No. 22-731

In the

Supreme Court of the United States

TYLER BRIENZA,

Petitioner,

v.

CITY OF PEACHTREE CITY, GEORGIA, ADAM C. WADSWORTH, AND MARK A. WILLIAMS,

Respondents.

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

BRIEF IN OPPOSITION

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OVERVIEW

Petitioner Tyler Brienza has submitted a petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit, identifying as respondents the City of Peachtree City, Georgia[1], Peachtree City Police Officer Adam C. Wadsworth, and Peachtree City Police Officer Mark Williams. The only federal claims in this case were asserted against Wadsworth and Williams and, accordingly, this response is offered on behalf of respondents Wadsworth and Williams and is being provided based

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[1] No federal claims were asserted against Peachtree City, only state law claims based on vicarious liability for the actions of Williams and Wadsworth in arresting petitioner (Count IV), for negligence (Count V), and a derivative state law claim for attorneys' fees. In his appeal of the district court's grant of summary judgment to all defendants on all claims, petitioner did not appeal from the summary judgment entered in favor of the city for the state law negligence and false arrest claims. *See*, *Brienza v. Peachtree City, et al*, 21-12290, 2022 WL 3841095, at *3 (11th Cir. 2022) ("Brienza hasn't appealed the summary judgment for the defendants on these negligence and false arrest claims. And although he contends that 'his derivative claim for attorney's fees should be reinstated' because 'the dismissal of [his] claims of false arrest, retaliation [,] and malicious prosecution w[as] in error,' we affirm the dismissal of these claims. Because the attorney's fees claim depends on them, it also fails.") Because the current petition addresses only federal claims against respondents Williams and Wadsworth, it is respectfully submitted that Peachtree City is erroneously identified as a respondent. Accordingly, hereinafter, the use of the term "respondents" refers solely to Wadsworth and Williams.

on a request by this Court in its docket entry dated March 9, 2023.

The request for relief in the petition challenges only the Eleventh Circuit's opinion affirming summary judgment for respondents on petitioner's First and Fourth Amendment claims (Counts I, II, and V), claims for which the district court and Eleventh Circuit determined, irrespective of the existence of probable cause, were barred by qualified immunity because the applicable law, under the rules applicable in the Eleventh Circuit[2], was not clearly established such that "every" reasonable law enforcement officer in the circumstances confronting respondents would have understood that what they were doing violated petitioner's federal rights. *See*, *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) ("A Government official's conduct violates clearly established law when, at the time of the challenged conduct, '[t]he contours of [a] right [are] sufficiently clear' that every 'reasonable official would [have understood] that what he is doing violates that right.'").

Petitioner does not challenge the conclusion by the district court, and affirmed by the Eleventh Circuit, that the law was not clearly established, nor could he. Instead, the petition merely advances an

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[2] As it relates to clearly established law, the Eleventh Circuit looks only to binding precedent set forth in decisions of the United States Supreme Court, the Eleventh Circuit, or the highest court of the state where the incident took place to decide whether the law was clearly established. *Amnesty Int'l v. Battle*, 559 F.3d 1170, 1184 (11th Cir. 2009).

argument that this Court should clarify the law by holding that probable cause for petitioner's arrest was lacking under the circumstances presented. Respondents do not concur with petitioner's argument that probable cause did not exist; however, a conclusion by this Court on certiorari that probable cause did not exist in the present case would not warrant reversal of the Eleventh Circuit's affirmance of summary judgment for respondents based on qualified immunity and, in effect, would amount to no more than an advisory opinion. Respondents also take issue with the recitation of facts by petitioner and his conclusions related to reasonable suspicion and probable cause, as discussed below.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

Much like the characters portrayed in the movie "Risky Business," when Brian Walsh's parents went out of town, he and his friend, petitioner Tyler Brienza, decided that they would throw a party at the Walsh residence on Plantain Terrace in Peachtree City. Walsh lived at the residence with his parents. Brienza did not reside there, and was not an owner, tenant, or overnight social guest. These two young men jointly prepared a flyer, which Walsh posted on his Facebook page, advertising the party. The flyer identified a McIntosh Homecoming party at 434 Plantain Terrace, in Peachtree City, where Walsh lived with his parents, to take place on September 25, 2016, 9pm, to last ALL NIGHT LONG, and advising that there would be Luigi's Famous Jungle Juice (alcohol) on site, $5 for guys, ladies free as always.

On September 25, the night before their planned event, Brienza and Walsh went to several bars in the Virginia Highlands area of Atlanta, and handed flyers out to persons they knew and others that they did not know, hoping to generate interest and attendance at the party, particularly women. On the date of the event, September 26, Peachtree City Police Officer Matthew Myers observed a post from Kristin Turner Boland on the "Life In The PTC Bubble" Facebook Page. In her post, Ms. Boland stated that her 14-year-old daughter had been given a copy of the flyer; and that the individual who had provided the flyer to her daughter advised that the party was going to be "the shit." She also attached a photograph of the flyer to her post.

