No. 23-1257

IN THE

# Supreme Court of the United States

SANTOS ARGUETA, *et al.*,

*Petitioners,*

*v.*

DERRICK S. JARADI,

*Respondent.*

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

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

The questions presented are:

1. Whether the Fourth Amendment prohibits a police officer from shooting a suspect who is running in limited lighting holding a semi-automatic pistol augmented with a high-capacity ammunition extension when the armed suspect is moving in a way that could indicate to a reasonable officer the suspect poses an imminent risk of serious injury or death to an officer or others.

2. Whether the Court finds it appropriate to change its established precedent holding under the Fourth Amendment that the reasonableness of force used by an officer is a pure question of law, to a question of fact that must be decided by a jury.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**The Fourth Amendment to the Constitution of the United States provides:**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## STATEMENT OF THE CASE

### A. Factual Background

This lawsuit arises from the fatal shooting of Luis Argueta as he ran through a residential neighborhood grasping a semi-automatic handgun with an expanded ammunition extension protruding from Argueta's weapon. (App.1-2) (ROA.13-42, 453, 477, 582, 586). The following events preceded the shooting:

Galveston police officer Derrick Jaradi and his police partner-trainee, Officer Matthew Larson, were on duty in a marked police vehicle. (App.2) (ROA.430-31, 440, 450, 482, 577, 612-13). Officers Jaradi and Larson first saw Argueta walk away from a convenience store and enter a Ford Fusion parked in the parking lot. (App.2) (ROA.431, 440, 450, 582). At approximately 2:49 a.m., Officer Jaradi drove his police vehicle into the same convenience store parking lot, while observing activities in and around the store. (App.2) (ROA.431, 440, 450, 456, 487 at 2:55, 488

at 1:41, 625-26, 836-37). Shortly after the police vehicle entered the lot, Argueta drove out of the lot. (App.2) (ROA.431, 440, 450, 457, 487 at 3:04, 488 at 2:03, 628-29, 836-37, 1218). Although the officers were not aware of the conversations occurring inside Argueta's vehicle, Argueta's passenger Maryann Luna, later reported Argueta was paranoid because the cops had come. (App.2) (ROA.581, 1204).

Shortly after Argueta drove out of the lot, Officer Jaradi drove the police vehicle out of the lot and observed that Argueta's vehicle was not in sight. (App.3) (ROA.431, 440, 450, 457, 487 at 3:14, 488 at 2:14, 630-31, 836-37). While patrolling the surrounding area, Officer Larson saw Argueta's vehicle with its lights turned off. (App.3) (ROA.432, 440, 450, 457, 599 at 0:00, 634-36). As Officer Jaradi drove in the direction of Argueta's vehicle, the officers saw Argueta's vehicle drive through an alleyway without headlights or taillights illuminated, in violation of Texas Transportation Code §547.302. (App.3) (ROA.432, 441, 450-51, 457, 582, 599 at 0:08, 637-38, 836-37, 1231-32). The patrol car followed Argueta for a few blocks before officers turned on emergency lights. (App.3).

Based on reasonable suspicion to believe the driver of the Fusion violated the Texas Transportation Code, Officer Jaradi drove the police vehicle behind the Fusion and activated the police car's emergency lights. (App.3) (ROA.432, 441, 450-51, 457-58, 582, 599 at 0:35, 642-44, 836-37). Argueta continued driving for roughly two blocks before he pulled over. (App.3) (ROA.432, 441, 451, 458, 599 at 0:37, 645-47, 836-37, 1235). Officer Jaradi transmitted over the police radio that Argueta's vehicle was not stopping. (ROA.432, 441, 451, 583, 645-46, 1235).

Argueta drove until he reached the 5300 block of Avenue L. (ROA.432, 441, 451, 486 at 0:00, 583, 599 at 1:02, 664). Although the officers were not aware of the conversations occurring inside Argueta's vehicle, Luna later reported Argueta stated he had to go, he had to run, even though Luna asked Argueta to stay inside his vehicle. (ROA.452, 581). When the Fusion stopped, Argueta stepped out of the driver's door and ran diagonally in front of the patrol vehicle across the street. (App.3, 9) (ROA.433, 444, 451, 453, 458, 583, 599 at 1:05, 666). Argueta's movement from the Fusion is "illuminated only minimally by streetlight and very briefly by police flashlights." ROA.9.

As he exited his vehicle, Argueta initially held his right arm and hand down alongside the right side of his body, as if Argueta was trying to conceal his right arm and hand from officers. (App.3, 9, 14, 14, 16, 17) (ROA.432, 441, 451, 599 at 1:06, 600, 645-46). Officer Larson exited the patrol vehicle on the passenger side to pursue Argueta. (ROA.433, 442, 451, 458, 485 at 0:04, 486 at 0:06, 583, 599 at 1:08, 836-37, 1235-36).

Simultaneously, Officer Jaradi stepped out of the driver's door of the patrol vehicle. (ROA.433, 442, 451, 458, 485 at 0:04, 583, 647-48, 836-37, 1235-36). After which Argueta ran diagonally in front of Officer Jaradi across the street toward a dark parcel of land in a residential neighborhood. (App.9) (ROA.433, 442, 451, 485 at 0:05, 583, 599 at 1:08, 647-48, 836-37, 1235-36). As Argueta ran through the neighborhood, he was grasping a semi-automatic handgun with an expanded ammunition extension protruding from his weapon. (App.4, 15, 14, 17) (ROA.433-35). As Argueta ran, he concealed his right

hand from Officer Jaradi's view by Argueta keeping his right hand near his right hip with the core of his body between him and Officer Jaradi. (App.3, 9, 14, 16, 17).

