No. 24-1124

IN THE

Supreme Court of the United States

CHRISTOPHER THOMAS,

Petitioner,

v.

TRACY PACHOTE,

Respondent.

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

BRIEF OF CALIFORNIA STATE ASSOCIATION OF COUNTIES AND THE CALIFORNIA FORCE INSTRUCTORS' ASSOCIATION AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

The California State Association of Counties ("CSAC") is a nonprofit corporation whose members comprise the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California ("Association") and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the State. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

CSAC has a significant interest in the outcome of this case. Its member counties are responsible for providing countless services for the public benefit. In providing such services, including law enforcement, local governments and law enforcement officers are inevitably subject to litigation. In order to provide services in an atmosphere of relative certainty concerning potential liability, CSAC firmly believes that the qualified immunity doctrine must be construed consistent with this Court's precedent, and that government officials must not be deprived of its protection absent controlling authority clearly establishing that a constitutional or statutory right has been violated.

The California Force Instructors' Association ("CalFIA") is a non-profit organization founded in 2017 in Southern California. CalFIA is dedicated to law

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[1] Pursuant to Rule 37.6, counsel for amici curiae authored this brief in whole. No party's counsel authored any portion of the brief, and no person or entity other than amici and its counsel contributed monetarily to preparing or submitting this brief. Pursuant to Rule 37.2, counsel for amici curiae timely notified the counsel of record of their intent to file this brief.

enforcement personnel throughout the United States and to advocating for industry standards and training protocols for all police agencies. Since its inception, CalFIA has grown nationwide and is currently comprised of both law enforcement personnel and experts on police practices and education standards. CalFIA's goal is to achieve better training for all individuals who serve our communities.

SUMMARY OF THE ARGUMENT

In a split decision, the Ninth Circuit denied qualified immunity to an officer who, arriving late to a physical struggle between his partner and a third party, aided his partner—whom he believed was acting lawfully—by using minimal force to subdue the individual. The court so held despite the absence of law clearly establishing a Fourth Amendment violation. The Ninth Circuit's analysis distorts and diminishes the heightened degree of specificity that this Court's precedent requires before concluding that controlling authority prohibits the challenged conduct.

By failing to define clearly established law with granularity, the Ninth Circuit's decision has several deleterious effects. First, it disincentivizes officer assistance and cooperation given the increased risk of civil liability. Second, and consequently, it jeopardizes the safety of officers, third-party subjects, and the general public. Third, the decision has significant societal costs, given well-intentioned, competent individuals will be deterred from pursuing careers in law enforcement amidst already widespread shortages in officer recruitment. Finally, the decision will adversely impact officer use-of-force training because departments and agencies will have to educate officers on inconsistent and, at times, contradictory guidance

handed down by the Ninth Circuit concerning what constitutes a Fourth Amendment violation.

The issues presented in the petition for certiorari concern important matters of public safety and the safety of law enforcement, particularly as they relate to an officer's reasonable assessment of a threat to the public, to the officer, or to fellow officers, and that officer's ability to utilize force in such a situation. Because the Ninth Circuit's decision fails to recognize the unique circumstances of this case and disincentivizes officers assisting fellow officers in the field, this Court should grant certiorari to reaffirm the scope and societal importance of qualified immunity. This case also presents an ideal vehicle for clarifying the scope of the collective knowledge doctrine within the context of qualified immunity.

ARGUMENT

I. Qualified immunity is a broad protection intended to shield all but the plainly incompetent or those who knowingly violate the law

A. The doctrine seeks to balance two important and competing interests

Since its inception, qualified immunity has sought to balance "the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). As this Court has explained, on the one hand, damages suits "may offer the only realistic avenue for vindication of constitutional guarantees." *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982). "On the other hand, permitting damages suits against government officials can entail

substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987).

As a means to accommodate these two objectives, the Court has held that government officials are entitled to qualified immunity "with respect to 'discretionary functions' performed in their official capacities." *Ziglar v. Abbasi*, 582 U.S. 120, 150 (2017) (quoting *Creighton*, 483 U.S. at 638). The doctrine thus provides officials "breathing room to make reasonable but mistaken judgments about open legal questions." *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)). Indeed, the protection applies "regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson*, 555 U.S. at 231 (internal quotation marks omitted).

