

No. 22-1003

IN THE
Supreme Court of the United States

MUCIO RAMIREZ,

Petitioner,

v.

CHRISTOPHER MARTIN,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondent objects to the Question Presented within the Petition for a Writ of Certiorari (hereinafter, the “Petition”), as it omits and misstates key facts which were clearly established and undisputed based on the several videos capturing the incident and inaccurately describes the holding and reasoning underlying the Fifth Circuit’s *per curium* panel decision. More accurately stated, the Question Presented to this Court, if any, would be, “Whether a reasonable officer could have perceived the minimal use of force in this case as justified given that the undisputed evidence clearly demonstrated that the Petitioner, who led police on an extended motor vehicle chase, had not been searched for weapons and, once stopped, failed to comply with lawful commands given to him by the police attempting to take him into custody.”

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STATEMENT OF THE CASE

Respondent objects to, and disagrees with, Petitioner's description of the underlying facts and Petitioner's description of the holding and reasoning of the *per curiam* panel of the Fifth Circuit. For purposes of clarity and completeness, the following facts are clearly established in the several videos which recorded the entire encounter.

On the night of April 14, 2019, police officers Brad Hanks and Natausha Swavey attempted to pull over Petitioner for swerving in traffic and having a broken taillight. (Pet. App. 18a) Instead of stopping, Petitioner led officers on a mile-and-a-half chase. *Id.* Hanks and Swavey called for backup, informing dispatch they were in felony pursuit of a vehicle. *Id.* Although Petitioner stopped for traffic lights, Hanks cautioned: "I don't want to approach him because he may be trying to bait us." *Id.* Petitioner eventually stopped his vehicle on an unlit, residential street. *Id.* Hanks and Swavey stepped out of their police cruiser, firearms and flashlights drawn, and Hanks began verbally engaging Petitioner. *Id.*

Respondent, Officer Martin, along with other officers, then arrived on the scene. (Pet. App. 18a) Officer Hanks instructed the Petitioner to place his hands outside the car window, but the Petitioner instead exited the vehicle and turned towards the officers. *Id.* Officer Hanks commanded the Petitioner to turn away, slowly walk backwards, and drop to his knees. *Id.* Petitioner initially complied but then abruptly stood up. *Id.* The officers commanded the Petitioner to get back on his knees, and he complied after several demands. *Id.* At this point, the Petitioner remained uncuffed, had not been searched, and officers had not yet checked his car for other passengers. (Pet. App. 19a)

With Petitioner back in the kneeling position, Officers Martin and Swavey were directed to secure the Petitioner, so the other officers could safely approach and clear the Petitioner's vehicle. (Pet. App. 19a) The plan was for Officers Martin and Swavey to each grab one of the Petitioner's arms, and then take him to the ground and handcuff him. *Id.* But as they approached the Petitioner, Officer Swavey paused to holster her weapon while Officer Martin grabbed the Petitioner's arm and pushed him to the ground. *Id.* The Petitioner collapsed forward and his head hit the pavement, resulting in a significant cut above his right eye. *Id.* The Petitioner was later charged with a felony for evading arrest and a misdemeanor for driving while intoxicated. *Id.*

The district court granted summary judgment in Respondent's favor. (Pet. App. 1a-15a) The Fifth Circuit affirmed. (Pet. App. 17a-26a) In affirming the summary judgment, the Fifth Circuit, applying the *Graham* factors, determined that no Constitutional violation had occurred. (Pet. App. 22a).

REASONS FOR DENYING THE PETITION

The Petition should not be granted because the arguments raised by the Petition misstate or exaggerate the Fifth Circuit's reliance on *Salazar v. Molina*, 37 F.4th 278 (5th Cir. 2022) and misstate or minimize the factual circumstances warranting the use of force. Accordingly, this case is not a particularly appropriate vehicle to evaluate the propriety of *Salazar*, which was recently before this court under a sperate Petition.¹ That petition was denied on April 24, 2023.

1. Docket No. 22-564.

I. THE PETITION MISSTATES AND MINIMIZES THE UNDISPUTED FACTS WHICH DEMONSTRATE THAT PETITIONER WAS REASONABLY VIEWED AS A THREAT

To begin, Petitioner omits from the Petition important factual matters which are clearly established by the several videos of the incident. These facts include that Petitioner led the police on an extended felony pursuit and that, throughout the encounter with police, the Petitioner failed to comply with police commands. (Pet. App. 23a-24a) Officer Martin secured Petitioner by the arm to lower him to the ground and place him in handcuffs. (Pet. App. 24a-25a) Prior to the use of force, Officer Martin was informed that he was participating in a felony stop and that Petitioner had led the police on a lengthy chase. (Pet. App. 18a-20a) In the seconds before the use of force, Officer Martin personally observed Petitioner refusing to follow his fellow officer's commands. *Id.* Those commands were intended to keep everyone on the scene safe. Petitioner's refusal to comply with the commands placed everyone on the scene in danger and led Officer Martin to reasonably conclude that Petitioner posed a threat to the police on the scene and would continue to do so until he was taken into custody and searched for weapons. (Pet. App. 24a-25a) It was under these circumstances that Officer Martin, under orders, grabbed Petitioner by the arm to lower him to the ground. Unbeknownst to Officer Martin, Petitioner was extremely intoxicated and as soon as Officer Martin grabbed him, Petitioner lost balance and fell to the ground resulting in a cut over his eye. All of these events were recorded on eight different video cameras. (Pet. App. 22a) Appellant offered no testimony to contradict the scene clearly depicted on the videos. As a result, there are no