[1, 2]

[3]

1. ROA.485 at 0:06, 600.
2. ROA.485 at 0:06, 600.
3. ROA.485 at 0:06, 601.

[4]

Officer Jaradi was concerned he could not, if necessary, react in time to stop an attack. (App.3) (ROA.433). Therefore, to be more prepared to act to defend himself with his pistol by reducing the time needed to react to a potentially deadly threat, Officer Jaradi unholstered his duty firearm and shouted for Argueta to get his hand out of his pocket. (App.36) (ROA.431-34, 442, 451, 477, 485 at 0:11, 582-83, 651-52, 656-58, 836-37). Sensing the potential Argueta might attack, Officer Jaradi raised his firearm to a ready position at his chest and pointed the gun toward Argueta, who continued to move diagonally. (ROA.433, 442, 451, 485 at 0:07). Two independent witnesses confirmed hearing police commands for Argueta to "get down" before Officer Jaradi fired. (App.9) (ROA.452-54).

There are moments when Officer Jaradi's extended arms and hands partially blocked some of what the recorder could view from the body-worn camera affixed to the front of Officer Jaradi's shirt. (App.9) (ROA.462-63, 485 at 0:08, 603-07). Nonetheless, still images from frames of Officer Jaradi's body-worn camera recordings depict

4. ROA.485 at 0:06, 602.

the general direction of Argueta's path of movement, the relative positions of Argueta's body and Officer Jaradi as Argueta moved laterally in front of Officer Jaradi, the relative position of Argueta's right arm and hand at various points in time when Argueta's right arm and hand were concealed from Officer Jaradi's view entirely. (ROA.433-34, 451, 485 at 0:08, 600-09). While Argueta crossed the street in front of Officer Jaradi and reached the dark lot, when Argueta extended his right foot forward Argueta's chest was facing Officer Jaradi, and as Argueta extended his left foot forward Argueta's back was facing Officer Jaradi. (ROA.485 at 0:07, 605).


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5. ROA.485 at 0:07, 605.

6. ROA.485 at 0:08.

Recordings made from the body-worn camera attached at chest-level to Officer Jaradi's shirt do not provide the identical point of view as Officer Jaradi's eyes, which had a higher vantage point looking over the handgun Officer Jaradi held in front of his chest, and Officer Jaradi's head could swivel much differently than his chest, where the camera was mounted. (App.9) (ROA.433-35, 485 at 0:08, 600-09). "The bodycam footage is not of the highest resolution and is filmed from the vantage of [Officer] Jaradi's chest rather than eyes, which creates a partially obscured view of Argueta after [Officer] Jaradi raises his gun." (App.9).

Officer Jaradi saw Argueta move his right hand toward the front of Argueta's body at which point Officer Jaradi could see Argueta was holding a handgun with a high-capacity ammunition extension in his right hand. (ROA.434, 451, 465). Argueta held his firearm in a position from which only a slight motion of Argueta's hand would have resulted in Argueta's handgun pointed at Officer Jaradi had Argueta decided to fire upon Officer Jaradi, at which point Officer Jaradi would not have had the ability to respond in self-defense. (ROA.434, 451, 464-65).

Officer Jaradi, who was trained regarding the scientific principle of *action versus reaction*, fired two shots at Argueta, who was approximately 15 feet away, within a range to kill or seriously injure Officer Jaradi with Argueta's gun. (ROA.434-35, 442, 451, 464-65, 485 at 0:11, 486 at 0:07, 590, 600-08, 652-55, 828-29, 836-37). Argueta fell onto his back still holding his gun in his right hand. (ROA.435, 442, 451-52, 485 at 0:12, 486 at 0:11, 583, 608-09, 653-55, 823-25, 836-37, 1237).

[7]

Because Argueta was still holding his gun, Officer Jaradi shouted for Argueta to put his hands up, drop the gun, and not reach for it. (ROA.435, 452, 485 at 0:11, 486 at 0:11, 836-37). Initially, Argueta failed to comply. (ROA.462, 485 at 0:13, 486 at 0:13, 836-37). Officer Jaradi called for emergency medical service personnel. (ROA.435, 452, 485 at 0:20, 486 at 0:20, 836-37). Officers Larson and Jaradi continued to shout commands for Argueta to drop his gun, in response to which Argueta ultimately complied. (ROA.435, 442, 452, 485 at 0:28, 486 at 0:23, 823-25, 836-37).

Officer Larson directed Argueta to roll onto his stomach. (ROA.435, 442, 452, 485 at 0:30, 486 at 0:30, 590, 836-37). Officer Jaradi kicked Argueta's gun away from Argueta's reach. (ROA.435, 442, 452, 485 at 0:46, 486 at 0:43, 590, 836-37). Officer Charles Thompson arrived with a first aid kit and applied pressure to Argueta's wound. (ROA.435, 442, 453, 471). EMS arrived soon thereafter

7. ROA.486 at 0:16, 823.

and took Argueta to a hospital. (ROA.442, 452). Argueta passed away at the hospital. (ROA.452).

### B. Procedural History

Santos Argueta, Blanca Granado, Dora Argueta, Tomas Argueta, and Jelldy Argueta individually and on behalf of Luis Argueta's estate filed suit against Officer Jaradi. (App.2, 4) (ROA.13-42).

Officer Jaradi filed his answer and defenses, including qualified immunity. (ROA.65-70, 72-89). After discovery concluded, Officer Jaradi moved for summary judgment. (App.4) (ROA.380-837, 927-1376, 1393-1418). Officer Jaradi asserted qualified immunity in his summary judgment motion. (App.4) (ROA.380-837, 927-1376, 1393-1418).

The district court issued an order denying summary judgment to Officer Jaradi. (App.4) (ROA.1491-1510). Officer Jaradi timely filed a notice of interlocutory appeal. (ROA.1511-1512).

A panel of the United States Court of Appeals for the Fifth Circuit reversed the district court order denying summary judgment and rendered judgment in favor of Officer Jaradi. (App.18).

Petitioners, thereafter, petitioned the Court.

## SUMMARY OF THE ARGUMENT

The Court should not grant certiorari because the first question Petitioners present does not accurately state a material issue in this litigation, and the Court

has previously answered the second question Petitioners present.

The evidentiary record does not support the factual premises of Petitioners' first issue, that Argueta *might be holding a gun* while fleeing detention, but Argueta *exhibited no other signs of dangerousness*. The evidence establishes Argueta *was* holding a gun augmented with a high-capacity ammunition extension that made the gun potentially more dangerous.