And because qualified immunity is "an *immunity from suit* rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Therefore, to effectuate the doctrine's purpose, this Court has "repeatedly [ ] stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (per curiam).

B. This Court's qualified immunity analysis in Section 1983 actions requires that existing law place the constitutionality of an officer's conduct "beyond debate"

Under this Court's precedent, "officers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and

(2) the unlawfulness of their conduct was 'clearly established at the time.'" *District of Columbia v. Wesby*, 583 U.S. 48, 62–63 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). "[I]f the answer to either [question] is 'no,' then the state actor cannot be held liable for damages." *Gordon v. Cnty. of Orange*, 6 F.4th 961, 968 (9th Cir. 2021). This two-part, sequential analysis, while once regarded as mandatory, now permits judges, in the exercise of their discretion, to address the two prongs in whichever order expedites resolution of the case. *Pearson*, 555 U.S. at 236 (noting it is frequently "quick[er] and easi[er]" to determine whether a constitutional right was clearly established than whether it was violated) (receding from *Saucier v. Katz*, 533 U.S. 194 (2001)); *Scott v. Cnty. of San Bernardino*, 903 F.3d 943, 948 (9th Cir. 2018) ("These two prongs of the analysis need not be considered in any particular order, and both prongs must be satisfied for a plaintiff to overcome a qualified immunity defense.") (internal quotation marks omitted).

Even when a lower court decides the constitutional question first, and affirmatively, qualified immunity still operates to shield an officer from liability if the officer's conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson*, 555 U.S. at 231 (quoting *Harlow*, 457 U.S. at 818). And the "clearly established" prong is exacting.

1. The "clearly established" standard demands that "controlling authority" prohibit the challenged conduct to a "high degree of specificity"

As this Court has explained, "[t]o be clearly established, a legal principle must have a sufficiently clear foundation in then-existing precedent. The rule must be settled law, which means it is dictated by controlling authority or a robust consensus of cases of persuasive authority." *Wesby*, 583 U.S. at 63 (cleaned up). "It is not enough that the rule is *suggested* by then-existing precedent. The precedent must be clear enough that *every* reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Id.* (emphasis added). Said otherwise, then-existing law "must have placed the constitutionality of the officer's conduct 'beyond debate.'" *Id.* (quoting *al-Kidd*, 563 U.S. at 741).

The clearly established standard "also requires that the legal principle clearly prohibit the officer's conduct in the particular circumstances before him"—which requires a "high degree of specificity." *Id.* (internal quotation marks omitted); *see White v. Pauly*, 580 U.S. 73, 79 (2017) (per curiam) (stressing need to "identify a case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment"). And whether clearly established law shows a Fourth Amendment violation turns on the objective legal reasonableness of the officer's actions "in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 397 (1989); *see Ziglar*, 582 U.S. at 151 ("Whether qualified immunity can be invoked turns on the 'objective legal reasonableness' of the official's acts.").

In light of these concerns and considerations, the Court has described this "demanding standard," *Wesby*, 583 U.S. at 63, as one that protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

2. By failing to define clearly established law with granularity, the Ninth Circuit's decision contravenes this Court's precedent and undermines the values qualified immunity seeks to promote

The Ninth Circuit's majority decision affirmed the denial of qualified immunity to Deputy Christopher Thomas, a late-arriving officer to the encounter between fellow deputy Stephanie Nelson and Respondent Tracy Pachote. (Pet. App. 4a–5a; *see* Pet. App. 52a–53a, ¶¶ 5–6.) In doing so, the majority relied on inapt authority that does not bear the requisite "high degree of specificity" to the particular circumstances facing Deputy Thomas at the time. *Cf. Wesby*, 583 U.S. at 63. Absent the requisite specificity, the decisions relied on by the majority do not and cannot establish a "sufficiently clear foundation" in precedent that, in a rapidly evolving situation, an officer's decision to assist a fellow officer he believes is acting lawfully, by using minimal force to subdue an individual, would constitute a Fourth Amendment violation. *Cf. id.* ("The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.")