Myers took a screenshot of the post and flyer and forwarded the same to Peachtree City Police Officer Jamaal Greer, who served as school resource officer at McIntosh High School. Greer advised the principal of the high school of the situation and alerted her to the existence of the flyer. Greer was able to identify an individual with the last name "Walsh" who was a 2014 graduate of McIntosh High school. Greer informed Myers by text message that the owner of the subject residence had been contacted, that she was in Australia, and that she "want[ed] someone to shut [the party] down if there [was] a party at the house."

The representation by petitioner that the only basis for respondent's reasonable suspicion of a potential underage drinking party was the flyer, and that respondents were proceeding only on a "hunch" of such activity, is disingenuous at best and was flatly rejected by the district court and Eleventh Circuit. In

addition, the representation by petitioner that any reasonable suspicion evaporated when respondents arrived at the residence and did not encounter "a lot of cars or golf carts, no loud music, no cups in the yard, no damage to anything, and the lights were dim" was also rejected by the Eleventh Circuit, as follows:

> The officers had probable cause—and at least reasonable suspicion—to believe that an illegal party was taking place at the house, so they could lawfully detain Brienza when he stepped onto the porch. *See Lindsey*, 482 F.3d at 1290; *see also Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002) (explaining that the Fourth Amendment "does not prevent a law enforcement officer from telling a suspect to step outside his home and then arresting him without a warrant" because, "[i]n that situation, the officer never crosses the firm line at the entrance to the house" (quotation omitted)). The officers had the Facebook post, including the flyer bearing Walsh's name, and police "identified a recent ... graduate of the school with the last name Walsh." The flyer advertised a party that would last "ALL NIGHT LONG" at his home address. It declared that there would be free alcohol for ladies. And the flyer was distributed at a high school homecoming dance to an underage girl. Based on these objective facts, a reasonable officer "could conclude that

there was a substantial chance of criminal activity," *Washington*, 25 F.4th at 902 (alteration adopted and quotation omitted), and could "have a reasonable, articulable suspicion" of such activity, *Lindsey*, 482 F.3d at 1290.

Brienza argues that reasonable suspicion "evaporated within minutes of their arrival" because the officers "observed absolutely no evidence of a party—no excessive amount of people, cars, golf carts, loud music, lights, cups, or beer bottles." But that argument is unpersuasive. The officers arrived about an hour after the flyer advertised that the "ALL NIGHT" party would begin, and a reasonable officer could think it unremarkable that most young people would arrive fashionably late. Consistent with the facts known to the officers, a small party could have been taking place inside. Likewise, a reasonable officer could find unremarkable the lack of cars an hour after the advertised start time. As the trial court in the criminal case explained, "[fourteen]-year-olds don't have cars." And it strains credulity to suppose that there was "no evidence" other than the flyer. As the officers approached the house, Officer Wadsworth reported that he "saw [people] in the house," a fact that supports the information on the flyer. So,

based on a flyer that identified Walsh and the home address, the independent corroboration that Walsh—a recent graduate—lived there, the fact that the flyer was distributed to minors, and the fact that people were present at the house, the officers could continue to reasonably believe that there was a substantial chance of criminal activity. *See Washington*, 25 F.4th at 902.

Nothing in the officers' conversation with Brienza and Walsh undermined their reasonable suspicion of underage drinking. Indeed, after Brienza and Walsh opened the door, the officers could hear other people inside. And Walsh later admitted that there were four people in the house, evidencing that at least a small gathering was taking place. To be sure, Walsh also asserted that "everyone [wa]s over the age of [twenty-one]," and he denied making or distributing the flyer, but neither reasonable suspicion nor probable cause "require officers to rule out a suspect's innocent explanation for suspicious facts." *See Wesby*, 138 S. Ct. at 588. The officers were "not required to believe" Walsh's denials "or to weigh the evidence in such a way as to conclude that probable cause did not exist" because "police officer[s] need not resolve conflicting evidence in a manner

favorable to the suspect." *Washington*, 25 F.4th at 902. The flyer that was distributed to minors at a high school and the presence of people inside the house furnished "plenty of reasons to doubt" Walsh's assurances. *Id.* (quotation omitted).

We conclude that probable cause and at least reasonable suspicion existed to detain Brienza on the porch to investigate underage drinking, barring a claim for false arrest under the Fourth Amendment. *See Williams v. Aguirre*, 965 F.3d 1147, 1158 (11th Cir. 2020) ("[T]he any-crime rule ... insulates officers from false-arrest claims so long as probable cause existed to arrest the suspect for *some* crime, even if it was not the crime the officer thought or said had occurred."). And because Brienza's first premise—the "reasonable articulable suspicion the officers had regarding an alleged 'illegal party' at ... Walsh's house evaporated within minutes of their arrival at the residence"—is wrong, his second premise—that, as a voluntary encounter, he "was not required to answer any questions, let alone produce identification"—is also wrong. Brienza does not contest that, if there was first reasonable suspicion to detain him, there was probable cause to arrest him for obstruction.

Brienza v. City of Peachtree City, Georgia, 21-12290, 2022 WL 3841095, at *6–7 (11th Cir. 2022).

Williams was engaged in a DUI traffic stop when he received a call from Greer who, at approximately 9:35 p.m., inquired if Williams knew about a flyer which had been going around inviting underage kids to a party on Plantain Terrace and which had been posted on the "Life in the PTC Bubble Facebook page." Greer advised Williams of the details of the flyer and advised that the principal of McIntosh High School was willing to contact parents and alert them to what was going on.

