

In the  
Supreme Court of the United States

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BOWE MARVIN,

*Petitioner,*

v.

DAVID HOLCOLMB, ET AL.,

*Respondents.*

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

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REPLY BRIEF OF PETITIONER

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## REPLY BRIEF OF PETITIONER

### ARGUMENT

This Petition raises two issues of Constitutional consequence: the protection of the home from state invasion and the right against the state assaulting a person without legal justification.

The decision from which this Petition for Certiorari appeals departed from the precedents of brother courts in sister Circuits on these two issues. Respondents admit a conflict exists between the Circuits but disclaim these conflicts by repeating the error of the Eighth Circuit Court of Appeals.

First, Respondents admit the instructional error about the privacy of the home but disclaim it and focus on other jury instructions instead. The District Court and the Court of Appeals failed to address the diminishment of one's reasonable expectation of privacy in their own home that resulted from their rulings. The Court of Appeal's Opinion affirming the District Court's Order of Dismissal and Judgment directly conflicts with the decisions cited by Petitioner. It is necessary for this Court to clarify the robustness of an individual's privacy rights in the doorway of their home and prevent an exception that an officer can pull an individual from their threshold and execute an arrest without a warrant and without probable cause.

Second, Respondents admit that most circuits, unlike the Seventh Circuit here, recognize the relevance of probable cause to an excessive force analysis, but attempt to blur the issue by noting how unlawful arrest

claims can separately compensate for damages from the force used in the arrest, an issue irrelevant to the matter here. The relevant issue is whether the lawfulness of the arrest is relevant to the use of force, which even the Respondent's cases concede.

Indeed, in *Hupp v. Cook*, cited by Respondents, the Fourth Circuit noted that “we may consider any lack of probable cause for the arrest as we evaluate the reasonableness of the force used.” 931 F.3d 307, 322 (4th Cir. 2019). Furthermore, in *Cortez v. McCauley*, the 10th Circuit held that although claims for unlawful arrest and excessive force warrant different analyses, “in cases involving claims of both unlawful arrest and excessive force arising from a single encounter, it is necessary to consider both the justification the officers had for the arrest and the degree of force they used to effect it” and the “evidence may overlap” in the respective analyses. 478 F.3d 1108, 1127 (10th Cir. 2007).

The lawfulness of an arrest therefore remains a relevant factor in the excessive force analysis that Petitioner seeks this Court to recognize.



## CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 29, 2023