When Deputy Nelson initially approached Pachote's residence, Deputy Thomas was approximately 100 feet away and facing the opposite direction, speaking to two possible witnesses. (Pet. App. 52a, ¶ 5.) He heard yelling, turned to look toward the house, and

saw Pachote and Deputy Nelson in a heated confrontation, with Pachote mere feet from the deputy. (Pet. App. 52a–53a, ¶¶ 6–7.) Concerned about possible physical violence—due to Pachote's volume and use of profanities—Deputy Thomas began walking toward the house, picking up his pace along the way. (*Id.*) On his approach, he observed Pachote and Deputy Nelson become engaged in a physical struggle, but Pachote's body was largely obscured behind a screen door. (Pet. App. 53a, ¶ 7; *see* Pet. at 3–4.) Upon his arrival, Deputy Thomas assisted Deputy Nelson—whom he believed was acting lawfully—in subduing Pachote. (Pet. App. 53a, ¶¶ 10–11); *see also* Pet. App. 6a (Bumatay, J., dissenting in part) (describing facts "in the light most favorable to" Pachote).

The majority's decision to deny qualified immunity on these facts rested on two decisions—*Rice v. Morehouse*, 989 F.3d 1112 (9th Cir. 2021), and *Shafer v. Cnty. of Santa Barbara*, 868 F.3d 1110 (9th Cir. 2017)—neither of which is sufficiently similar to this case. In *Rice*, the Ninth Circuit articulated the rule that "officers have a duty to independently evaluate a situation when they arrive, *if they have an opportunity to do so*." 989 F.3d at 1122 (emphasis added); *cf.* Pet. at 16 n.5 (noting *Rice*'s reliance on *Deorle v. Rutherford*, 272 F.3d 1272 (9th Cir. 2001), and this Court's warning in *Kisela v. Hughes*, 584 U.S. 100, 106 (2018) (per curiam), not to read *Deorle* too broadly). Unlike here, *Rice* involved "over a dozen officers" responding to a highway stop. 989 F.3d at 1115–1116. The officers were present for more than a minute before the use of force ensued. *Id.* at 1122. And they had spoken with an on-scene officer who related that the situation was not an emergency. *Id.* at 1123. Here, however, "it is undisputed that [Deputy Thomas] did not know the full story of what was happening" when he "arrived at

the altercation between Pachote and Deputy Nelson." (Pet. App. 7a (Bumatay, J., dissenting in part).) He "did not know what precipitated the argument," and "he witnessed the altercation turn physical just seconds before he arrived at the house." (*Id.*) Therefore, "Deputy Thomas did not 'have an opportunity' to 'independently evaluate [the] situation,'" *id.*, and *Rice* does not control.

Shafer is even more inapt. In that case the subject officer was not a late-arriving officer to a rapidly evolving situation, as here, but instead was the officer who initiated contact with the suspect and escalated the interaction to a physical altercation. 868 F.3d at 1113–1114. Had the majority here heeded the pronouncement in *White* that the court in *Shafer* did—"that, to satisfy this [clearly established law] step in the qualified immunity analysis, [courts] must 'identify a case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment,'" *Shafer*, 868 F.3d at 1117—it would have reached the same conclusion that *Shafer* did on the question of whether the officer violated clearly established law: "The answer is no." *Id.*

In light of the Ninth Circuit's failure to define clearly established law with sufficient specificity given the particular circumstances Deputy Thomas confronted, this Court's review is warranted to ensure that the lower court's decision does not "undermine the values qualified immunity seeks to promote." *al-Kidd*, 563 U.S. at 735.

II. Denying officers qualified immunity when using minimal force to assist fellow officers in securing resisting subjects disincentivizes officer assistance and counters law enforcement training

Every day, in departments and agencies throughout the United States, nearly 650,000 law enforcement officers work to maintain order, enforce laws, and serve and protect their communities.[2] "By asking police to serve and protect us, we citizens agree to comply with their instructions and cooperate with their investigations. Unfortunately, not all of us hold up our end of the bargain. As a result, officers face an ever-present risk that routine police work will suddenly become dangerous." *Mattos v. Agarano*, 661 F.3d 433, 453 (9th Cir. 2011) (en banc) (Kozinski, CJ., joined by Bea, J., concurring in part and dissenting in part). Statistics bear out the danger of police work. In 2020, 60,105 law enforcement officers were assaulted in the line of duty. Of those officer assaults, 18,568 officers (30.9%) sustained injuries.[3]

This case reflects the dangerous and unpredictable realities that officers face both in the field and in subsequent litigation. The majority's decision imposes

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[2] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics: 33-3051 Police and Sheriff's Patrol Officers, May 2023, https://www.bls.gov/oes/2023/may/oes333051.htm# (last visited May 29, 2025).