disputed facts in this case. As a matter of law, Officer Martin's conduct was not objectively unreasonable, the district court correctly granted summary judgment in his favor, and the Fifth Circuit properly affirmed.

II. THE FIFTH CIRCUIT DID NOT TRUNCATE THE *GRAHAM* ANALYSIS

The Petition should also be denied because it is based on the erroneous premise that the Fifth Circuit's opinion relies primarily on *Salazar* to dispense with the application of the traditional *Graham* factors resulting in a circumstance where a citizen who flees from the police or fails to obey commands, can no longer surrender. Of course, in this case, the Petitioner *both* fled from the police *and* failed to obey simple commands intended to ensure the safety of everyone on the scene, including the Petitioner. Regardless, the panel's reliance of *Salazar* did not lead it to dispense, in any way, with the traditional *Graham* factors and the application of *Graham* clearly required affirming the district court's grant of summary judgment in favor of Officer Martin.

In order to determine whether Officer Martin's conduct was objectively unreasonable, the Fifth Circuit applied the three *Graham* factors: (1) the severity of the crime at issue; (2) the danger posed by the suspect to the officer and others; and (3) whether the suspect was resisting or fleeing. *Graham v. Conner*, 490 U.S. 386, 396 (1989).

In applying the first *Graham* factor, the Fifth Circuit correctly determined that Petitioner was engaged in the serious crimes of fleeing from the police and driving

while intoxicated. *See Cooper v. Brown*, 844 F.3d 517, 522 (5th Cir. 2016) (driving while intoxicated); *Griggs v. Brewer*, 841 F.3d 308, 315-316 (5th Cir. 2016) (driving while intoxicated); *Ouedraogo v. Garland*, 844 Fed Appx. 756, 757-58 (5th Cir. 2021) (arrest or detention with a vehicle is a “particularly serious crime”). In fact, on appeal the Petitioner conceded that he was engaged in serious crimes, but fails to make that concession in his Petition. (Pet. App. 24a)

In applying the second *Graham* factor, the Fifth Circuit correctly determined that Officer Martin had ample reasons to view the Petitioner as a threat. In support, the panel observed that Petitioner’s purported surrender came mere seconds after he disobeyed commands to stay in his car and to drop to his knees, and only a few minutes after he led officers on a nighttime car chase before stopping on an unlit street and that another officer cautioned that Petitioner’s stop-and-go driving suggested he may be trying to bait the officers. (Pet. App. 24a-25a) Additionally, the Fifth Circuit noted that Officer Martin arrived at a nighttime scene where an already tense and potentially dangerous situation was playing out. *Id.* Petitioner had “just committed a dangerous felony,” remained unrestrained, and had not yet been searched for a weapon and because he had just disobeyed commands to remain in his vehicle, officers could not be sure of Petitioner’s next act resulting in multiple officers on the scene with weapons drawn until Officer Martin secured the Petitioner and other officers cleared his vehicle. *Id.* The Fifth Circuit also noted other facts which further heightened Petitioner’s threat risk to the officers. The Petitioner was visibly intoxicated and erratically disobeyed officers’ commands, and consequently officers

were unable to safely approach his car to check for other passengers until he was subdued. *Id.* In light of all of the foregoing undisputed facts, the Fifth Circuit correctly determined that Officer Martin was reasonably on guard about what the Petitioner might do next. *See Poole v. City of Shreveport*, 691 F.3d 624, 629 (5th Cir. 2012) (arrestee that refused commands “posed an ‘immediate threat to the safety of the officers’”); *see also Buchanan v. Gulfport Police Dep’t*, 530 Fed. Appx. 307, 313-14 (5th Cir. 2013) (“where a suspect resists arrest or fails to follow police orders, officers do not violate his right against excessive force by deploying their tasers to subdue him.”).

Additionally, in determining that Officer Martin’s use of force was not unreasonable, the Fifth Circuit noted that he “ratcheted down his use of force to [Petitioner’s] then-current threat level. Rather than using even intermediate force, like a taser, Martin pushed Ramirez to the ground and then refrained from using additional force once Ramirez was subdued.” (Pet. App. 24a) “Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Graham*, 490 U.S. at 396. Petitioner must concede that, given his conduct and his refusal to follow Officer Hank’s commands, it was not objectively unreasonable for an officer in Officer Martin’s position to have taken him to the ground in order to secure the scene.