In addition to the evidence the Fifth Circuit Court found proved Argueta was holding a gun augmented with a high-capacity ammunition extension, Officer Jaradi further testified he saw Argueta holding the gun with the ammunition extension.

Officer Jaradi testified he saw Argueta moving the firearm forward and away from his right side where Argueta had previously concealed it. Officer Jaradi testified he saw Argueta hold his pistol in a position from which only a slight motion from Argueta's hand would have resulted in his handgun pointed directly at Officer Jaradi, and had Argueta started to fire, Officer Jaradi would not have had the ability to act in self-defense.

Without citing evidence supporting the argument, Petitioners argue a jury might not believe Officer Jaradi's testimony and conclude he could not see the gun Argueta held. But whether Officer Jaradi saw Argueta's gun or not, Argueta held the gun.

Petitioners' first issue also omits a fact that is crucial to evaluating the reasonableness of Officer Jaradi's

response. Argueta's actions and Officer Jaradi's reactions to Argueta's conduct occurred in circumstances officers recognize as low light conditions. *Low light* conditions are not *no light* conditions. The evidence proves light from a streetlight and police flashlights provided some illumination. Video evidence demonstrates many of Argueta's actions were visible during Argueta's movement from his vehicle to the location where he was shot. Officer Jaradi obviously saw Argueta well enough to fire gunshots that struck Argueta.

Despite this evidence, Petitioners argue Officer Jaradi did not admit into evidence a recording depicting Argueta holding his gun at the instant he was shot so, Petitioners argue, a jury may conclude Officer Jaradi could not see Argueta's gun until after Argueta fell after being shot.

The Court has never held that an officer who shoots an armed suspect during the nighttime is not entitled to summary judgment and must face trial unless the officer files a recording of the armed suspect holding the gun when the officer fired. But this is the interpretation of Rule 56 of the Federal Rules of Civil Procedure that Petitioners' first issue depends on.

The first question Petitioners presented is facially deficient for other reasons as well. Besides holding, or possibly holding, a gun, Argueta exhibited several other signs of dangerousness. Petitioners argue circuit courts generally require indicia of dangerousness other than merely being armed before an officer may seize a suspect by shooting the suspect, but Petitioners admit "[a]ny other warning will do actually." (Petition 3).

In the case at bar, during the nighttime Argueta without explanation exited his vehicle and ran "in such a way that the right side of his body, including his right arm and hand, [wa]s completely hidden in the dashcam video and either obscured or not in focus in the bodycam footage." (App.9). "Rather than swing both of his arms, as one naturally does when running. Argueta swung only his left arm, keeping his right arm purposefully and unnaturally pressed along his right side and out of sight as he ran away." (App.14). Officer Jaradi testified he was concerned Argueta may be reaching for a weapon and Officer Jaradi testified "he was concerned that he could not, if necessary, react with his handgun in time to stop an attack." (App.14).

The evidence proves Officer Jaradi's reasonable concerns for his life were well-founded, regardless of technological limitations of the camera mounted on his chest to record a depiction of the gun in Argueta's hand, and regardless of whether the lack of lighting limited Officer Jaradi's ability to see the gun Argueta wielded. If the lighting was so poor as to inhibit Officer Jaradi from seeing Argueta's gun and his threatening movements, in the context of this case, that also provided other signs of the seriousness of the risk.

From the vantage point of a reasonable officer during these tense, uncertain, and rapidly evolving events, an objective officer could reasonably believe Officer Jaradi's reaction to the several signs of dangerousness Argueta's actions presented was reasonable. Certainly, under the circumstances presented to him, Officer Jaradi did not violate any clearly established constitutional right.

Contrary to Petitioners' argument, this case in no way implicates any gun owner's right to responsibly carry a firearm. Argueta was not mistakenly shot while reasonably exercising a right to gun ownership, but rather because of the threat his actions presented to an officer. An objective officer could reasonably have been concerned for his safety when Argueta responded to merely being pulled over, by grasping a handgun, removing it from his vehicle, running gun in hand attempting to conceal the weapon from Officer Jaradi, and moving the firearm from concealment into a position from which only a slight motion of Argueta's hand would have resulted in the handgun pointed at Officer Jaradi. Officers do not violate the Fourth Amendment by using reasonable force under the threatening circumstances Argueta's choices and actions created.

The second issue Petitioners present needs no further decision by the Court. In *Scott v. Harris*, 550 U.S. 372, 381 (2007), the Court held that, under Rule 56, when a reviewing court determines the material facts relevant to application of the Fourth Amendment, the reasonableness of force an officer used is a pure question of law.

For these reasons, the Court should deny certiorari.

## REASONS TO DENY THE PETITION

### A. The Court should not broaden its summary judgment precedents to require a police officer to corroborate summary judgment testimony with a recording.

The summary judgment evidence proves Argueta's movements were "illuminated," to some degree, by a

streetlight and police flashlights. ROA.9. The evidence proves the recording made from the body-worn camera attached at chest-level to Officer Jaradi's shirt does not depict the point of view of Officer Jaradi's eyes, which had a higher vantage point looking over the top of the handgun Officer Jaradi held in front of his chest. (App.9) (ROA.433-35, 485 at 0:08, 600-09). Officer Jaradi's head could rotate much differently than could the camera mounted on his shirt. (App.9) (ROA.433-35, 485 at 0:08, 600-09).

The Fifth Circuit panel that reviewed the recording found, "[t]he bodycam video is not of the highest resolution and is filmed from the vantage of [Officer] Jaradi's chest rather than eyes, which creates a partially obscured view of Argueta after [Officer] Jaradi raises his gun." (App.9).

"The result of the foregoing is that, from the moment Argueta exit[ed] the vehicle until the moment he is laying on the ground, not one frame of the video evidence presents a clear glimpse of [Argueta's] firearm." (App.9). But the lack of a video recording of Argueta's weapon before the shooting does not change the fact Argueta was armed with a gun when Officer Jaradi fired in self-defense. (App.14-15).