Williams had no knowledge of the flyer prior to the call from Greer. He advised Greer that he should tell the principal at the high school to do whatever she needed to do, and that he would have officers go to the subject residence to investigate what was going on. After receiving Greer's telephone call and after reviewing the post and flyer, Williams decided to go to the residence himself to investigate possible underage drinking; Wadsworth also went to the residence to assist Williams.[3]

The prevention of underage drinking is an important issue for Peachtree City law enforcement

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[3] It is undisputed that, prior to the arrival of respondents at the Walsh residence, Brienza and Walsh were aware that police officers were headed in their direction. While this issue is omitted from the current petition, the record below confirms that, prior to respondents' arrival, Brienza and Walsh had been contacted by a friend who advised that the subject flyer had been posted on Peachtree City's Facebook Page and that Peachtree City Police officers were on their way to the residence.

and Williams treated such incidents with priority. Based on the foregoing, Williams and Wadsworth clearly had reasonable suspicion of potential criminal activity at the subject residence, which suspicion continued throughout their encounter with petitioner, and arguable cause to investigate the same. It is undisputed, and not contested by petitioner, that the actions by respondents after they arrived at the residence were undertaken within their discretion as duly certified law enforcement officers.

The audio recordings[4] of the interactions between respondents, Brienza, and Walsh confirm that Brienza interfered with and hindered a lawful investigation of potential underage drinking at the Walsh residence, amply supported by reasonable suspicion. Thus, Brienza attempted to speak for Walsh and advised him not to answer the officers' questions, in addition to refusing to provide his name and date of birth. Petitioner's representation that probable cause did not support his arrest for obstruction because it was based solely on his refusal to identify himself is inaccurate and his reliance on language in the citation that he was arrested for refusing to identify himself, is unavailing and is not

[4] At the time of the incident, the Peachtree City Police Department did not issue body-worn cameras to its officers; however, audio of Williams' and Wadsworth's approach to the residence and their subsequent interactions with Walsh and Brienza on the porch of the residence were recorded on respondents' dash cameras, which audio recordings were tendered into the record in the district court.

dispositive on the issue of probable cause for his obstruction arrest.[5]

Following petitioner's arrest, the Solicitor General for Fayette County prepared an accusation upgrading the charges from a municipal ordinance violation to state charges for violation of O.C.G.A. § 16-10-24(a) (Obstruction of a Law Enforcement Officer) and for violation of O.C.G.A. § 16-11-39 (Disorderly Conduct). Neither Williams nor Wadsworth played any role, nor were they involved in any manner, in the Solicitor General's decision to upgrade the charges from an ordinance violation to state charges. Before petitioner's criminal trial commenced, the Solicitor dismissed the disorderly conduct charge and proceeded only with the state law obstruction charge, again without input or influence from respondents.

At petitioner's criminal trial, his counsel filed a motion for directed verdict after the close of the State's case, arguing that probable cause was lacking for the obstruction charge as a matter of law and that no question was presented for a jury to consider. The trial judge denied the motion based on his determination that the evidence submitted by the State was sufficient to support a conviction by the jury

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[5] *See*, *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004) (Our cases make clear that an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause.); *see also*, *Williams v. Aguirre*, 965 F.3d 1147, 1162 (2020) ("We also acknowledge that the any-crime rule undisputedly applies to warrantless arrests under the Fourth Amendment.…")

on the state law obstruction charge.[6] He also addressed and rejected the argument by petitioner's counsel that his client had been arrested, and was prosecuted, *solely* for refusal to provide his name and date of birth and that, because this was a Tier I encounter, he could not have been lawfully arrested and charged with obstruction. The judge's comments in this regard are compelling.

> All right. So, I stand by my original pronouncement taking the evidence in light most favorable to the non-moving party. We have a reason for the officer to be there. I believe that the into one of two things; whether there is underage drinking at the house; whether there is a false and was considering that and I do believe that any refusal to or just the

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[6] While admittedly not binding for a federal malicious prosecution claim, Georgia law provides that where a trial judge denies a motion for directed verdict at the close of the State's evidence, the same conclusively establishes the existence of probable cause for the prosecution. *See*, *Monroe v. Sigler*, 256 Ga. 759, 761 (1987). ("When the trial judge, having heard all of the state's evidence, considers a motion on behalf of an accused (the accused being present and given an opportunity to be heard in support of the motion); and when the trial judge rules that the evidence is sufficient *as a matter of law* to support a conviction (that is, is sufficient to enable a rational trier of fact to find each and every element of the guilt of the accused beyond a reasonable doubt), we can see no reason why such a holding—unreversed and in the absence of fraud or corruption—should not suffice as to the existence of probable cause. Compare the doctrine of collateral estoppel, *Usher v. Johnson,* 157 Ga. App. 420 (1981).") *See also*, *Remeneski v. Klinakis*, 222 Ga. App. 12, 14 (1996).

> statements he made, each time he made a statement that did, according to the evidence of both Officer Williams and Wadsworth, that did create an impediment to the investigation -- and it doesn't have to be a slight or long impediment -- and so I think again taking the light most favorable to the non-moving party, the motion will be denied.

Trial Transcript, Day One, pp. 172-73.

