In the Supreme Court of the United States

JEREMIAH HENDERSON,

PETITIONER,

v.

AUSTIN K. McCLAIN,

RESPONDENT.

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

SUPPLEMENTAL BRIEF OF PETITIONER

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SUPPLEMENTAL BRIEF

Jeremiah Henderson respectfully submits this Supplemental Brief pursuant to Rule 15.8 to inform the Court of the decision of the United States Court of Appeals for the Ninth Circuit in the case of *Ballentine v. Tucker*, 28 F.4th 54 (9th Cir. 2022). In *Ballentine v. Tucker*, the Ninth Circuit affirmed the District Court's ruling that the defendant arresting police officer was not entitled to summary judgment on plaintiff's retaliatory arrest claim under 42 U.S.C. § 1983, even though the arresting officer had probable cause to arrest plaintiff for chalking a sidewalk, because the plaintiff presented sufficient that he was arrested in retaliation for the anti-police content of his chalked messages and other persons who did not chalk anti-police messages were not arrested for chalking. *Id.* at 64. The Ninth Circuit found that the plaintiff satisfied the narrow exception, stated by this Court in *Nieves v. Bartlett*, 139 S. Ct. 1715, 1735 (2019), to the general rule that the existence of probable cause defeats a plaintiff's claim for § 1983 retaliatory arrest. *Ballentine* belies Petitioner's statement on page 9 of his Petition for Certiorari that: "*No* § 1983 retaliatory prosecution or arrest plaintiff has qualified under the *Nieves* exception, "leaving the public exposed potentially to flagrant abuses." The plaintiffs in *Ballentine* qualified under the *Nieves* exception.

Respectfully Submitted,

JEREMIAH HENDERSON

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