

IN THE
Supreme Court of the United States

CHRISTOPHER THOMAS,

Petitioner,

v.

TRACY PACHOTE,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

This petition frivolously poses a long-resolved question of Fourth Amendment law regarding whether a reasonable officer may use excessive force against a person who has committed no crimes, has presented no threat and is merely standing in their doorway vociferously demanding officers to leave.

The questions presented are:

1. Under the Fourth Amendment, can an officer use force (including entering her home, throwing her to the ground and driving a knee into her back causing a tear in her meniscus) against a person not suspected of any crimes because the person stood in her house, verbally demanded that officers leave the curtilage of her home and cussed at them.
2. Whether clearly established law gave Defendant Thomas fair warning that using force against a person not suspected of any crimes and presenting no threat because the person stood in her home, cussed at officers and verbally demanded that officers leave the curtilage of her home violated the Fourth Amendment.

**PARTIES TO THE PROCEEDING AND
RULE 29.6 STATEMENT**

Petitioner, who was Defendant/Appellant below, is Deputy Christopher Thomas, who is sued in his personal capacity.

Respondent, who was Plaintiff/Appellee below, is a private individual, Tracy Pachote.

TABLE OF CONTENTS

	<i>Page</i>
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF CITED AUTHORITIES	iv
I. STATEMENT OF FACTS	1
A. Ms. Pachote's Call for Service.....	1
B. Ms. Pachote's Interaction with Deputy Nelson.....	1
C. Defendant Thomas Arrests Ms. Pachote for Battery And Interfering with Defendant Nelson's Investigation	2
D. Aftermath	5
II. REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI	6
III. CONCLUSION	11

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Blankenhorn v. City of Orange</i> , 485 F.3d 463 (9th Cir. 2007)	9
<i>City of Houston, Texas v. Hill</i> , 482 U.S. 451 (1987)	6
<i>Duran v. City of Douglas</i> , 904 F.2d 1372 (9th Cir. 1990)	6
<i>Florida v. Bostick</i> , 501 U.S. 429 (1991)	9
<i>Fontana v. Haskin</i> , 262 F.3d 871 (9th Cir. 2001)	9
<i>Gravelet-Blondin v. Sheltin</i> , 728 F.3d 1086 (9th Cir. 2013)	9
<i>Hansen v. Black</i> , 885 F.2d 642 (9th Cir. 1989)	9
<i>McDowell v. Rogers</i> , 863 F.2d 1302 (6th Cir. 1988)	9
<i>Mena v. Massie</i> , 795 Fed.Appx. 539 (9th Cir. 2020)	10
<i>Meredith v. Erath</i> , 342 F.3d 1057 (9th Cir. 2003)	9

<i>Cited Authorities</i>	<i>Page</i>
<i>P.B. v. Koch</i> , 96 F.3d 1298 (9th Cir. 1996)	10
<i>Rice v. Morehouse</i> , 989 F.3d 1112 (9th Cir. 2021).....	7
<i>Wilkins v. Gaddy</i> , 559 U.S. 34 (2010).....	9
Constitutional Provisions and Statutes	
U.S. Const. amend. I.....	6
Cal. Pen. Code § 415	5

I. STATEMENT OF FACTS

A. Ms. Pachote's Call for Service

On May 28, 2020, at around 1:30 AM, Plaintiff Tracy Pachote heard gunshots in her neighborhood. 4 ER-703. Out of concern for herself and her autistic minor son, she called and reported the gunfire to police. *Id.* Although Ms. Pachote stated deputies could contact her “if they need to”, she did not expect them to come to her door and knock. 5 ER-712; 4 ER-703.

About twenty minutes later, Contra Costa County Sheriff's Deputies Stephanie Nelson and Christopher Thomas responded to the call of shots being fired in the area. 5 ER-716. They knew that Ms. Pachote was a reporting party. *Id.*

Defendant Nelson decided to approach Ms. Pachote's door and knock to ask her questions. 5 ER-736. Ms. Pachote was familiar with Defendant Nelson because they had a verbal argument a few months prior and did not like each other. 4 ER-706-7.

