No. 24-998

IN THE

Supreme Court of the United States

OFFICER EDDIE BOYD, III, *ET AL.*,
Petitioners,
v.

FRED WATSON,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION REDACTED

Daniel S. Harawa
Counsel of Record
Adam B. Murphy
NEW YORK UNIVERSITY SCHOOL OF LAW
FEDERAL APPELLATE CLINIC
245 Sullivan Street, Fifth Floor
New York, NY 10012
(212) 998-6420
daniel.harawa@nyu.edu

QUESTIONS PRESENTED

I. Whether a police officer is entitled to qualified immunity for aiming a loaded gun at a civilian's head and threatening to kill him—specifically because the civilian asked for the officer's name and badge number—after the civilian complied with all relevant orders.

II. Whether this Court should grant certiorari to adopt a novel "objective reasonableness" requirement for First Amendment retaliatory force claims when: (1) the issue was not raised below, and (2) the courts of appeals have not split.

III. Whether this Court should grant certiorari to revisit the Eighth Circuit's fact-bound application of settled First Amendment retaliation doctrine.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

TABLE OF AUTHORITIES - Continued

TABLE OF AUTHORITIES - Continued

Statutes

Other Authorities

TABLE OF AUTHORITIES - Continued

INTRODUCTION

Former Ferguson Police Officer Eddie Boyd has a long and well-documented history of misconduct. For that reason, he has roamed from department to department in the St. Louis metropolitan area.[1] Along the way, Boyd has triggered numerous complaints by adults, children, and even fellow officers, and he has racked up sustained claim after sustained claim of wanton violence, false reporting, and retaliation.

Navy veteran Fred Watson was one of Boyd's victims. It all started with Boyd "pulling over" Mr. Watson, who was sitting in his parked car in a local park one evening after a game of pickup basketball. Boyd parked his car directly in front of Mr. Watson's to block him in, and unsnapped his holster before the encounter even began. From the get-go, Boyd started lobbing outlandish accusations (baselessly speculating that Mr. Watson could be a pedophile) and making unusual requests (demanding that Mr. Watson provide his social security number before even asking for his license).

Alarmed by Boyd's behavior, Mr. Watson asked Boyd for his name and badge number. When Boyd refused to provide any identifying information and continued to escalate the encounter, Mr. Watson reached for his phone, in plain sight on the dashboard, to call 911. In response, Boyd screamed, "Put your fucking phone down and put your hands on the steering wheel!" Mr. Watson did as he was told. Afterward—

---

[1] *See* Timothy Williams, *Cast-Out Police Officers are Often Hired in Other Cities*, N.Y. Times (Sept. 10, 2016), https://www.nytimes.com/2016/09/11/us/whereabouts-of-cast-out-police-officers-other-cities-often-hire-them.html?smid=url-share.

while Mr. Watson was sitting there, hands on the steering wheel—Boyd removed his gun from his holster, aimed it at Mr. Watson's head, and threatened, "I could shoot you right here and nobody will give a shit." This is the basis for Mr. Watson's First Amendment retaliatory force claim.

Boyd and the City of Ferguson ask this Court to grant certiorari to address a series of gerrymandered, fact-bound, and split-less questions, each of which the Eight Circuit resolved correctly (to the extent they were even presented). This Court should deny the petition.

First, the Eighth Circuit's denial of qualified immunity creates no conflict with any circuit decision or decision of this Court. No court has ever held (or even hinted) that a police officer can threaten to shoot a compliant person in response to being questioned. Boyd had ample notice that such behavior was plainly unconstitutional, and no court of appeals has suggested otherwise.

Second, Petitioners ask this Court to "extend" its existing precedents and adopt a new rule requiring plaintiffs raising First Amendment retaliatory force claims to "plead and prove that the conduct complained of was objectively unreasonable." Pet. 22. But Petitioners did not raise this request below. This Court should reject Petitioners' invitation to change the rules of the game now, especially given that there is no confusion among the courts of appeals.