[3] FBI Crime Data Explorer, Law Enforcement Officers Killed and Assualted Annual Reports, 2020 (Table 80), *available for download at* https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/downloads#leokaDownloads (under "Law Enforcement Officers Killed and Assaulted Annual Reports" select "2020" in dropdown box and "Officers Assaulted" within collection box) (last visited May 29, 2025).

unrealistic expectations on officers who, investigating 911 calls reporting shots fired, respond to an active physical struggle between a fellow officer and third-party. Absent clear indications of submission by the third-party, a late-arriving officer encountering an active struggle between a deputy and a third-party should be entitled to use minimal force to help secure the subject. *Jones v. City of Elyria*, 947 F.3d 905, 916 (6th Cir. 2020) (officer's use of force to assist fellow officers subdue individual "quite unremarkable"). In a dynamic situation like this, immediate action is required. Officers need to gain control of a subject swiftly for the safety of the subject, the officers, and the general public. *See id.* Indeed, in such situations, at least one firearm is involved because deputies are always armed when encountering individuals. This presents a risk that the firearm (or other weapon, such as a taser) will be taken from the officer and used against him or her. Thus, the assisting officer's objective is to secure the subject and de-escalate the encounter so that no violence occurs.

The Constitution and this Court's precedent grant officers the necessary leeway to rely on the lawfulness of their fellow officers' actions in securing a subject, absent evidence to the contrary that the officer's actions are clearly unconstitutional. *See White,* 580 U.S. at 80 (no settled Fourth Amendment principle required a late-arriving officer to second-guess the steps already taken by his or her fellow officers in instances like that which the officer confronted); *Whiteley v. Warden, Wyo. State Penitentiary*, 401 U.S. 560, 568 (1971) (officers called upon to aid other officers in making an arrest are entitled to assume that the officers requesting aid have acted properly); *see also United States v. Am*, 564 F.3d 25, 28 (1st Cir. 2009) (officer who assisted in arrest was "entitled to

assume" that his fellow officer, "was acting in a manner consistent with his legal responsibilities") (internal quotation marks and alteration omitted). Indeed, "[e]ffective and efficient law enforcement requires cooperation and division of labor [amongst officers] to function" safely. *Motley v. Parks,* 432 F.3d 1072, 1081 (9th Cir. 2005), *overruled on other grounds by United States v. King*, 687 F.3d 1189 (9th Cir. 2012) (en banc and per curiam). For this reason, officers are entitled to rely on the collective knowledge of other investigating officers on the scene, and all of the reasonable inferences that may be drawn. *Motley*, 432 F.3d at 1081. Here, that means reasonably concluding that minimal force is appropriate to secure a subject who is actively resisting a fellow officer's attempts to secure the subject.

There is no analytical framework within which the majority decision in this case and this Court's qualified immunity decisions, including in *Emmons,*[4] *White,* and *Kisela,* can be read to co-exist. Review is therefore warranted to ensure consistent, predictable, and practical application of qualified immunity in accord with settled legal norms.

A. The practical consequences of the Ninth Circuit's denial of qualified immunity jeopardize the safety of officers, third-party subjects, and the general public

The "real world" implication of the Ninth Circuit's decision is that officers will be dissuaded from engaging with individuals to enforce potential violations of the law or, worse yet, dissuaded from aiding citizens or other officers for fear of being exposed to civil liability.

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[4] *City of Escondido v. Emmons*, 586 U.S. 38 (2019) (per curiam).

An officer's reticence to perform his duties endangers the officers, the subjects that they encounter, and the general public.