> I think that it is pretty clear that there was an investigation by Williams and Wadsworth, and they were walking up to the door to investigate and I think they could have been investigating underage possession. I think they could have been investigating how they got that flyer. Could that lead to a false report of a crime? And I believe that if I called that a Tier II last time, I think I was wrong. I think it's a Tier I. I think they had the right to ask the questions. I think Mr. Brienza had the right to walk away. And I think if he walks away…that can't be the obstruction…for his investigation. I think Mr. Brienza has the right to say, "I'm not going to answer." He has the right to turn away and if he walks away they can't arrest him. . . . I think the investigation wasn't just with Tyler Brienza, that the investigation was with Brian Walsh. Brian Walsh was speaking

> to the officers. Brian Walsh was willing to speak to the officers. Brian Walsh was giving some information to the officers. I think that's the evidence that we have that's been presented. And anywhere between two and four times, there was an interjection, "We don't answer questions." And I think that Mr. Brienza for himself can say that, "I don't answer questions." But Mr. Brienza has no agency over Mr. Walsh; had no control over Mr. Walsh. And if Mr. Walsh wants to talk to the officers, Mr. Walsh could talk to the officers. So I think that we really do have an issue here which is, "Did that interjection two to four times, did that interfere with their investigation?" The officers have testified that there was an impediment. So I think that the jury question remains is, "If it was ten seconds, ten minutes, ten hours; is that the obstruction?" So I think that there was a right to investigate and the evidence is that there was an interference. It can be argued whether it was slight or whether it was great and it's going to be up to a jury, I believe, to determine whether that interference leads to obstruction.

Trial Transcript, Day Two, pp. 3-5.

Moreover, Walsh testified by deposition in the district court action that he never asked Brienza to speak on his behalf nor did he authorize Brienza to

speak on his behalf. (Walsh Dep. pp. 24-25). As noted by the trial judge, Brienza interrupted Williams several times in connection with questions Williams posed to Walsh by saying, "we do not answer questions" and "we do not consent to searches."

Respondents reasonably concluded that it was their duty as certified law enforcement officers to identify all persons present in the residence based on the possibility that there had been a party prior to their arrival, that a party might occur after they left the residence, and/or if some incident had occurred before they arrived or might occur after they left.

After several warnings by Williams for Brienza to stop interfering with his investigation, Williams made a discretionary decision to arrest Brienza and asked Wadsworth to issue a citation charging him with violation of Peachtree City Ordinance § 50-2.[7]

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[7] Petitioner was arrested and charged with a violation of Peachtree City Ordinance § 50-2, which provides as follows: "It shall be unlawful for any person to make resistance to *or* knowingly *or* willfully obstruct *or* hinder *or* in any manner interfere with a city employee or any other official of the city in the discharge of such officer's or employee's official duty." (emphasis supplied). In contrast, the language in O.C.G.A. § 16-10-24(a), the statute which the Solicitor General included in the accusation he prepared prior to Brienza's criminal trial, makes it a misdemeanor when someone 'knowingly *and* willfully obstructs *or* hinders any law enforcement officer….in the lawful discharge of his or her official duties…" (emphasis supplied). Despite the more onerous language in the state obstruction statute requiring both knowing *and* willful obstruction, the trial judge nevertheless denied petitioner's motion for directed verdict holding that a jury question existed, based on the evidence provided by the State which, in his opinion, would support a conviction by the jury on the state law obstruction charge.

Following his arrest, Brienza posted bond and was released under normal conditions of pre-trial release without any continuing deprivation of his liberty. The absence of a deprivation of liberty confirms that the prosecution did not constitute a Fourth Amendment seizure, noted by the Eleventh Circuit as follows:

> Here, there was no seizure "pursuant to legal process." *Id.* (quotation omitted); *see Kingsland v. City of Miami*, 382 F.3d 1220, 1235 (11th Cir. 2004), *abrogated on other grounds by Williams*, 965 F.3d at 1159. "In the case of a warrantless arrest, the judicial proceeding does not begin until the party is arraigned or indicted." *Kingsland*, 382 F.3d at 1235. Brienza's "arrest cannot serve as the predicate deprivation of liberty because it occurred prior to the time of arraignment, and was not one that arose from malicious prosecution as opposed to false arrest." *See id.* (quotation omitted). And because "normal conditions of pretrial release" do not "constitute a continuing seizure barring some significant, ongoing deprivation of liberty, such as a

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See, *Stryker v. State*, 297 Ga. App. 493, 494 (2009) (interference with investigation by advising another to disobey officer's order will support a conviction for state law obstruction. *See also*, *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979) ("Whether an officer is authorized to make an arrest ordinarily depends, in the first instance, on state law.")

> restriction on the defendant's right to travel interstate," *id.* at 1236 (quotation omitted), Brienza could not establish a Fourth Amendment malicious prosecution claim.

Brienza v. City of Peachtree City, Georgia, 21-12290, 2022 WL 3841095, at *8 (11th Cir. 2022).

