No. 22-978

In the Supreme Court of the United States

JACKIE JACKSON,

Petitioner,

v.

OHIO,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Ohio

REPLY BRIEF FOR PETITIONER

RAYMOND T. FALLER
SARAH E. NELSON
Hamilton County
Public Defender
230 East Ninth St.
2nd Floor
Cincinnati, OH 45202

STUART BANNER
Counsel of Record
UCLA School of Law
Supreme Court Clinic
405 Hilgard Ave.
Los Angeles, CA 90095
(310) 206-8506
banner@law.ucla.edu

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REPLY BRIEF FOR PETITIONER

I. Ohio's defense of the decision below rests on an erroneous premise.

The crux of our disagreement with Ohio can be found on pages 13 and 14 of the brief in opposition, where Ohio suggests that police officers who work together as a team nevertheless pursue "no common goal" (BIO 13) and thus should not be treated "as acting jointly" (BIO 14). If this were an accurate description of police work, then Ohio's merits argument would be correct. But it is not an accurate description of police work. When a team of police officers converges on a motorist, the officers share the common goals of ascertaining whether a crime has taken place and, if so, of arresting the offender and obtaining evidence of the crime. In their pursuit of these goals, the officers do not act independently of each other, like competing rappers (BIO 13). They are coworkers who act jointly.

This case is a good example. Two Cincinnati police officers, working together, stopped Jackie Jackson's car, ostensibly because his window tint was too dark. Pet. App. 3a. Six more officers arrived within moments. *Id.* at 4a, 19a. Their arrival was clearly not due to chance; they must have been summoned to help the first two officers. Working together, the eight officers searched Jackson and the car. One officer opened the car door, ordered Jackson out of the car, and left the driver's-side door open and hanging into the road. *Id.* at 4a, 17a-18a. Another officer walked Jackson to the rear of the car. *Id.* at 4a. While a group of officers surrounded and searched Jackson, an officer walked over to the open driver's-side door, peered inside with a flashlight, and looked

for contraband. *Id.* at 4a, 18a. Because of their teamwork—because of their joint pursuit of a common goal—the officers found the marijuana cigarette that launched this case.

The question presented is whether, in assessing whether a "search" has occurred under the Fourth Amendment, a court should consider the officers' conduct as a team, or whether it should consider their conduct one by one. Below, the Ohio Supreme Court was clear that the outcome of this case hinges on this choice. The court acknowledged that if a single officer opened the door and looked inside the car for contraband, that would be a search. *Id.* at 8a. But the court rejected the argument that a search takes place where a team of officers does the same. *Id.* at 13a. Because the officer who opened the door did not look inside, and because the officer who looked inside did not open the door, the court held that neither officer conducted a search, and that therefore no search took place. *Id.* at 12a-13a.

So far as we know, no other court has ever adopted this reasoning. Ohio certainly has not provided any examples in its brief in opposition. Every other court, including this Court, analyzes the conduct of the police as a team in deciding whether a search has taken place. Pet. 9-20. It is not hard to see why. Otherwise, the police could evade the Fourth Amendment simply by dividing their work among multiple officers.

II. Ohio misunderstands the lower court conflict.

Because Ohio's argument rests on the faulty premise that teams of police officers lack a common

goal and do not act jointly, Ohio misunderstands (BIO 4-6) the lower court conflict created by the decision below. The conflict is not over how to apply *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (per curiam). As we explained in our certiorari petition (Pet. 16), *Mimms* has nothing to do with the definition of a search.

Rather, the conflict is over how to answer the question presented. Where a team of police officers opens the door of a car, looks inside, and finds contraband, have the police conducted a "search," where the individual officer who opened the door had no intent to look inside for contraband? Every other court to answer this question has said "yes." Pet. 9-11. Below, Ohio said "no." Contrary to Ohio's assertion (BIO 4), this case would have come out differently in all these jurisdictions, because all of them would have held that the officers' conduct amounted to a search.

In *United States v. Ngumezi*, 980 F.3d 1285, 1286 (9th Cir. 2020), for example, the officer who opened the car door had no intent to look inside for contraband. Once the police had access to the car, another officer found a gun inside. *Id.* at 1287. The Ninth Circuit analyzed the conduct of the police collectively and held that a search had taken place. *Id.* at 1289. The Ohio Supreme Court, by contrast, would have analyzed the conduct of the police individually. It would have determined that no individual officer conducted a search, on the theory that the officer who opened the door had no intent to look for contraband, while the officer who found the gun did not open the door.

See also State v. Malloy, 498 P.3d 358, 359, 363-64 (Utah 2021) (holding that a search takes place where an officer opens a car door with no intent to look for contraband and the police find drug paraphernalia); *McHam v. State*, 746 S.E.2d 41, 44, 48 (S.C. 2013), *partially overruled on other grounds*, *Smalls v. State*, 810 S.E.2d 836 (S.C. 2018) (holding that a search takes place where an officer opens a car door with no intent to look for contraband and the police find drugs); *United States v. Meredith*, 480 F.3d 366, 367, 369 (5th Cir. 2007) (holding that a search takes place where an officer opens a car door with no intent to look for contraband and the police find a gun). These cases would all come out differently in Ohio. The Ohio Supreme Court would hold that no search took place because the individual officer who opened the door lacked the intent to look for contraband.

III. Ohio errs in suggesting that this case is a poor vehicle.

Ohio mistakenly claims (BIO 14-16) that this case is a poor vehicle for answering the question presented, on the theory that even if the officers did conduct a search, the search complied with the Fourth Amendment. In fact, the search clearly violated the Fourth Amendment. But this is a question that was not reached below by the majority of the Ohio Supreme Court, because the majority erroneously determined that no search had taken place.

Below, the only justices who reached this issue were the dissenters. They found, correctly, that the police's "conduct was not only a search, it was a fishing expedition and not a constitutional law-enforcement technique." Pet. App. 15a. After watch-

ing videos of the search taken by the police themselves, the dissenters concluded:

> Eight officers—not one of whom had a tint meter—stopped Jackson for an alleged tint violation, opened his door, moved him to the rear of his car, patted him down, left the door open in moving traffic, and then invaded the otherwise private space of his car. By any objective standard, the videos do not provide competent, credible evidence that these officers conducted a lawful search for evidence of a crime throughout their encounter with Jackson.

Id. at 31a.

If this Court grants certiorari and decides that a search took place, we believe the state courts will agree that the search was unlawful. That issue remains to be litigated on remand. But this is hardly a reason to deny certiorari on the antecedent question of whether a search took place at all. Many of the Court's decisions result in further litigation in the lower courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RAYMOND T. FALLER
SARAH E. NELSON
Hamilton County
Public Defender
230 East Ninth St.
2nd Floor
Cincinnati, OH 45202

STUART BANNER
Counsel of Record
UCLA School of Law
Supreme Court Clinic
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Los Angeles, CA 90095
(310) 206-8506
banner@law.ucla.edu