The threat of lawsuits may induce government officials "to act with an excess of caution or otherwise to skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct." *Forrester v. White*, 484 U.S. 219, 223 (1988) (superseded by statute); *see also Filarsky v. Delia*, 566 U.S. 377, 390 (2012) ("[A]voiding unwarranted timidity on the part of those engaged in the public's business . . . [e]nsur[es] that those who serve government do so with the decisiveness and the judgment required by the public good") (internal quotation marks and citation omitted). With the luxury of hindsight to dissect each moment of a use-of-force event, some judges may be deceived into believing that it is possible for officers to conduct a similar analysis while directly involved in a rapidly evolving situation, functioning under the pressure of not getting hurt, and trying to prevent injury to the subject and their fellow officers. That simply is not the case. It is therefore imperative that officers remain free to use their best judgment to control subjects and secure scenes where, as here, minimal force is required. They must act swiftly and decisively with the confidence that they have "breathing room to make reasonable but mistaken judgments" without fear of unwarranted litigation. *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 611 (2015) (internal quotation marks omitted).

The Ninth Circuit's decision will have the inexorable effect of causing officers in rapidly evolving circumstances to second guess their actions leading up to an encounter with a subject, for fear of subjecting them-

selves to potentially devastating financial liability. With second guessing comes hesitation. Hesitation, in turn, leads to more unpredictable and dangerous outcomes for all involved. "The increasingly risky profession of law enforcement cannot put those sworn to 'serve and protect' to a *Hobson's* choice: place their lives on the line by heroic forbearance or risk their financial security in defense of lawsuits. The Supreme Court has repeatedly stated in plain terms that the purpose of qualified immunity is to prevent precisely this quandary." *Cole v. Carson*, 935 F.3d 444, 457–58 (5th Cir. 2019) (en banc) (Jones, J., joined by Smith, Owen, Ho, Duncan, and Oldham, JJ., dissenting).

B. The Ninth Circuit's denial of qualified immunity in this circumstance will inflict significant societal costs

When courts deny qualified immunity where the law does not clearly establish a constitutional violation, social costs are inevitable. The doctrine is grounded in the recognition that officers are often forced to make split-second judgments about the appropriate degree of force to use in chaotic and (potentially) dangerous situations. *Graham*, 490 U.S. at 397. Society as a whole has a vested interest in encouraging officers to resolve law enforcement encounters swiftly and safely, including through the use of reasonable force. Indeed, this Court's precedent highlights the need for officers like Deputy Thomas to quickly de-escalate threats or gain control of subjects. *See, e.g., Scott v. Harris*, 550 U.S. 372, 385–86 (2007) (discussing policy implications of creating use of force rules that would discourage officers from gaining control of a fleeing subject); *Sheehan*, 575 U.S. at 612 (concluding that where subject had "not been disabled" and "delay could make the situation more dangerous," officers' additional efforts

to gain control of the subject were constitutional); *Plumhoff v. Rickard*, 572 U.S. 765, 776–77 (2014) (finding multiple efforts to gain control of suspect's continued flight reasonable, unlike in situation where suspect had "ended any threat" or "clearly given himself up").

The doctrine also aims to protect officials from the demands of defending long, drawn-out lawsuits so that officers can focus on serving and protecting the public. *See Pearson,* 555 U.S. at 231–32. Consequently, when qualified immunity is improperly denied, bright, capable people—precisely the type of men and women who should be put in uniform—will refrain from donning the badge. This will leave communities with only the "most resolute or the most irresponsible," neither of which benefits society. *Crawford-El v. Britton*, 523 U.S. 574, 590 & n.12 (1998). Communities throughout the country are already living this reality as agencies and departments experience increased staffing concerns. *See Cole*, 935 F.3d at 478 n.2 (Ho and Oldham, JJ., joined by Smith, J., dissenting) ("Those social costs are particularly stark today given widespread news of low officer morale and shortages in officer recruitment."). Undoubtedly, everyone is safer when officers are empowered to act swiftly and exercise discretion in combating crime and protecting the public.

> Law enforcement effectiveness often depends on officers' confidence and willingness to act swiftly and decisively to combat crime and protect the public. However, the fear of personal liability can seriously erode this necessary confidence and willingness to act. Even worse, law enforcement officers . . . may become overly timid or indecisive and fail to

> arrest or search—to the detriment of the public's interest in effective and aggressive law enforcement.