In sum**,** respondents had reasonable suspicion, and arguable probable cause, to investigate a potential underage drinking party at the Walsh residence; Brienza knowingly resisted, obstructed and/or hindered the investigation, both by refusing to identify himself and by interrupting questions posed by Williams to Walsh, who never objected to speaking to Williams and who, in contrast to Brienza, was a resident of the household. Moreover, qualified immunity clearly barred the federal claims against respondents in any event and, as discussed below, petitioner failed to carry his burden to overcome such immunity.

REASONS FOR DENYING THE PETITION

KNOCK AND TALK

Petitioner submits that the encounter on the porch of the Walsh residence between him and respondents constituted a so called "knock and talk." Although this issue is not dispositive in the present case, respondents do not concur with petitioner's position in this regard.

In the law review article identified by petitioner in his brief, Jamesa J. Drake, *Knock and Talk No More*, 67 Me. L. Rev. 25, 34-36 (2014), the author

defines a "knock and talk" as follows: "In practice, the phrase 'knock-and-talk' is a catch-all to explain different iterations of police activity, all of which share the same attribute: one or more law enforcement officers approach a targeted residence *with a predetermined plan to circumvent the warrant requirement and convince the homeowner to let them inside using tactics designed to undermine, if not completely subjugate, the homeowner's free will*." (emphasis supplied)

Under such definition, the present case does not qualify as a "knock and talk." Respondents had indisputable reasonable suspicion, and arguable probable cause, to investigate a potential underage drinking party at the Walsh residence, as confirmed by the district court and Eleventh Circuit. There was no evidence of any predetermined plan by respondents to circumvent any warrant requirements, nor did any evidence exist of any preconceived plan to "convince the homeowner to let them inside and subjugate the 'homeowner's free will.'" First, Brienza was not the homeowner, and was not a resident, tenant, or overnight social guest in the Walsh residence. As such, he had no recognized expectation of privacy afforded to homeowners who may be coerced to consent to a search of their residences, and who are arrested based on what the officers discover, either inside the residence, or based on furtive attempts by officers to look inside the residence from the porch or curtilage of the home for evidence of a crime to justify such entry, to conduct a search, and/or to arrest the homeowner based on what is found inside into the home. In fact, Brienza had no authority to consent or

object to a search of the Walsh residence. Moreover, there was no search of the home, no evidence located in the home or from the curtilage of the home to support an arrest of the homeowner, or anyone else. Brienza was arrested for obstructing respondents' investigation, while in their presence, having nothing to do with the residence or curtilage of the same.

In Justice Gorsuch's opinion denying certiorari in *Bovat v. Vermont*, 141 S. Ct. 22 (2020), he defined a "knock and talk" as an increasingly popular law enforcement tool, where officers "approach a home's front door, knock, and win the homeowner's consent to a search." He further defined such a claim as one where officers "appear with overbearing force or otherwise seek to suggest that a homeowner has no choice but to cooperate" or where the "officers fail to head directly to the front door to speak with the homeowner, choosing to wander the property first to search for whatever they can find." *Id. at 22.* No such activity occurred in the present case and no such activity was alleged by petitioner, in the district court, in his appeal to the Eleventh Circuit, or in the current petition.

The present case does not fit the so called "knock and talk" scenario. Brienza was arrested for committing a crime in the presence of respondents by obstructing their lawful investigation. The fact that the encounter took place on the porch of a residence with which petitioner had no relationship, other than being present to engage in a party he and his friend had planned, is of no consequence. There was no search, the arrest was not based on anything found in any search, there was no force involved, and there was

no physical evidence on which the arrest was based. In sum, to the extent petitioner seeks review on certiorari on the ground that the present case involved a typical knock and talk, this case is not a good choice for review on certiorari.

QUALIFIED IMMUNITY

As this Court is well aware, qualified immunity offers complete protection for government officials sued in their individual capacities as long as their conduct violates no "clearly established statutory or constitutional rights of which a reasonable person would have known." *Thomas v. Roberts*, 261 F.3d 1160, 1170 (11th Cir. 2001), relying on *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

It is axiomatic that respondents were acting within the scope of their discretionary duties as law enforcement officers in connection with their interactions with petitioner, and petitioner has never disputed the same. As such, qualified immunity was implicated (*Bates v. Harvey*, 518 F.3d 1233, 1242 (11th Cir. 2008); *Anderson v. Creighton,* 483 U.S. 635, 638, (1987)) and, as such, the burden shifted to petitioner to demonstrate that, when respondents acted, the applicable law confirmed that "[t]he contours of [a] right [were] sufficiently clear" that *every* "reasonable official would [have understood] that what he is doing violates that right." *Ashcroft,* 563 U.S. at 741 (emphasis added); *Anderson, supra* at 640. The Eleventh Circuit, as do other circuits, places the burden on a plaintiff to demonstrate that the defendant is not entitled to qualified immunity. *Andujar v. Rodriguez,* 486 F.3d 1199, 1203,

n.2 (11th Cir. 2007) ("When it is undisputed … that government officials were acting within their discretionary authority, the burden is on the plaintiff to establish that qualified immunity is not appropriate.")