B. Ms. Pachote's Interaction with Deputy Nelson

Ms. Pachote heard pounding on her door, opened the door and saw that Defendant Nelson had broken her screen door and was shining a flashlight in her face. *Id.* at 703-5. Ms. Pachote asked why Defendant Nelson was at her door and Defendant Nelson loudly replied that Ms. Pachote had called the police. *Id.* at 704. Ms. Pachote asked, “Can you say that any louder?” *Id.* Ms. Pachote explained that she lives in the housing projects so a police

officer coming to her door in the middle of the night is a risk to her and she expected them to be discrete. *Id.*

Subsequently, Ms. Pachote demanded that Defendant Nelson leave and she did not want to talk to her. *Id.* at 707. Ms. Pachote repeatedly screamed for Defendant Nelson to leave, but Defendant Nelson refused to leave her porch. *Id.*

During this interaction, Defendant Thomas was approximately 100 feet away, but could hear Ms. Pachote demanding Defendant Nelson to leave from her porch. 5 ER-806-8. Defendant Thomas could also hear Defendant Nelson replying to Ms. Pachote. *Id.*

Defendant Thomas walked over and continued to hear Defendant Nelson and Ms. Pachote arguing and Ms. Pachote demanding for Defendant Nelson to leave. *Id.* at 812. Defendant Thomas could see that Defendant Nelson and Ms. Pachote were about three feet from one another. 5 ER-791.

C. Defendant Thomas Arrests Ms. Pachote for Battery And Interfering with Defendant Nelson's Investigation

Defendant Thomas watched and heard them interacting for 30 seconds before he claimed to see Ms. Pachote push Defendant Nelson. 5 ER 792-3. Defendant Thomas explained in his police report what he independently observed, leading to his decision to arrest Ms. Pachote:

“I turned around and observed Deputy Nelson speaking to a very agitated and belligerent female subject in the doorway of 1216 Trigger

Ct. It appeared the subject was screaming at Deputy Nelson to leave her residence. I began walking toward Deputy Nelson as it appeared the resident was becoming increasingly belligerent as their conversation went on. As I approached the front of 1216 Trigger Ct. I saw the female resident, later identified as ARR-Tracy Pachote, push Deputy Nelson with both hands, knocking Deputy Nelson off balance and causing her to stumble back.

I arrived at the front door of the residence and attempted to grab Pachote's right arm as Pachote was continuing to push Deputy Nelson and scream at her. Deputy Nelson and I determined that Pachote needed to be detained in handcuffs as her increasingly belligerent physical behavior was a threat to our safety in the course of our investigation. Deputy Nelson and I began giving Pachote commands to stop resisting and give us her hands. Pachote ignored our multiple commands and began pulling away from us. I attempted to place Pachote's right arm in a control hold however Pachote began tensing her arm and pulling away from me. Despite giving Pachote additional commands to stop resisting, Pachote began trying to run back into her residence, in the process she began pulling Deputy Nelson and I into her residence. As Pachote did this, Pachote grabbed both mine and Deputy Nelson's uniforms, pulling and twisting them in multiple directions. This caused Deputy Nelson's uniform to rip, losing a top button, and

my external duty carrier to become partially removed. After approximately 2 minutes of attempting to gain control of Pachote, Deputy Nelson and I were able to pull Pachote to the ground.”

5 ER-834-5—Defendant Thomas Report.

Defendant Thomas further explained in his report the arrest’s alleged factual basis and the charges:

“Given Pachote’s actions, using unlawful and unwarranted force on Deputy Nelson, delaying Deputy Nelson in the course of her investigation regarding a possible shooting, I believed Pachote to be in violation of PC 243b—battery on a peace officer and PC 148(a)(1)—obstructing and delaying a peace officer. I placed Pachote under arrest for the aforementioned charges.”

Id. at 835.

Ms. Pachote testified that she *never* pushed or even touched Defendant Nelson. 4 ER-704. Instead, Ms. Pachote testified that Defendant Nelson deliberately stepped forward and pressed herself against Ms. Pachote’s arm, laughed and told Ms. Pachote she was under arrest for assaulting a police officer. *Id.* at 704.

Defendant Nelson proceeded to grab Ms. Pachote by her hair and was tugging Ms. Pachote out of the house by her hair. *Id.* Defendant Thomas, who had already been approaching, entered into Ms. Pachote’s house and pushed her out. *Id.* at 704-705.