Daniel L. Schofield, S.J.D., *Personal Liability: The Qualified Immunity Defense*, 59 FBI L. Enf't Bull. 26, 26–27 (March 1990), *available at* https://leb.fbi.gov/file-repository/archives/march-1990.pdf.

C. Denying qualified immunity in this circumstance will adversely impact law enforcement training, as departments are forced to teach and apply inconsistent and sometimes contradictory case law

The Ninth Circuit's jurisdiction—the largest in the country—covers nine states, as well as the territories of Guam and the Northern Mariana Islands.[5] The men and women who become law enforcement officers in these states are required to obtain state certification to exercise their powers. Although each state has its own certification requirements, all involve rigorous training and stringent standards to ensure individuals are suitable for the profession.[6]

The increasingly diverse challenges and service demands confronting law enforcement require officers

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[5] U.S. Courts for the Ninth Circuit, What Is The Ninth Circuit?, https://www.ca9.uscourts.gov/judicial-council/what-is-the-ninth-circuit/ (last visited May 28, 2025).

[6] *E.g.*, Alaska Stat. Ann. §§ 18.65.130, et seq.; Ariz. Rev. Stat. Ann. §§ 41-1821, et seq.; Cal. Pen. Code §§ 832.3, 832.4, 13510; Haw. Rev. Stat. Ann. §§ 139-1, et seq.; Idaho Code Ann. § 19-5109; Mont. Code Ann. § 7-32-303; Nev. Rev. Stat. Ann. § 289.550; Or. Rev. Stat. Ann. §§ 181A.410, 181A.490(1); Wash. Rev. Code Ann. §§ 43.101.095, et seq.

to receive legal training on a myriad of topics. Law enforcement's primary sources of legal information and guidance are not only the Constitution and governing statutes, but also the decisional law construing that authority. Because the principles in our Constitution—such as the Fourth Amendment's prohibition against unreasonable seizures and seizures—appear in broad, abstract terms, law enforcement training relies on case law to provide officers with specific guidance for training purposes. When Ninth Circuit decisional law fails to adhere to well-established precedent, it leads to inconsistent and unpredictable field outcomes as officers attempt to apply sometimes conflicting and contradictory authority learned in the classroom to real-life scenarios.

For peace officer certification in California, for example, individuals are required to complete an academy training program certified by the Commission on Peace Officer Standards and Training ("POST"). Cal. Pen. Code § 832.4(b). The POST-mandated training curriculum consists of 43 topics, which are divided into "Learning Domains."[7] The bedrock constitutional principles regarding use of force, as set forth in *Graham, a*re found throughout the Learning Domains, but are emphasized in POST Learning Domain 20 (Use of Force/Deescalation).[8] Importantly, Learning Domain 20 teaches that, under *Graham,* officers have the legal right to do what Deputy Thomas did in this case, and for the reasons he did them: "to use objectively reasonable force to effect an arrest . . . to overcome resistance . . . in defense of

[7] California Commission on Peace Officer Standards and Training, Regular Basic Course Training Specifications, https://post.ca.gov/regular-basic-course-training-specifications (last visited May 28, 2025).

[8] *Id.*

others."[9] POST training also instructs officers that, under California law, a person (like Pachote in this case) has a legal obligation to submit to arrest and to "refrain from using force . . . to resist such arrest." Cal. Pen. Code § 834a. Moreover, officers are taught that they "need not retreat or desist from their efforts" to arrest a subject "by reason of the resistance or threatened resistance" of the subject. Cal. Pen. Code § 835a(d).

Just as officers are required to follow the law, so too are they entitled to be protected by it as they confront the daily challenges of their law enforcement responsibilities. The majority's opinion here, "far removed from the scene and with the opportunity to dissect the elements of the situation," failed to heed this Court's admonition not to second guess split-second law enforcement decisions made in the field under significant pressure in perilous situations, from the peace, safety, and comfort of chambers. *See Ryburn v. Huff,* 565 U.S. 469, 475 (2012) (per curiam). The opinion, rendered "[w]ith the benefit of hindsight and calm deliberation," *id.* at 477, will result in confusing law enforcement training, and will impede and endanger officers in the discharge of their duties while patrolling our streets and keeping the peace in our neighborhoods.