To discharge his burden, an aggrieved plaintiff is required to satisfy two prongs. "First, a plaintiff must show that a constitutional or statutory right has been violated. Second, a plaintiff must show that the right violated was clearly established." *Fennell v. Gilstrap*, 559 F.3d 1212, 1216 (11th Cir. 2009). "Both elements of this test must be present for an official to lose qualified immunity, and this two-pronged analysis may be done in whatever order is deemed most appropriate for the case." *Avery v. Davis*, 700 F. App'x 949, 951–52 (11th Cir. 2017). *See also*, *Pearson v. Callahan*, 55 U.S. 223, 236 (2009); *Case v. Eslinger,* 555 F.3d 1317, 1326-27 (11th Cir. 2009) (discussing *Pearson*). See also, *Jenkins by Hall v. Talladega City Bd. of Educ.,* 115 F.3d 821, 823 (11th Cir. 1997) (For the law to be clearly established, it "must have earlier been developed in such a concrete and factually definite context to make it obvious to all reasonable government actors, in the defendant's place, that 'what he is doing violates federal law.'" (*en banc*), *cert. denied, Jenkins by Hall v. Herring,* 522 U.S. 966 (1997).

In the present case, petitioner sought to carry his burden to demonstrate that the law was clearly established by reliance solely on three cases: *Terry v. Ohio*, 392 U.S. 1 (1968); *Hope v. Pelzer*, 536 U.S. 730 (2002); and *Florida v. Bostick*, 501 U.S. 429 (1991). None of these cases carried petitioner's burden on the

issue of clearly established law in the present case, as correctly determined by the district court and affirmed by the Eleventh Circuit.

To suggest that *Hope v. Pelzer* provides clearly established law in the present case is unsupportable. The petition itself argues strenuously that the law was not clearly established and remains so, and that this Court should clarify the law by holding that probable cause was lacking for petitioner's arrest. In no manner does the present case qualify as an "obvious clarity" case.

Likewise, *Terry v. Ohio* is far too general to carry petitioner's burden for purposes of clearly established law. The critical question for purposes of qualified immunity for respondents is whether a reasonable officer, in the circumstances presented to respondents "*could have*" concluded that probable cause existed to arrest petitioner. *Dawson v. Jackson*, 748 Fed. Appx. 298, 299 (11th Cir. 2018) ("Arguable probable cause exists where reasonable officers in the same circumstances and possessing the same knowledge as the [d]efendant could have believed that probable cause existed to arrest,").

As it relates to the concept of clearly established law in qualified immunity cases, this Court has recently reiterated to lower federal courts that they "must not 'define clearly established law at a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced.'" *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018); *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) ("This

Court has 'repeatedly told courts . . . not to define clearly established law at a high level of generality.'"). "A rule is too general if the unlawfulness of the officer's conduct 'does not follow immediately from the conclusion that [the rule] was firmly established.'" *Wesby*, *supra* at 590.

Simply put, to demonstrate that law is clearly established "demands that a bright line be crossed. The line is not found in abstractions—to act reasonably, to act with probable cause, and so on—but in studying how these abstractions have been applied in concrete circumstances. If case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant." *Post v. City of Fort Lauderdale*, 7 F.3d 1552, 1557 (11th Cir. 1993), modified, 14 F.3d 583 (11th Cir. 1994) (citing *Dartland v. Metropolitan Dade County*, 866 F.2d 1321, 1323 (11th Cir.1989)).

With these factors in mind, it is respectfully submitted that the final case relied upon by petitioner to demonstrate that the law was clearly established and, accordingly, that qualified immunity was not applicable, *Florida v. Bostick*, was correctly distinguished by the district court as follows:

> But in *Bostick*, officers *randomly* stopped a bus rider and arrested him when he refused to let them search his luggage. This Court has since distinguished cases such as *Bostick* from cases in which the officers conducted a stop based on reasonable suspicion that the suspect

> was committing or had committed a crime.
>
> For instance, in *Gainor v. Douglas County*, 59 F. Supp. 2d 1259, 1282 (N.D. Ga. 1998), the plaintiff was arrested for obstruction after he refused to identify himself. This Court held that the officers had probable cause to arrest him because they were "investigating a matter for which the facts known to the officer supported the stop," as compared to a scenario where "the officer seemingly had no reason for stopping [the suspect]." *Id.* (internal citation omitted). The Court reasoned that "under Georgia case law dealing with the offense of obstruction, the standard for determining whether an officer was lawfully discharging his duties such that a refusal to provide identification would constitute obstruction is whether a reasonable suspicion existed to stop the individual charged with obstruction." *Id.* (citing *Holt v. State*, 487 S.E.2d 629 (Ga. Ct. App. 1997), and *Brooks v. State*, 425 S.E.2d 911 (Ga. Ct. App. 1992).

Following the grant of summary judgment in favor of respondents on the federal claims by the district court, the Eleventh Circuit affirmed the district court's conclusion that qualified immunity applied and decided that the federal claims against respondents failed as a matter of law. In the present case, petitioner has not identified any applicable law

to overcome such immunity nor has he provided any plausible arguments to support the proposition that the law was clearly established such that qualified immunity would not have application in the present case. Having failed to carry his burden regarding clearly established law in the courts below, it is difficult to fathom why this Court would review the present case on certiorari to address solely whether probable cause existed to support petitioner's arrest, the first prong of the qualified immunity analysis.[8]

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[8] As noted, respondents submit that qualified immunity shielded respondents from liability in the present case, independent of whether probable cause existed in fact. Nevertheless, respondents do not concur with the position advanced by petitioner that probable cause was lacking for his obstruction arrest.