Third, Petitioners ask this Court to engage in error correction, urging it to find that there could be some plausible "alternative explanation" for Boyd's

pointing of his gun at Mr. Watson's head and threatening to shoot him. But not only is error correction a disfavored reason to grant review, it would be error to credit any potential "alternative explanation" at this juncture given that, at summary judgment, all facts must be viewed and all inferences drawn in Mr. Watson's favor.

With a jury trial looming after nearly seven years of litigation, Petitioners ask this Court to intervene to correct errors that were not error at all, and to address questions that have caused no confusion. Their petition should be denied.

STATEMENT OF THE CASE

In 2015, the United States Department of Justice released a "scathing" report on the Ferguson, Missouri Police Department.[2] In the 100-plus page report, DOJ concluded that Ferguson PD engaged in "a pattern of unconstitutional policing" that "raise[d] due process concerns and inflict[ed] unnecessary harm on members of the Ferguson community."[3] The Ferguson Report found that these harms were borne primarily by Ferguson's Black residents, as Ferguson PD's "practices both reflect[ed] and exacerbate[d] existing racial bias."[4]

On page three of the Ferguson Report, DOJ provided a paradigmatic example of the "relatively routine misconduct by Ferguson police officers," detailing the "summer of 2012" arrest of "a 32-year-old African-American man sat in his car cooling off after playing basketball in a Ferguson park."[5]

That man was Fred Watson. The arresting officer was Eddie Boyd. That fateful encounter provides the basis for this lawsuit.

---

[2] *See, e.g.*, Wilson Andrews, Alicia Desantis, & Josh Keller, *Justice Department's Report on the Ferguson Police Department*, N.Y. Times (Mar. 4, 2015), https://nyti.ms/3LVBopX; Mark Berman & Wesley Lowery, *The 12 Key Highlights from the DOJ's Scathing Ferguson Report*, Wash. Post (Mar. 4, 2015), https://wapo.st/3H7rL7W.

[3] Dept. of Justice, Civil Rights Div., Investigation of the Ferguson Police Department 2 (2015), *online at* https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

[4] *Id.*

[5] *Id.* at 3.

I. The Incident.

On the evening of August 1, 2012, after finishing a game of basketball in a local Ferguson park, Navy veteran Fred Watson sat in his car to cool off. Pet. App. 54a–55a. While Mr. Watson was sitting in his parked car with the air conditioning running, Officer Eddie Boyd pulled into the parking lot, parked his cruiser in front of Mr. Watson's car, and got out to confront Mr. Watson. R. Doc. 196-2, at 2.[6] From the start, Boyd was aggressive, unstrapping his gun holster before even speaking to Mr. Watson. Pet. App. 6a. When Boyd got to the car, he asked Mr. Watson if he knew why he had "pulled [him] over," which perplexed Mr. Watson because his car was parked. *Id.* With no justification, Boyd ordered Mr. Watson to provide his social security number. Pet. App. 7a. When Mr. Watson asked Boyd why he needed this information, Boyd started yelling and lobbed the unfounded accusation that Mr. Watson "could be a pedophile." *Id.*

Confused and alarmed by Boyd's increasingly aggressive conduct, Mr. Watson asked Boyd for his name and badge number. *Id.* Boyd instantly became "visibly upset" and refused to provide any identifying information, telling Mr. Watson it would be on his tickets. *Id.*

---

[6] "R. Doc." citations are to the district court docket.

Petitioners point to the tint on Mr. Watson's car windows and the lack of front license plate as being suspicious. They leave out that both were legal under Florida law, where Mr. Watson's car was registered. *See* R. Doc. 196-2, at 1; Fla. Stat. Ann. § 316.605 (West). And while Boyd claimed there had been a spate of break-ins, he did not present data to support this claim.

Afraid of what Boyd might do, Mr. Watson reached for his phone—which was in plain sight on the car dashboard—so he could call the police. *Id.*; *see* R. Doc. 196-2, at 4. Boyd screamed at Mr. Watson, "put your fucking phone down and put your hands on the steering wheel!" Pet. App. 7a. Mr. Watson immediately complied, "return[ing] his hands to the steering wheel." *Id.* Boyd himself then called for backup, drew his gun, trained it at Mr. Watson's head, and told him that he could "shoot [him] right here and nobody will give a shit." *Id.* (brackets omitted).