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[9] State of California, Training and Testing Specifications for Learning Domain #20 Use of Force/Deescalation (April 2022), https://post.ca.gov/Portals/0/post_docs/training/trainingspecs/LD20.docx.

III. The Ninth Circuit's unpublished decisions sow confusion because they increasingly disregard this Court's directive regarding the specificity required when assessing clearly established law

Over the last decade, the Ninth Circuit's qualified immunity jurisprudence has slowly drifted away from this Court's precedent and reverted to the decisional quagmire that existed before this Court issued a series of opinions reversing denials of qualified immunity. *See Emmons*, 586 U.S. at 41–43 (summarily reversing Ninth Circuit); *Kisela*, 584 U.S. at 103–08 (same); *Wesby*, 583 U.S. at 62–68 (reversing D.C. Circuit); *White*, 580 U.S. at 78–81 (summarily reversing Tenth Circuit); *Sheehan*, 575 U.S. at 611–17 (reversing Ninth Circuit); *Mullenix v. Luna*, 577 U.S. 7, 11–19 (2015) (per curiam) (summarily reversing Fifth Circuit); *Carroll v. Carman*, 574 U.S. 13, 16–20 (2014) (per curiam) (summarily reversing Third Circuit); *Plumhoff*, 572 U.S. at 778–81 (reversing Sixth Circuit).

In a number of unpublished opinions that followed these decisions, the Ninth Circuit has unfortunately been less attentive to the specificity requirement and relied on high-level generality to deny qualified immunity. *See Perez v. Cox*, 788 F. App'x 438, 448 (9th Cir. 2019) (Ikuta, J., dissenting) (noting the majority failed to identify any clearly established law, and inquiring, "How many times must we be told how to conduct such an analysis?"); *Easley v. City of Riverside*, 765 F. App'x 282, 291 (9th Cir. 2019) (Bennett, J., joined by Bea, J., dissenting) ("No case identified by [plaintiff] comes close to the facts here."); *Chandler v. Guttierrez*, 773 F. App'x 921, 926 (9th Cir. 2019) (Bennett, J., dissenting in part) ("The majority's holding . . . defines whatever right we clearly established in [prior case

law] at far too high a level of generality."); *Estate of Soakai v. Abdelaziz*, No. 23-4466, 2025 Westlaw 1417105, at *15 (9th Cir. May 16, 2025) (Bumatay, J., dissenting) ("One would expect that, for something to meet the high standard of clearly established law, the majority could point to a single Supreme Court or Ninth Circuit statement that makes 'every reasonable official' understand 'that what he is doing violates' the law. We have nothing of the sort here."). Other circuits, too, have criticized decisions of the Ninth Circuit for its lack of adherence to the specificity requirement. *See Ashford v. Raby*, 951 F.3d 798, 804 (6th Cir. 2020) (concluding the Ninth Circuit "arguably made the all-too-common error of defining clearly established law at a high level of generality") (internal quotation marks and alteration omitted).

In qualified immunity cases, divided Ninth Circuit panels are commonplace. The majority's unpublished decision here is merely one example among many. In some circumstances, an unpublished decision may militate against certiorari. Here, however, given the growing chasm between this Court's doctrinal analysis and unpublished circuit decisions construing that doctrine, the lack of publication is itself reason for this Court to exercise its authority to grant review and to serve the interests of justice. *See* Jeffrey Cole & Elaine E. Bucklo, *A Life Well Lived: An Interview with Justice John Paul Stevens*, 32 No. 3 Litig. 8, 67 (Spring 2006) ("I tend to vote to grant more on unpublished opinions, on the theory that occasionally judges will use the unpublished opinion as a device to reach a decision that might be a little hard to justify."); Ruth Bader Ginsburg, *The Obligation to Reason Why*, 37 Fla. L. Rev. 205, 222 (1985) ("A limited publication rule, however sensible its purpose, is susceptible of misuse. What controls might a court install to inhibit resort to

an unpublished, abbreviated disposition to conceal or avoid a troublesome issue?"). This Court has reviewed unpublished decisions in this context before. *Emmons,* another Ninth Circuit qualified immunity case, is one example.[10] As with *Emmons,* certiorari is warranted to provide necessary redirection, and to bring the Ninth Circuit's qualified immunity jurisprudence back into alignment with this Court's established precedent.

