Clark, the Eleventh Circuit violated its own rule that it cannot ignore uncontradicted evidence because it is unfavorable to Respondent. *Fennel v. Gilstrap*, 559 F.3d 1212, 1216 n. 3 (11th Cir. 2009).

The uncontroverted testimony and evidence, when properly analyzed using this Court's factors discussed above, shows that the totality of the circumstances from February 7, 2014, establish that an objective officer would have had probable cause or at least arguable probable cause that AJIII violated Florida Statute § 616.185.

Accordingly, the totality of events from February 7, 2014, constituted at least arguable probable cause to arrest AJIII and established that not every official would have understood that detaining AJIII under those circumstances amounted to a constitutional violation.

As a matter of law, it was not clearly established that Petitioner Clark's detention of AJIII was unconstitutional and therefore the Eleventh Circuit inappropriately affirmed the denial of summary judgment for Petitioner Clark and denied him qualified immunity.

The purpose of qualified immunity is to shield from suit "all but the plainly incompetent or one who is knowingly violating the federal law" and to allow officials to carry out their discretionary duties without fear of personal liability or harassing litigation. *Anderson v. Creighton*, 483 U.S. 635, 638 (1987); *Rehberg v. Paulk*, 598 F.3d 1268 (11th Cir. 2010). This purpose will be defeated if the Eleventh Circuit's erroneous ruling is not reversed in this case.

The inquiry into qualified immunity must be taken in light of the specific context of the case, not as a broad general proposition. *Brosseau v. Haugen,* 543 U.S. 194, 198 (2004). "[S]pecificity is especially important in the Fourth Amendment context, where . . . it is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." *Mullenix v. Luna,* 577 U.S. 7, 12 (2015). Therefore, this Court should reverse the Eleventh Circuit's decision denying Petitioner

Clark qualified immunity because controlling precedent and the record of this case establishes that Petitioner Clark was not on fair notice that his conduct on February 7, 2014, was unlawful. *See, e.g., Rivas-Villegas v. Cortesluna,* 142 S.Ct. 4 (2021); *City of Tahlequah v. Bond,* 142 S.Ct. 9 (2021). As a result, Petitioner Clark is entitled to qualified immunity.

CONCLUSION

For all of the foregoing reasons contained herein, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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