Officer Jaradi provided the following testimonial evidence regarding *the moments immediately before* he fired:

> I subsequently observed Argueta move his right hand toward the front of his body where I could then see he was holding a black colored handgun in his right hand. I observed both the top of the handgun and a high capacity ammunition

> magazine sticking out of the grip of the gun. It is very unusual for a law abiding citizen to utilize a high capacity magazine extension … At this point the gun was visible to me in Argueta's hand and Argueta was moving the firearm forward and away from his right side where he previously concealed it. Argueta held his pistol in a position from which only a slight motion from his hand would have resulted in his handgun being pointed directly at me and had he started to fire, I would not have had the ability to act in self-defense.

ROA.433-434.

Petitioners urge the Court to make inappropriate credibility determinations that summary judgment precedent precludes. Petitioners argue the Court should disbelieve Officer Jaradi's testimony regarding what he saw that led him to believe it reasonable to fire in self-defense. Petitioners' argued rationale is that *a jury might not believe* Officer Jaradi's testimony. But because such an argument could be made in many, if not most, cases in which summary judgment is granted, the Court's precedents directing application of FED. R. CIV. P. 56 forbid such credibility challenges in assessing summary judgment evidence. *See Anderson v. Liberty Lobby*, 477 U.S.242, 255 (1986).

"Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict." *Id.* "[T]he determination of whether a

given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case." *Id*. It is not enough for a non-movant to ask a judge to ignore or disbelieve the summary judgment evidence based solely on the premise a jury might later disbelieve testimony at trial. *See id*.

"Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial." *Id*. at 256. "At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party **only if there is a 'genuine' dispute as to those facts**." *Scott*, 550 U.S. at 380 (emphasis added) (quoting FED. R. CIV. P. 56(c)).

"[T]he plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment. This is true even where the evidence is likely to be within the possession of the defendant, as long as the plaintiff has had a full opportunity to conduct discovery." *Id*. at 257. "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts …" *Scott*, 550 U.S. at 380. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Id*. (quoting *Matsushita Elec. Industrial Co. v. Zenith Radio Corp*., 475 U.S. 574, 586-587 (1986) (footnote omitted)).

The Court has further explained, "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott*, 550 U.S. at 380.

Under Rule 56 and *Scott supra*, "no reasonable jury could conclude that Argueta was visibly unarmed – because he was armed." (App.15). "Here, Argueta was armed with a high-capacity semi-automatic weapon, which he kept out of view as he fled, and needed only a slight turn to begin firing at the officers from close range." (App.14).

Recordings evidence the following. Argueta's movement is illuminated by some lighting. ROA.9. When Argueta exited his vehicle, he initially held his right arm and hand down alongside the right side of his body, which is consistent with trying to conceal his right arm and hand from officers. (App.3, 9, 14, 14, 16, 17) (ROA.432, 441, 451, 599 at 1:06, 600, 645-46). As Argueta ran, for a time he continued to conceal his right hand from Officer Jaradi's view by Argueta keeping his right hand near his right hip with the core of his body between him and Officer Jaradi. (App.3, 9, 14, 16, 17). The general direction of Argueta's path of movement, the relative positions of Argueta's body and Officer Jaradi as Argueta moved laterally in front of Officer Jaradi, the relative position of Argueta's right arm and hand at various points in time when Argueta's right arm and hand were concealed from Officer Jaradi's view entirely. (ROA.433-34, 451, 485 at 0:08, 600-09).

While Argueta ran in front of Officer Jaradi, when Argueta extended his right foot forward Argueta's chest

was facing Officer Jaradi, and as Argueta extended his left foot forward Argueta's back was facing Officer Jaradi. (ROA.485 at 0:07, 605). This natural movement controls whether the bullets struck Argueta in the back or the front of his torso.

Immediately before the recorded view of Argueta's movements is obstructed by Officer Jaradi's hands holding his gun, the recordings depict Argueta's left arm and hand, the elbow area of Argueta's right arm, Argueta's shorts, legs, and shoes. (ROA.599 at 02:59:01, 603). When Officer Jaradi fired, he could see well enough to fire shots that struck Argueta. (ROA.599 at 02:59:08, 608).

To the extent recordings corroborate Officer Jaradi's testimony, recordings provide *additional* evidence. *See Scott*, 550 U.S. at 380. The application of *Scott's* holding regarding recorded evidence ends there. Under Rule 56, a mere lack of recorded evidence corroborating Officer Jaradi's testimony regarding his observations does not negate his testimonial evidence. *See id.*

Nonetheless, Petitioners urge the Court to broaden its precedents beyond the limits of *Scott* and Rule 56 and require Officer Jaradi to file a recording of Argueta brandishing his gun when he was shot for Officer Jaradi's testimony to be credited. The Court has never interpretated Rule 56 to place such a burden on an officer.

In *Craven v. Novelli*, 2024 U.S. App. LEXIS 10834 *7, 2024 WL 1952590 (4th Cir. 2024) (unpublished opinion)), the Fourth Circuit credited officers' testimony "that after Mr. Cravens lowered his hands, he reached toward his waistband and drew a handgun with his right hand,"

even though "[a]ll parties agreed that, at that point in the body camera footage, the Officers' flashlights make Mr. Craven's movements difficult, if not impossible, to discern." This was proper application of Rule 56.

As the Fifth Circuit Court discussed in *Orr v. Copeland*, 844 F.3d 484, 490 (5th Cir. 2016), when applying *Scott*, requiring a recording as a condition of admissibility of testimony "flips Supreme Court precedent on its head." Petitioners' insistence on a recording corroborating Officer Jaradi's testimony regarding facts he saw that led him to believe it reasonable to fire in self-defense "inverses" the *Scott* holding. *Orr*, 844 F.3d at 491.

Although there are moments when Officer Jaradi's extended arms and hands partially blocked some of the view of the body-worn camera affixed to the front of Officer Jaradi's shirt (App.9) (ROA.462-63, 485 at 0:08, 603-07), Officer Jaradi's eyes had a higher vantage point looking over the handgun he held in front of his chest, and Officer Jaradi's head could swivel much differently than the camera mounted on his shirt. (App.9) (ROA.433-35, 485 at 0:08, 600-09).