Thus, in *Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County*, 542 U.S. 177 (2004), this Court affirmed a conviction based on Nevada's "stop and identify" statute. The statute authorized law enforcement officers, armed only with reasonable suspicion that a person had committed, was committing or was about to commit a crime, to detain such person and ascertain his identify, and to make an arrest if he failed to identify himself. As in *Hiibel*, the detention of petitioner in the present case was based on reasonable suspicion. Also, as in *Hiibe*l, petitioner herein was not required to provide "credible and reliable" confirmation of his identity and was only required to identify himself.

Because the Nevada statute did not impose any obligation beyond answering the officer's request to disclose his name, this Court upheld his conviction, noting that a statute requiring a suspect to disclose his name during a valid *Terr*y stop is "consistent with Fourth Amendment prohibitions against unreasonable searches and seizures." *Id.* at 188. Additionally, in *Hiibel,* this Court identified O.C.G.A. § 16-11-36(b) as a "stop and frisk" statute, which statute authorizes an officer to require identification in what is essentially a *Terry* stop. Finally, Georgia law authorizes an arrest for obstruction based on a person's

Moreover, as noted above, any determination that probable cause was lacking to support petitioner's arrest would not alter the conclusion that the federal claims against respondents cannot succeed because both prongs of the qualified immunity analytical framework must be satisfied to overcome such immunity.

SPLIT IN CIRCUIT COURTS OF APPEAL

Petitioner posits that a split in the Circuit Courts of Appeal exists, which he contends warrants the grant of certiorari in the present case to resolve the same. Respondents respectfully submit that there exists no split in the Circuit Courts of Appeal which would warrant review on certiorari in the present case, and that the cases relied upon by petitioner in

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interference with a lawful investigation by telling a friend to disobey the officer's instructions, as occurred in the present case. *See*, *Stryker*, *supra* at 494; *Michigan*, *supra* at 36.

In the present case, petitioner's arrest for violation of the city's municipal ordinance for obstruction was lawful, was supported by probable cause, and was based not only because he refused to provide his identity, but also because he interfered with respondents' lawful investigation of potential underage drinking. *See, e.g.*, *Devenpeck, supra* at 153.

In any event, respondents respectfully submit if a state statute requiring a suspect to identify himself during a *Terry* stop, supported only by reasonable suspicion, does not violate a suspect's Fourth Amendment rights, and where, as here, the actions of petitioner in the present case are clearly recognized under Georgia law as providing probable cause for an obstruction arrest, a different outcome is not warranted simply because the arrest is based on violation of a municipal ordinance, or a state law obstruction statute, and constituted an arrest which was clearly authorized under Georgia law.

this regard are inapposite. Petitioner relies on the following cases to support his contention regarding a purported conflict in the Circuit Courts of Appeal on the issues in the present case: *Webster v. Westlake*, 41 F.4th 1004 (8th Cir. 2022); *U.S. v. Perea-Rey*, 680 F.3d 1179 (9th Cir. 2012); *Soza v. Demsich*, 13 F.4th 1094 (10th Cir. 2021); and *U.S. v. Lindsey*, 482 F.3d 1285 (11th Cir. 2007). In addition, petitioner relies on this Court's decision in *Florida v. Jardines*, 569 U.S. 1 (2013).

In *Jardines*, a homeowner, charged with trafficking in cannabis and theft of electricity, moved to suppress evidence seized from his home pursuant to a search warrant obtained after a police dog sniff was conducted by police officers on the front porch his home during which the dog alerted for an odor of marijuana emanating from the home. The sole issue in the case was whether the search of the home pursuant to a warrant, following the positive alert by the police canine on the porch, constituted a "search" within the meaning of the Fourth Amendment. Justice Scalia, writing for the majority, held that the officers' use of a drug-sniffing dog on the front porch of the defendant's home, based solely on an unverified tip that marijuana was being grown in the home, was a trespassory invasion of the curtilage of the home and constituted a "search" for purposes of the Fourth Amendment.

In the present case, petitioner was not an owner, resident, tenant, or overnight social guest in the Walsh residence; the Walsh residence was never searched; no warrant was sought or obtained to conduct any search; no contraband was found in the

home to support petitioner's arrest; and there was no arrest of the owner of the Walsh home based on drugs or other materials found the home.

In *Webster*, a homeowner had been arrested under an Iowa statute for "interference with official acts" arising from an attempt by police to conduct a welfare check on the homeowner's child after a school nurse had found marks, abrasions and bruising on her 7-year-old daughter's legs. Noting that the Iowa statute required "active interference," and not merely a refusal to cooperate, the Eighth Circuit decided that the officers lacked probable and arguable cause to arrest her under the statute. The Court noted that the officers had not applied for a search warrant, had not applied for a removal order of the child from the home, and that the officers lacked any evidence to conclude that the mother had harmed her child, because the child had advised authorities that it was her father who had disciplined her. The present case involves no such facts and the precedent from *Webster* in no manner supports petitioner's contention that it creates a conflict within the Circuits which, in turn, would warrant the grant of his petition for a writ of certiorari.