In addressing the third *Graham* factor, the Fifth Circuit held that Officer Martin “could have been reasonably wary about whether Ramirez would remain compliant.” (Pet. App. 25a) “Ramirez led officers on a

mile-and-a-half chase and disobeyed officer commands by exiting his vehicle and not staying stationary on his knees. These are both reasons for officers to believe that Ramirez either intended to flee or that he posed a threat.” *Id.*

Once the totality of the undisputed facts and the substance and reasoning associated with the panel’s holding are fairly and accurately portrayed, the purported truncation of the *Graham* analysis disappears. The Fifth Circuit merely included, as it was required to do, the information available to Officer Martin at the time the decision to use the minimal force at issue herein was made.

Petitioner invites this Court to establish a new rule requiring officers on the scene to disregard their knowledge of the conduct of a suspect immediately preceding arrest. In so doing, Petitioner proposes hypotheticals completely divorced from the facts of this case. In one, a diabetic suspect appears to flee and passes out, a suspect who had committed no crime and was the subject of only an investigatory stop. In the second hypothetical, a suspect who had fled from police in a previous encounter related to a minor offense, was later confronted and surrendered peacefully. Neither scenario is analogous to the undisputed facts of this case. The Petitioner had committed two serious crimes, including fleeing from the police during the encounter which ended in the use of force. Further, after stopping his vehicle, the Petitioner demonstrated repeatedly that he was either unwilling or unable to follow police commands. When told to stay in the car, Petitioner got out. When told not to turn and look at the officers, he turned and looked. After going to his knees the first time, when told to crawl backwards, he stood up and again turned to look at the

officers. Petitioner would have this Court pronounce a rule that a reasonable police officer must ignore all of the foregoing in determining what amount of force to deploy when Petitioner went to his knees the second time.

Additionally, Petitioner fails to address the undisputed evidence that external factors, and not Officer Martin's grasp of Ramirez's right arm, caused him to go to the ground in a manner which resulted in the cut over his eye. *See Johnson v. Rogers*, 944 F.3d 966, 969 (7th Cir. 2019) ("Any takedown can go awry—some suspects fall clumsily, while others have fragile bones—but, if the officers use steps reasonably likely to effect a clean takedown, an injury does not lead to liability."); *see also Horn v. Barron*, 720 Fed. Appx. 557, 564 (11th Cir. 2018) ("even if the force applied . . . by taking hold of her left arm, putting his right arm over her left arm, and using gravity and his own weight to bring her to the ground—was unnecessary, it was not unlawful."); *Durruthy v. Pastor*, 351 F.3d 1080, 1094 (11th Cir. 2003) ("Here, even if the force applied by Pastor in effecting the arrest -- forcing Durruthy down to the ground and placing him in handcuffs -- was unnecessary, plainly it was not unlawful. The amount of force used was de minimus."). Petitioner fails to acknowledge that his blood alcohol level at the time of arrest was between .235 and .265 and that such a level of consumption would cause physical and mental impairment. He fails to acknowledge that his high level of intoxication caused him to experience a loss of balance, coordination and motor skills, which caused him to fall when Officer Martin secured his arm. He fails to acknowledge that he was kneeling on a downward grade.

As can be seen on the videos, Officer Martin does not strike the Petitioner. He grabs his right arm in an

attempt to lower him to his stomach. Officer Martin's feet remain in a stationary position, and he is leaning over at the waist. As Petitioner falls, Officer Martin does not swing Petitioner's arm away from his body, but instead can be seen attempting to break his fall by holding the arm stationary. A close examination of the force -- understanding the severity of Petitioner's intoxication -- reveals that Officer Martin's actions were not unreasonable. He simply could not have anticipated how much alcohol the Petitioner had consumed.

Perhaps the Petitioner should have been afforded another opportunity to crawl back and lie flat so he could be handcuffed. However, given his level of intoxication, there is no reason to believe that providing Petitioner with additional clear directions would result in a more compliant response. The Petition fails to articulate why Petitioner failed to follow the officer's clear commands yet he asks this Court to accept that, given one more opportunity, he would have done so. Regardless, Officer Martin did not make the decision to take Petitioner into custody without providing an additional opportunity for Petitioner to comply. Officer Hanks was controlling the interaction with Petitioner. Petitioner had already refused Officer Hanks' command to crawl backwards and lie flat by standing up and turning to look at the officers. Rather than commanding Petitioner to lie flat a second time, Officer Hanks ordered Officer Martin to go "hands on." At this point, Petitioner had not been searched for weapons and his vehicle had not been cleared of other occupants, all of which posed a potential threat to the officers on the scene. At that point, it was Officer Martin's duty to secure the Petitioner so he could be searched for weapons and his vehicle could be cleared of other potential occupants. The minimal force used in this case was clearly reasonable.

CONCLUSION

For these reasons the Petition for a Writ of Certiorari should be denied.

Respectfully Submitted,

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