The Fifth Circuit panel noted "[t]he bodycam footage is not of the highest resolution and is filmed from the vantage of [Officer] Jaradi's chest rather than eyes, which creates a partially obscured view of Argueta after [Officer] Jaradi raises his gun." (App.9).

No recording can reasonably be construed to evidence Officer Jaradi *could not have seen* Argueta's weapon. The recording depicts many details no more challenging for Officer Jaradi to have seen than Argueta's manipulation

of a pistol with the high-capacity ammunition extension. Also, there is no evidence the capabilities of the body-worn-camera were as good as Officer Jaradi's eyes and there is no unobstructed recording of Argueta when he was shot that could prove lack of visibility. No jury could reasonably believe the lighting conditions rendered Officer Jaradi incapable of seeing Argueta's weapon. *Scott*, 550 U.S. at 380.

The Court has never held that an officer who shoots an armed suspect during the nighttime must face trial unless the officer files a recording of the armed suspect holding the gun when the officer fired. If all that is required to create a genuine factual dispute regarding what an officer *could have* seen is argue the existence of low light conditions, Rule 56 is rendered virtually worthless in less than perfect lighting conditions. And even when the lighting is perfect, why couldn't a plaintiff still argue that an officer may not have seen what he saw for some other claimed reason based on an argument challenging the officer's veracity.

Therefore, Petitioners have failed to satisfy their burden to identify facts which controvert Officer Jaradi's testimony regarding his observations. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

"Under Rule 56(c), summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact for trial and that the moving party is entitled to judgment as a matter of law.'" *Celotex*, 477 U.S. at 322 (quoting FED. R. CIV. P. 56). "[T]he plain meaning of Rule 56(c) mandates

the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id*. "In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.'" *Id*. at 322-323. "Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing there is a genuine issue for trial.'" *Id*. at 324.

There is no evidence Officer Jaradi *could not possibly* see Argueta brandish his gun. Accordingly, this is not an appropriate case for the Court's consideration because the entire premise of Petitioners' argument is not supported by the evidence and depends on the Court improperly weighing evidence and making credibility determinations Rule 56 does not permit. *See Anderson*, 477 U.S. at 255. The Court should not broaden its precedents to require an officer to corroborate testimony with a recording.

### B. Determining the reasonableness of force an officer used is a question of law.

In addressing the legal question of whether an officer's actions were reasonable, in *Scott*, 550 U.S. at 381, the Court has rejected the argument such a determination is a fact question reserved for a jury. "At the summary judgment stage, [], once [courts] have determined the relevant set of facts and drawn all inferences in favor of

the nonmoving party *to the extent supportable by the record*,…,the reasonableness of [the officer's] actions -- or in Justice Stevens' parlance, '[w]hether [respondent's] actions have risen to a level warranting deadly force,' post, at 395 -- is a pure question of law." *Id*. at n.8. (emphasis in original).

In *Mullenix v. Luna*, 577 U.S. 7, 10 (2015) (*per curiam*), the Court examined an error a Fifth Circuit panel majority made in *Luna v. Mullenix*, 765 F.3d 531, 538 (2014), when the panel majority initially opined "that the 'immediacy of the risk posed by [a fleeing suspect] is a disputed fact that a reasonable jury could find either way in the plaintiffs' favor or in the officer's favor, precluding [the circuit court] from concluding that [the officer] acted objectively reasonably as a matter of law.'"

In *Mullenix*, 577 U.S. at 10, the Court examined that Fifth Circuit Court Judge Carolyn Dineen King dissented, describing the "'fact issue referenced by the [panel] majority' as 'simply a restatement of the objective reasonableness test that applies to Fourth Amendment excessive force claims,' which she noted, the Supreme Court has held 'is a pure question of law.'" *Luna*, 765 F.3d at 544-545 (quoting *Scott*, 550 U.S. at 381 n.8). The Fifth Circuit panel majority withdrew the initial opinion and substituted it with *Luna v. Mullenix*, 773 F.3d 712 (5th Cir. 2014). "The revised opinion recognized that objective reasonableness is a question of law that can be resolved on summary judgment – as Judge King had explained in her dissent..." *Mullenix*, 577 U.S. at 11.

Later, in addition to discussing the merits of Judge King's dissent in the withdrawn *Luna I* opinion, the

Court's analysis and decision in its *Mullenix* decision confirmed that, whether a given course of conduct poses a risk of harm that justifies deadly force is a legal question for the court's decision, not a factual dispute for a jury that precludes summary judgment. *Id.* at 10-11, 13-19. In *Mullenix*, 577 U.S. at 11-14, the Court also rejected a different, but related error in *Luna II* regarding that panel's opinion "the law was clearly established such that a reasonable officer would have known that the use of deadly force, absent a sufficiently substantial imminent threat, violated the Fourth Amendment." The qualified immunity question is also a legal issue for the court's decision based on the court's analysis of "whether the violative nature of *particular conduct* is clearly established."

When an officer "contend[s] that [his] conduct did not violate the Fourth Amendment and, in any event, did not violate clearly established law," the officer "raise[s] legal issues; these issues are quite different from any purely factual issues that the trial court might confront if the case were tried; deciding legal issues of this sort is a core responsibility of appellate courts, and requiring appellate courts to decide such issues is not an undue burden." *Plumhoff v. Rickard*, 572 U.S. 765, 773 (2014).

The Court has determined that, whether deadly force is unreasonable under the Fourth Amendment or violates clearly established law, in response to a particular course of conduct, are legal questions for the court, not questions of fact for a jury.

### C. Officer Jaradi's reaction to the threat he faced was reasonable under the circumstances Argueta created.

The issue in *Tennessee v. Garner*, 471 U.S. 1, 3 (1985), was "determin[ing] the constitutionality of the use of deadly force to prevent the escape of an apparently unarmed suspected felon." The Court "conclude[d] that such force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officers or others." *Id.*

In *Garner*, Memphis police officer Elton Hymon responded to a prowler call and saw a person run across a backyard. *Id.* The fleeing suspect was Edward Garner. *Id.*

> "With the aid of a flashlight, [Officer] Hymon was able to see Garner's face and hands. He saw no sign of a weapon, and, though not certain, was 'reasonably sure,' and 'figured' that Garner was unarmed."