In *Perea-Rey*, border patrol agents watched a man climb over the Mexico-United States border fence and followed him as he took a taxi to his home. An agent watched a suspected undocumented alien walk through a gated entrance to the home and knock on the front door. The agent followed this individual through the front door, around the side of the house and into the carport. He found the suspect there, standing with Perea-Rey in front of a side door

entrance to the home, and detained both men until other agents arrived. Perea-Rey was indicted on three counts of harboring undocumented aliens who were found in his home.

He filed a motion to suppress regarding the undocumented aliens found in his home. The district court held that the carport was within the curtilage of the home, but that there was no reasonable expectation of privacy because it could be observed from the sidewalk. As such, the district court determined that Perea-Rey's Fourth Amendment rights were not violated by the officers' entry into the carport, knocking on the side door and ordering people in the house to come out.

The Ninth Circuit reversed, holding that a warrantless incursion into the curtilage of Perea-Rey's home by the border patrol agents and the resulting searches and seizures violated his Fourth Amendment rights. The *Perea-Rey* case does not break any new ground and does not create any split in the Circuit Courts of Appeal. There was no entry into the Walsh residence and Brienza was not arrested based on any evidence found inside the home. He was arrested for hindering and interfering with a lawful police investigation, amply supported by reasonable suspicion, and arguable probable cause. There is no parallel between the issues in *Perea-Rey* and the present case.

In *Soza*, a homeowner filed a damages action against police officers who detained him on the front porch of his home with guns drawn, handcuffed him, and patted him down as part of a burglary

investigation. The Tenth Circuit held that the officers' actions in immediately drawing their guns and handcuffing him, when they only had reasonable suspicion that he had committed a recent home invasion, violated his Fourth Amendment rights.

In its analysis, the Tenth Circuit stated that plaintiff had to demonstrate that the law was clearly established that the actions of the officers *in immediately drawing their guns and handcuffing him*, when they had only reasonable suspicion, but not probable cause, that he had committed a recent home invasion, constituted an unconstitutional arrest as opposed to a lawful investigative detention. In the final analysis, the Court held that plaintiff had failed to carry his burden to overcome qualified immunity in any event to demonstrate that the law was clearly established in this regard. The focus of the Court's analysis was the use of handcuffs and guns by the officers where only reasonable suspicion existed that plaintiff had committed the crime of home invasion. No force of any kind was involved in the present case and the arrest of petitioner and the holding in *Soza* can, in no manner, be viewed as creating a split in the Circuit Courts of Appeal for which review of the present case on certiorari is necessary or advisable.

In *Lindsey*, the defendant was convicted in district court of firearms offenses based on evidence discovered during a warrantless search of his vehicle, following an investigatory stop conducted on the strength of an anonymous tip. The Eleventh Circuit held that the officers had reasonable suspicion of criminal activity; that an investigatory stop was warranted; that the officers had probable cause to

arrest the defendant for being a felon in possession of a firearm; that the search of plaintiff's vehicle was justified under the automobile exception to the warrant requirement; and that the other claims asserted by plaintiff were not persuasive.

Lindsey is based on the "automobile exception" to the warrant requirement and had nothing to do with the porch or curtilage of a home, did not involve any so called "knock and talk," and was not, as in the present case, based on Lindsey's conduct in the presence of law enforcement officers.

In sum, none of the cases relied upon by petitioner create any conflict in the Circuit Courts of Appeal which would warrant, or make it advisable, to grant the current petition for certiorari.

CONCLUSION

In the present action, petitioner characterizes this case as a "knock and talk" on the front porch of a residence in which he did not reside, did not own, was neither a tenant nor an overnight social guest. He rejects overwhelming evidence of reasonable suspicion, asserting that respondents were acting solely on a "hunch," based solely on the existence of the flyer which he and Brian Walsh prepared and distributed. Both positions are flawed, do not comport with facts of the case, and were soundly and appropriately rejected by the district court and Eleventh Circuit.

Petitioner seeks a decision from this Court that probable cause was lacking for his arrest for violation of a municipal ordinance for obstruction because, in

his view, the arrest was based solely on his refusal to provide his name and date of birth. He ignores the undisputed fact that he was charged with obstruction of an investigation amply supported by reasonable suspicion, and arguable probable cause, for hindering and interfering with a lawful investigation, both by refusing to identify himself and by interrupting Williams' questioning of Brian Walsh, a resident of the home who offered no objection to answering questions being posed to him. His position on this issue is also flawed and was similarly rejected in the courts below.

There was no search of the residence; there was no evidence seized from the home to support petitioner's arrest; there was no warrantless entry into the home; and the acts on which the obstruction arrest was made occurred in presence of respondents and had nothing to do with the home. As noted, respondents do not concede that probable cause was lacking for petitioner's arrest. Pretermitting this issue, qualified immunity barred the federal claims asserted against respondents in any event, as determined by the district court and Eleventh Circuit. Petitioner herein failed to carry his burden regarding clearly established law in the courts below and has offered nothing on this issue in his petition to alter such a result. As such, qualified immunity barred the federal claims against respondents and the relief sought by petitioner herein regarding the existence or lack of probable cause would not alter that result.

For these reasons, respondents respectfully submit that the present case is not a good candidate for review on certiorari and pray that the current petition be denied.

Respectfully submitted,

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