Defendant Thomas—who is 6'3" and 240 pounds—wrote in his police report that he pulled Ms. Pachote to the ground intentionally. *Id.* at 815-6. Ms. Pachote testified that Defendant Thomas and Defendant Nelson drove their knees into her back when they pulled her to the ground, causing her meniscus to tear. *Id.* at 704-5; 707-8.

D. Aftermath

Ms. Pachote cried and called out for someone to care for her minor autistic son, who curled up in a ball on the couch *Id.* at 706. Fortunately, a neighbor was able to care for him until his father arrived. *Id.*

Minutes after Ms. Pachote was arrested, Defendant Thomas alerted dispatch that Ms. Pachote had committed a Cal. Pen. Code § 415 violation for disturbing the peace—no mention of battery or resisting arrest. 5 ER-798; 902. In essence, Defendant Thomas had arrested and used force on Ms. Pachote for screaming and cussing at his partner from her front door—not for making threats or pushing her.

Afterwards, Defendant Thomas discussed the incident with his partner and, an hour and a half later, Defendant Thomas fraudulently changed the crime to a battery on an officer. 5 ER 800-1.

After Ms. Pachote was arrested, Defendant Thomas was the main person responsible for the report writing. 5 ER-815–816. Even though there were multiple neighbors outside, Defendant Thomas did not interview the neighbors or request video evidence from them—and no one else interviewed the witnesses. 5 ER-815–816; 818–819.

II. REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

There is no shortage of case law that provided notice to Defendant Thomas that ripping a woman out of her house, pulling her to the ground and driving his knee into her back with such force to cause a meniscus tear merely for refusing to be interviewed and cussing at officers to leave her property was an unconstitutional use of excessive force. *See Florida v. Bostick*, 501 U.S. 429, 437 (1991) (the Supreme Court has “consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure.”); *see also Duran v. City of Douglas*, 904 F.2d 1372 (9th Cir. 1990) (“Thus, while police, no less than anyone else, may resent having obscene words and gestures directed at them, they may not exercise the awesome power at their disposal to punish individuals for conduct that is not merely lawful, but protected by the First Amendment.”); *City of Houston, Texas v. Hill*, 482 U.S. 451, 462-63 (1987) (“[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.”).

On appeal, Defendant Thomas has tried to re-frame himself as a late-arriving officer, who was unable to make an independent decision to make the arrest, but instead just assisted and relied on Defendant Nelson’s judgment in making an arrest based on facts unknown to him. Defendant Thomas not only had the opportunity to independently evaluate the situation, but he actually did so per his own police report:

“As I approached the front of 1216 Trigger Ct. **I saw** the female resident, later identified as **ARR-Tracy Pachote, push Deputy Nelson with both hands**, knocking Deputy Nelson off balance and causing her to stumble back.

... Given Pachote’s actions, **using unlawful and unwarranted force on Deputy Nelson**, delaying Deputy Nelson in the course of her investigation regarding a possible shooting, I believed Pachote to be in violation of PC 243b—battery on a peace officer and PC 148(a)(1)—obstructing and delaying a peace officer. I placed Pachote under arrest for the aforementioned charges.”

5 ER-834-5—Thomas Report. (emphasis added).

Based on these facts, the Ninth Circuit majority correctly concluded that Defendant Thomas not only had the opportunity but, taking the facts in the light most favorable to Plaintiff, *did* independently evaluate the situation and used excessive force. *See* Ninth Circuit Memorandum at page 5: (“Rather, Thomas had “a duty to independently evaluate [the] situation when [he] arrive[d], if [he had] an opportunity to do so.” *Rice v. Morehouse*, 989 F.3d 1112, 1122 (9th Cir. 2021). Viewing the facts in the light most favorable to Plaintiff, Thomas did have such an opportunity. A reasonable jury could find that Thomas knew that Pachote had neither committed a crime nor posed a threat, and that Thomas’s non-trivial use of force in pulling Pachote to the ground, dragging her, and placing his knee on her back, causing her to tear her meniscus, was therefore excessive.”)

Of course, Ms. Pachote testified that she never pushed Defendant Nelson. Taking the facts in the light most favorable to Plaintiff, the Court must take this dispute of fact in Plaintiff's favor and consider that Plaintiff never pushed Defendant Nelson. As such, the basis for Defendant Thomas's force is absent and his use of force is excessive.