*Id.* (quoting the evidentiary record).

Garner "began to climb over the fence." *Id.* at 4. "Convinced that if Garner made it over the fence he would elude capture, [Officer] Hymon shot [Garner]." *Id.* "In using deadly force to prevent the escape, [Officer] Hymon was acting under the authority of a Tennessee statute and Police Department policy." *Id.*

The Court decided,

> "Officer Hymon could not reasonably have believed that Garner – young, slight, and unarmed – posed any threat. Indeed, [Officer] Hymon never attempted to justify his actions on any basis other than the need to prevent escape."

*Id.* at 21.

Four years after deciding *Garner*, the Court further refined Fourth Amendment precedent in *Graham v. Connor*, 490 U.S. 386 (1989). "Because 'police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.' [*Graham*, 490 U.S. at 397], the reasonableness of the officer's belief as to the appropriate level of force should be judged from that on-scene perspective. [*Graham*, 490 U.S. at 396]." *Saucier v. Katz*, 533 U.S. 194, 205 (2001). For this reason, the Court has "set out a test that cautioned against the '20/20 vision of hindsight' in favor of deference to the judgment of reasonable officers on the scene." *Id.* (quoting *Graham*, 490 U.S. at 393, 396). Under the objective reasonableness standard "[i]f an officer reasonably, but mistakenly, believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force that in fact was needed." *Id.*

To achieve the principles the Court established through *Graham*, the reasonableness standard and associated qualified immunity must be interpreted consistently by courts with a pragmatic recognition of the material facts melded with an understanding of the Fourth Amendment

that provides officers a legitimate opportunity to protect themselves and save other innocent lives. It is crucial that courts, in interpreting reasonableness, render decisions harmonized with realistic capabilities and legitimate needs of officers and the public officers are duty bound to protect. The Court's decisions have consistently so applied the Fourth Amendment and immunity.

In *Ryburn v. Huff*, 565 U.S. 469, 477 (2012), the Court reinforced the salient principle that appropriate evaluation of whether a set of facts present an imminent threat to safety must be "[j]udged from the proper perspective of a reasonable officer forced to make a split-second decision in response to a rapidly unfolding chain of events…"

Before the Court decided *Ryburn*, the Ninth Circuit "panel majority – far removed from the scene and with the opportunity to dissect the elements of the situation – confidently concluded that the officers really had no reason to fear for their safety or that of anyone else." *Ryburn*, 565 U.S. at 475. The Ninth Circuit majority "recit[ed] a sanitized account of this event." *Id*. at 473.

> "[T]he [Ninth Circuit] panel majority's method of analyzing the string of events that unfolded at the Huff residence was entirely unrealistic. The majority looked at each separate event in isolation and concluded that each, in itself, did not give cause for concern. But it is a matter of common sense that a combination of events each of which is mundane when viewed in isolation may paint an alarming picture."

*Id*. at 476-477.

But under the Court's precedent, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving." *Graham*, 490 U.S. at 396-97. "The Fourth Amendment standard is reasonableness, and it is reasonable for police to move quickly if delay 'would gravely endanger their lives or the lives of others.'" *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 612 (2015) (quoting *Warden Md. Penitentiary v. Hayden*, 387 U.S. 294, 298-299 (1967)).

Officer Jaradi testified he shot Argueta after Officer Jaradi saw Argueta moving a firearm augmented with a high-capacity ammunition extension forward and away from his right side where Argueta previously concealed it indicating a potential escalation of the threat Argueta's actions posed. (ROA.434). Officer Jaradi fired when Argueta held his pistol in a position from which only a slight motion from his hand would have resulted in his handgun pointed at Officer Jaradi. ROA.433-434. "It is hard to imagine that pointing a [pistol] in any direction would not cause a reasonable officer to fear for someone's life." *Wilson v. Meeks*, 52 F.3d 1547, 1553-1554 (10th Cir. 2012) (*per curiam*).

Under the Court's decisions, the force Officer Jaradi used was objectively reasonable. That is so even if Officer Jaradi had not seen Argueta's gun. Officer Jaradi had been trained regarding the scientific principle of action versus reaction. Under this instruction, Officer Jaradi learned an individual who acts first can execute a planned task quicker than can an individual who is reacting in response to an observed action. The individual who acts

first can covertly think of his planned actions without others knowing the action is in progress until the reacting person observes the action already in progress. ROA.434. Only after the responding person perceives threatening action, and the responding person mentally creates an intended response, and the responding person transmits the intended response to a part of the responding person's body that is capable of responding, can a person reacting to a threat perform a defensive task. (ROA.434).

Because all those steps take time, action is faster than reaction. In the context of Officer Jaradi's encounter with Argueta, Officer Jaradi realized Argueta could easily shoot Officer Jaradi before he could react to defend himself if he waited until Argueta pointed his gun at Officer Jaradi. (ROA.434).

Without regard to Officer Jaradi's testimony regarding him seeing Argueta's gun and seeing Argueta's manipulation of the gun, the circumstances Officer Jaradi encountered posed a serious threat of harm to Officer Jaradi. Officer Jaradi was approximately fifteen feet from Argueta and Officer Jaradi had no cover to protect him from a bullet if Argueta fired a shot. (ROA.434). In response to Officer Jaradi merely initiating a vehicle stop, the driver's door of Argueta's vehicle quickly sprang open, and Argueta ran southeast away from his vehicle in low lighting. Argueta did not choose to run westbound, which would have been directly away from officers. Instead, Argueta took a route that passed at an angle diagonally alongside the driver's side of Officer Jaradi's vehicle.