IV. This case presents an ideal vehicle for clarifying the scope of the collective knowledge doctrine in the qualified immunity context

Under the collective knowledge doctrine, "[w]here law enforcement authorities are cooperating in an investigation . . ., the knowledge of one is presumed shared by all." *Illinois v. Andreas*, 463 U.S. 765, 771 n.5 (1983); *United States v. Bernard*, 623 F.2d 551, 561 (9th Cir. 1979) (reasoning that "the officers involved were working in close concert with each other and the knowledge of one of them was the knowledge of all") (internal quotation marks omitted); *United States v. Hoyos,* 892 F.2d 1387, 1392 (9th Cir. 1989) ("[P]robable cause may be based on the collective knowledge of all the officers involved in the investigation and all of the reasonable inferences that may be drawn therefrom."), *overruled on other grounds by United States v. Ruiz*, 257 F.3d 1030 (9th Cir. 2001) (en banc). "The rule exists because, in light of the complexity of modern police work, the arresting officer cannot always be aware of every aspect of an investigation; sometimes his authority to arrest a suspect is based on facts

[10] In *Emmons,* this Court reviewed the Ninth Circuit's unpublished memorandum opinion, which is available at 716 F. App'x 724 (9th Cir. 2018).

known only to his superiors or associates." *United States v. Valez*, 796 F.2d 24, 28 (2d Cir. 1986).

Here, the majority opinion overlooked key facts and misapplied or ignored key qualified immunity and collective knowledge precedent. Factually, it is undisputed that Deputies Thomas and Nelson were jointly investigating a 911 shooting call, that Deputy Thomas rushed to respond to a physical struggle between Deputy Nelson and Pachote, and that Deputy Thomas assisted Deputy Nelson with securing Pachote. Nonetheless, the Ninth Circuit summarily concluded that because Deputy Thomas did not claim that he verbally communicated with Deputy Nelson immediately before he secured Pachote, the collective knowledge doctrine did not apply. (Pet. App. 4a–5a.) This conclusion is factually and legally incorrect.

A "communication" requirement for purposes of collective knowledge is sensible when applied properly because it attempts to "distinguish[] officers functioning as a team from officers acting as independent actors who merely happen to be investigating the same subject." *United States v. Terry*, 400 F.3d 575, 581 (8th Cir. 2005); *see also Bernard*, 623 F.2d at 561. Here, the Ninth Circuit applied an improper and unreasonable time restriction to the "communication" element that is not supported by law. As this Court held in *Whiteley,* responding officers are entitled to assume that their fellow officers are acting in a manner consistent with their legal responsibilities. 401 U.S. at 568. Consistent with the collective knowledge doctrine set forth in *Andreas* and *Bernard*, Deputy Thomas' actions were reasonable as a matter of law regardless of whether he verbally communicated with Deputy Nelson in the seconds before securing Pachote. The facts known by the deputies at the time of the encounter, and the

reasonable inferences that could be drawn from them, amply show that a reasonable officer in Deputy Thomas' position could have believed that he was authorized to use force to take Pachote into custody. *See Reynolds v. Cnty. Of San Diego*, 84 F.3d 1162, 1170 (9th Cir. 1996) ("The inquiry is not whether another reasonable or more reasonable interpretation of events can be constructed . . . after the fact . . . Rather, the issue is whether a reasonable officer could have believed that his conduct was justified.") (internal quotation marks and citation omitted), *overruled on other grounds by Acri v. Varian Assocs., Inc.*, 114 F.3d 999 (9th Cir. 1997) (en banc). At a minimum, there was no clearly established law that put Deputy Thomas on notice that his actions were indisputably unconstitutional. This case thus provides an ideal vehicle to analyze and properly apply the collective knowledge doctrine in the context of Fourth Amendment qualified immunity.

CONCLUSION

For the reasons set forth above, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

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