But whether or not Ms. Pachote pushed Defendant Nelson, Defendant Thomas admitted he was watching their interaction prior to and during Defendant Nelson's use of force. Therefore, Defendant Thomas's own testimony precludes his argument that he was a late arriving officer—he saw “the subject was screaming at Deputy Nelson to leave her residence. [He] began walking toward Deputy Nelson as it appeared the resident was becoming increasingly belligerent as their conversation went on. As [he] approached the front of 1216 Trigger Ct. [he] saw the female resident, later identified as ARR-Tracy Pachote, push Deputy Nelson with both hands, knocking Deputy Nelson off balance and causing her to stumble back.” 5 ER-834-5—Deputy Thomas Report. Defendant Thomas could not have been a late arriving officer if he was continuously watching Ms. Pachote and Defendant Nelson, and could hear the substance of their conversation, as he approached Ms. Pachote's home—before any force was used.

Moreover, Plaintiff had every right to demand that the officers leave her home, as it is undisputed that: they did not suspect her of any crimes; she made no verbal threats and merely used profanities. Ms. Pachote was no threat to anyone, including the officers, and therefore the decision to take her down to the ground and jam their knees in

her back was clearly excessive. *See Gravelet-Blondin v. Sheltin*, 728 F.3d 1086, at 1094 (9th Cir. 2013) (holding that “the use of non-trivial force of *any kind* was unreasonable” against a suspect “engaged in no behavior that could have been perceived . . . as threatening or resisting”); *Meredith v. Erath*, 342 F.3d 1057, at 1061 (9th Cir. 2003) (holding as clearly established that throwing a suspect to the ground and twisting her arms was excessive when the suspect “did not pose a safety risk” and “the need for force, if any, was minimal at best.”); *Hansen v. Black*, 885 F.2d 642, 645 (9th Cir. 1989) (“the officers used excess force on Hansen by unreasonably injuring her wrist and arm as they handcuffed her.”).

Notably, Defendant Thomas’s argument that he used *de minimis* force is contradicted by the takedown maneuver and injuries he caused to Ms. Pachote. Compare with, *Wilkins v. Gaddy*, 559 U.S. at 37 (“Injury and force . . . are only imperfectly correlated, and it is the latter that ultimately counts); *Bryan*, 630 F.3d at 824 (“We have held that force can be unreasonable even without physical blows or injuries.”); *McDowell v. Rogers*, 863 F.2d 1302, 1307 (6th Cir. 1988) (“we do not believe that a serious or permanent injury is a prerequisite to a claim under Section 1983”).

Nonetheless, even *de minimis* force is unconstitutional and excessive in circumstances, such as here, where Plaintiff is nonthreatening, suspected of no criminal activity and merely cussing at officers to leave her property. *See Fontana v. Haskin*, 262 F.3d 871, 880 (9th Cir. 2001) (explaining that when the circumstances show that there is no need for force, any force used is constitutionally unreasonable); *Blankenhorn v. City of Orange*, 485 F.3d 463, 481 (9th Cir. 2007) (holding it clearly

established that “force is only justified when there is a need for force”); *P.B. v. Koch*, 96 F.3d 1298, 1303 f.4 (9th Cir. 1996) (“since there was no need for force, [the official’s] use of force was objectively unreasonable.”).

Defendant’s citation to *Kisela v. Hughes* and *White v. Pauly* are utterly inapposite. *Kisela* and *White* discuss officer’s constitutional obligation when they use deadly force against an armed suspect. There are dozens and dozens of cases, wherein Plaintiff has cited a great many of them, that provide notice that Defendant Thomas’s uses of force (to tear a woman from her house, throw her to the ground and drive his knee into her back, causing a meniscus tear, for cussing at officers to leave her property) was excessive under long-standing clearly established law. See, e.g., *Mena v. Massie*, 795 Fed.Appx. 539, 540 (9th Cir. 2020) (by 2016, it was clearly established law that “it would be excessive force to use violence that is foreseeably likely to cause more than de minimis amounts of pain and injury against an arrestee where the crime is a non-violent misdemeanor and the arrestee (1) was not a threat to the officers or anyone else, (2) was not a flight risk, (3) did not resist (or at most passively resisted) being handcuffed, and (4) was not warned that the officer was going to use violent force before it was applied.”) (collecting cases).

III. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Writ of Certiorari.

Date: July 3, 2025

Respectfully submitted,

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