Sometime during the encounter, Boyd asked Mr. Watson for his name. Pet. App. 8a. Mr. Watson identified himself by the name he goes by, "Fred Watson," which is the abbreviated version of his legal name, Freddie Watson. *Id.* Boyd also asked Mr. Watson for his license and registration. Pet. App. 25a. Mr. Watson, afraid to remove his hands from the steering wheel, informed Boyd that his license was in his pants pocket on the back seat and his registration was in the glove compartment. Pet. App. 9a. Boyd then ordered Mr. Watson to throw his keys out of the window and exit the car. Pet. App. 8a. But Mr. Watson's key fob was also in his pants pocket, so to avoid making any movements, Mr. Watson sat in the car with his hands on the wheel until other officers arrived, at which point he got out of the car. Pet. App. 9a.

Boyd immediately shoved Mr. Watson against the car, handcuffed him tightly, and placed him in the back of his cruiser. *Id.* Boyd then ransacked Mr. Watson's car and found Mr. Watson's license and registration where Mr. Watson said they would be. R. Doc. 196-2, at 7. Boyd also checked a police database and

discovered both were valid and unexpired.[7] Pet. App. 9a. Boyd arrested Mr. Watson anyway. R. Doc. 196-3 at 134.

After spending the night in the Ferguson jail, Mr. Watson was released and given the following seven tickets that Boyd issued:

1. No operator's license in possession
2. No proof of insurance
3. Vision reducing material applied to windshield
4. Expired state operator's license
5. No seat belt
6. Failure to register an out of state vehicle
7. No vehicle inspection.

Pet. App. 10a. Contrary to what Boyd had promised, his name was not legible on any of the tickets. R. Doc. 196-11, at 1–8. His badge number was missing on five of the tickets. *Id.* And on the remaining two tickets, his badge number was purposefully scratched out. *Id.*

Shortly after his release, Mr. Watson went back to the Ferguson Police Department to file a complaint.

---

[7] Petitioners provide an incomplete version of the facts. Boyd conducted multiple searches of the police database (REJIS) that evening. The first search he ran using the name "Fred Watson" turned up nothing. Pet. App. 8a. The second search he ran using the name "Freddie Watson" showed Mr. Watson as having an expired Missouri license. Pet. App. 9a. The third search conducted "shortly thereafter" revealed Mr. Watson had a valid Florida license and that his vehicle "was registered and insured in Florida." *Id.* Thus, Boyd knew *before* he issued any tickets that Mr. Watson had an unexpired Florida license and registration that matched his car's Florida license plate. *Id.*

R. Doc. 196-2, at 8. But the officers on duty refused to provide Mr. Watson a complaint form and told him there was no one that he could speak with. *Id.* Months after this attempted complaint, Mr. Watson discovered Boyd had charged him with two more offenses:

> 8. Making a false statement
>
> 9. Failure to obey the orders of a police officer.[8]

Pet. App. 10a. In total, Mr. Watson was charged with *nine* offenses based on the traffic "stop" of his parked car.

These charges destroyed the life Mr. Watson had built after his military service. The pending charges caused him to lose his highest-level secret security clearance. *See* R. Doc. 137, at 15–16. Without his security clearance, he lost his cybersecurity job. *Id.* Without his job, he could not pay his mortgage and became homeless. *Id.* And after five years and the filing of this suit, Ferguson finally dismissed all charges. R. Doc. 196-17, at 1.

II. Ferguson's Failure to Adequately Screen or Supervise Boyd.

For purposes of Mr. Watson's *Monell* claim, the evidence at summary judgment showed that Ferguson's screening practices for prospective officers were cursory. For Boyd, [redacted]

[8] The first seven offenses were written as traffic tickets, while the latter two offenses were charged via complaint. *See* R. Doc. 197-9; R. Doc. 197-100; R. Doc. 197-11. Although the complaints are dated the day of the incident, Mr. Watson did not receive notice of them until much later. *See* Pet. 10a.