In addition to the odd route Argueta took that was nearer Officer Jaradi than Argueta could have taken,

Officer Jaradi was in a position from which Argueta could easily have fired a firearm at Officer Jaradi. Officer Jaradi noted Argueta kept his right hand down to his side. Officer Jaradi could not then determine whether Argueta was holding something behind his right hip or if his right hand was inside his pocket because the core of Argueta's body initially obscured Officer Jaradi's view of Argueta's right hand. Officer Jaradi perceived Argueta's actions as Argueta intentionally holding his right arm down at his right side to conceal something.

It appeared to Officer Jaradi that Argueta was concealing his right hand, so recognizing a potential risk of harm Officer Jaradi began to act to reduce his reaction time if he perceived it necessary to use his handgun to defend himself. Officer Jaradi removed his handgun from its holster and pointed it toward Argueta as a precaution due to the events that had occurred to that point.

Officer Jaradi verbally commanded Argueta to get his hand out of his pocket, which is what Officer Jaradi initially suspected Argueta may be doing with his hand. Officer Jaradi did not know the actual threat he faced was even greater than he anticipated may be the reason Argueta was concealing his right hand. Instead of having his right hand in his pocket, Argueta held a firearm augmented with a high-capacity ammunition extender.

From this position, only a slight motion of Argueta's hand would have resulted in his handgun pointed at Officer Jaradi. Had Officer Jaradi ever recognized Argueta's gun and had Officer Jaradi decided to fire, Officer Jaradi would not have had the ability to timely act in self-defense. Because Officer Jaradi could not then see Argueta's gun,

Officer Jaradi underestimated the latent risk of serious harm Officer Jaradi faced before he saw Argueta's gun. (App.14) (ROA.433-435).

Argueta's actions presented Officer Jaradi with a dilemma wherein he had only fractions of seconds to respond to the serious threat to his life Argueta's actions potentially posed, during circumstances that were tense, uncertain, and rapidly evolving, without Officer Jaradi having more time or more information which may have allowed him to respond differently had Argueta not reduced Officer Jaradi's reaction time as Argueta did. (ROA.433-435). Under these perilous circumstances, any objective officer could have reasonably feared he could be shot and could have responded to the apparent threat by shooting Argueta to stop the threat.

Training Officer Jaradi had received regarding action and reaction informed Officer Jaradi's assessment of the threat and response to it. Officer Jaradi's training likens the knowledge and training Texas Ranger Jeff Cook explained in *Ontiveros v. City of Rosenberg, Texas*, 564 F.3d 379, 384 n.2 (5th Cir. 2009).

In *Ontiveros*, 564 F.3d at 381, Rosenberg police lieutenant Dewayne Logan confronted Modesto Ontiveros inside a dimly lit room of a mobile home. When opening the door of a room in which Ontiveros was located, "Lieutenant Logan illuminated Ontiveros with a tactical light on his pistol and saw him a few feet away holding an object over his head." *Id.* Ontiveros moved behind the door." *Id.* Lieutenant "Logan then believed he saw Ontiveros reaching into a boot at chest level for what Logan believed could be a weapon." *Id.* "At that point, Logan fired two [fatal] shots." *Id.*

Ranger Cook, who investigated the shooting, explained the exigency confronting Lieutenant Logan. *Id.* at 384 n.2. In response to the following questions asked of him, Ranger Cook testified:

> Q. If Lieutenant Logan perceived Mr. Ontiveros's actions as Mr. Ontiveros putting his hand inside the boot do you think it would have been necessary for Lieutenant Logan to wait until Mr. Ontiveros exhibited a weapon before taking defensive action?
>
> A. Absolutely not.
>
> Q. And why not?
>
> A. Because he will then be behind the curve on reacting. Action is always-action always beats reaction.
>
> …
>
> Q. And do you think that it's likely that Lieutenant Logan would have had enough time to take appropriate steps to protect himself if he waited until Mr. Ontiveros removed a handgun from the boot if he had one in there?
>
> A. No. Again, action beats reaction. If someone pulls a gun-I don't know if you want me to go into that or not but …
>
> Q. Explain that for us.

A. Action is going to beat reaction every time. For example, if I have-if I have a gun and my brain-I have made the decision to shoot, then that message is going to travel down to my muscles and I'm going to shoot. For you to react to that – I have already started a process. You have to recognize it, then your brain has to tell your muscles to react, and then you're reacting to my actions. So action is going to beat reaction simply because of the cognitive element involved.

*Id*. at p. 389.

Q. Have you ever observed a training exercise where one officer stands across a room from an officer, for example, and the training officer has his hand down next to his body with a gun in it and then the other officer is supposed to react? Have you seen that kind of exercise?

A. I actually participated in that training about three weeks ago.

Q. Can you explain that in detail, how that training works?

A. Well, we had simunition guns. I don't know if I need to explain, but it's guns that look and feel real but don't shoot real bullets. And literally, I stood there and pointed a gun at the instructor and the instructor had the gun actually pointed to the ground and just

> told me to shoot whenever he acted. And I could not shoot him before he shot me. At best, I could tie him. He could bring the gun up, pull the trigger before I could pull the trigger. I never beat him, and at best I could tie him."
>
> Q. Is a tie good enough in this work?
>
> A. No, **a tie, you die, you know**.

*Id*. (emphasis added).

Ranger Cook explained police training that is consistent with the sound rationale underlying the well-reasoned *furtive* movement line of circuit court case opinions, in which a suspect's conduct signals to a reasonable officer the suspect may be readying a weapon to use against the officer or another. *Compare*, *Salazar-Limon v. City of Houston*, 826 F.3d 272, 275 (5th Cir. 2016); *Batyukova v. Doege*, 994 F.3d 717, 722-723 (5th Cir. 2012); *Carnaby v. City of Houston*, 636 F.3d 183, 188-189 (5th Cir. 2011); *Manis v, Lawson*, 585 F.3d 839, 844 (5th Cir. 2009); *Reese v. Anderson*, 926 F.2d 494-500-501 (5th Cir. 1991); *Young v. City of Killeen*, 775 F.2d 1349, 1353 (5th Cir. 1985).

Under *Garner* and circuit court opinions like *Ontiveros* and the cases cited in the preceding paragraph, that are supported by the rationale Ranger Cook adeptly explained, a reasonable officer could have believed Argueta posed a serious threat of death or serious physical injury to Officer Jaradi. *See Garner*, 471 U.S. at 3. *Garner* cannot reasonably be construed to have prohibited Officer

Jaradi from firing to defend himself. *Compare*, *Garner*, 471 U.S. at 3; and *Ontiveros*.

### D. Officer Jaradi is entitled to judgment in his favor based on qualified immunity because he did not violate clearly established law.

The Fifth Circuit rendered judgment in favor of Officer Jaradi based on the holding "that Argueta failed to establish 'beyond debate' that [Officer] Jaradi violated a clearly established federal right." (App.18).

Petitioners presented no question to the Court that forecloses Officer Jaradi's immunity. Petitioners do not identify any legal standard, that stems from controlling legal authority or a robust consensus of cases of persuasive authority, dictating Officer Jaradi's action beyond debate. *See Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021); *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018). "To be clearly established, a legal principle must have a sufficiently clear foundation in then-existing precedent." *Id.*

"It is not enough that the rule is suggested by then-existing precedent." *Id.* "The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Id.* (quoting *Reichle v. Howards*, 566 U.S. 658, 666 (2012)). "Otherwise, the rule is not one that 'every reasonable official' would know." *Id.* (citing *Reichle*, 566 U.S. at 664).

The Court has "repeatedly told courts … not to define clearly established law at a high level of generality." *Mullenix*, 577 U.S. at 12 (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)).

> "[T]here is no doubt that *Graham v. Connor*, *supra*, clearly establishes the general proposition that use of force is contrary to the Fourth Amendment if it is excessive under objective standards of reasonableness. Yet that is not enough. Rather, [the Court] emphasized in *Anderson* 'that the right the official is alleged to have violated must have been 'clearly established' in a more particularized, and hence more relevant, sense."

*Brosseau v. Haugen*, 543 U.S. 194, 198-199 (2004) (*per curiam*).

Petitioners admit *Garner* does not address the specific circumstances Officer Jaradi encountered, so *Garner* does not provide a proper measure of Officer Jaradi's immunity. Argueta was not an unarmed fleeing suspect like Garner. Petitioners concede *Garner* did not address whether, under the circumstances that confronted Officer Jaradi, an officer may - consistent with the Fourth Amendment - seize an armed suspect by shooting the suspect. Petitioners do not argue *Garner* or any other decision of the Court provides notice to every reasonable officer that Officer Jaradi's conduct was clearly unlawful under established constitutional law. (Petition I, 2).

And had Petitioners made such an argument, the Court has consistently rejected the notion *Garner* provides clearly established law in the immunity context. *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5-6 (2021); *White v. Pauly*, 580 U.S. 73, 79-80 (2017); *Mullenix*, 577 U.S. at 12-13); *Plumhoff*, 572 U.S. at 779; *Brosseau*, 543 U.S. at 205.

"To be clearly established. a legal principle must have a sufficiently clear foundation in then-existing precedent. The rule must be 'settled law,'" *Hunter*, 502 U.S. at 228, which means it is dictated by 'controlling authority' or 'a robust consensus of cases of persuasive authority.'" *Wesby*, 583 U.S. at 63 (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741-742 (2011) (quoting *Wilson v. Layne*, 526 U.S. 603, 617 (1999)).

Petitioners do not identify controlling authority or a robust consensus of cases of persuasive authority showing that every reasonable officer knew Officer Jaradi's reaction to the potential threat Argueta posed was clearly unlawful. Instead, Petitioners argue a split exists (not a consensus) in circuit court opinions regarding the circumstances when an officer may, consistent with the Fourth Amendment, seize an armed suspect by shooting him.

Petitioners argue some circuit courts require indicia of dangerousness other than being armed before an officer may shoot the suspect but, even if true, such opinions are much too general to satisfy the Court's standard for declaring a clearly established constitutional right. (Petition I, 2-3). And Petitioners admit that "[a]ny other warning will do actually." (Petition 3).

Thus far, only the Supreme Court has declared clearly established law in the immunity context. *Rivas-Villegas*, 595 U.S. at 5. The Court has never found circuit court authority sufficient to clearly establish constitutional law. *Id*.

Assuming *arguendo*, without conceding, that a consensus of circuit court authority could clearly establish Constitutinal law, no such authority exists in this case. No one circuit court opinion Petitioner cited is factually similar to the circumstances Officer Jaradi encountered, and certainly no consensus of authority exists in the circuit court opinions Petitioners cite that would apply with particularity to the apparent threat Argueta presented.

This is far from an obvious case, so "to show a violation of clearly established law, [Petitioners] must identify a case that put [Officer Jaradi] on notice that his specific conduct was unlawful." *Rivas-Villegas*, 595 U.S. at 6; *City of Escondido v. Emmons*, 586 U.S. 38, 43-44 (2019). Petitioners have not even attempted to satisfy this requirement. *See Wesby*, 583 U.S. at 64-65.

The bedrock of immunity is fair notice to an officer warning him when he acts that his conduct is clearly unlawful in the specific circumstance the officer is facing. *See Brosseau*, 543 U.S. at 205. "If judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy." *Wilson*, 526 U.S. at 618.

"Qualified immunity is no immunity at all if clearly established law can simply be defined as the right to be free from unreasonable searches and seizures." *Sheehan*, 575 U.S. at 613. Petitioners present no basis for denying immunity to Officer Jaradi.

Lastly, if the Court issued an interpretation of the Fourth Amendment in the case at bar, any such decision would not retroactively create a clearly established law

governing Officer Jaradi's conduct when he shot Argueta on June 25, 2018. Judicial decisions that post-date Officer Jaradi's action "could not have given fair notice to [Officer Jaradi] and are of no use in the clearly established law inquiry." *Brosseau*, 543 U.S. at 200 n.4.

Officer Jaradi is entitled to judgment in his favor because he did not violate clearly established constitutional law.

## CONCLUSION

For these reasons, the Court should deny certiorari.

Respectfully submitted,

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