[redacted]

In light of Ferguson's decision to blind itself to past misconduct, Ferguson failed to learn that, in 2006, [redacted]

In a separate incident, in 2007, [redacted]

[redacted]

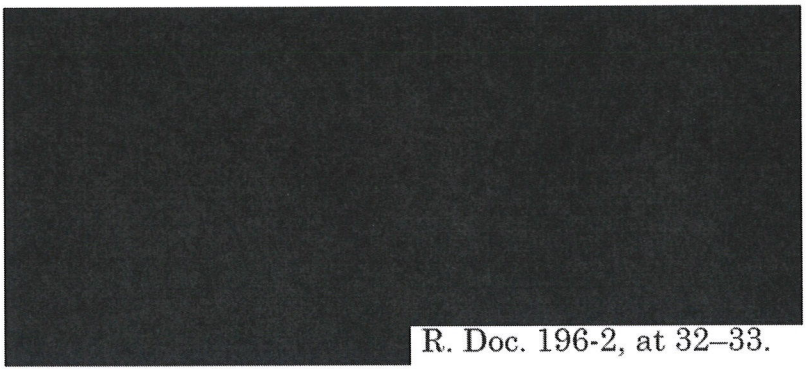
Ferguson's screening process was designed to catch none of this.

Boyd's misconduct continued while on the Ferguson PD, in large part because Ferguson also had systems in place that ensured Boyd would remain on the force despite his repeated misbehavior.[9]

From 2011 to 2014, [redacted]

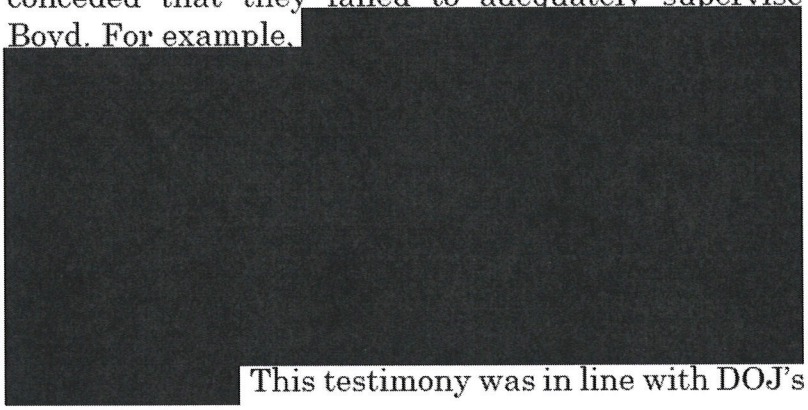
Despite these complaints, Ferguson never disciplined Boyd during his tenure. Ferguson also failed to maintain appropriate systems to monitor Boyd's performance. For example, [redacted]

[9] For a sampling of Boyd's misconduct while on the Ferguson PD, *see* R. Doc. 196-2, at 17–31.



R. Doc. 196-2, at 32–33.

During this litigation, Ferguson PD officials conceded that they failed to adequately supervise Boyd. For example,



This testimony was in line with DOJ's

---

[10] Boyd was sued several times while employed by Ferguson. *See Kidd v. Boyd*, No. 4:15-cv-01801-CEJ (E.D. Mo. 2015); *Phillips v. Ferguson*, No. 4:16-cv-00084 (E.D. Mo. 2016); *Rice v. Boyd*, No. 4:19-cv-01563 (E.D. Mo. 2019); *Mentzel v. City of Ferguson*, No. 4:19-cv-01923 (E.D. Mo. 2019). Three of these cases involved claims that Boyd retaliated against individuals who asked for his name or recorded his conduct. *See* Valerie Schremp Hahn, *Woman Sues Ferguson Police Officer, Alleges Unreasonable Arrest at Accident Scene*, St. Louis Post-Dispatch (Dec. 8, 2015), https://perma.cc/PL9E-49PJ; Sarah Fenske, *A Local Father, Attorney Speak Out About a Ferguson Officer's History of Abusive Policing*, STLPR, (Sept. 26, 2019), https://perma.cc/H34B-JX4Y; Sarah Fenske, *Ferguson Again Sued Over Actions of Officer Eddie Boyd*, Riverfront Times (Jul. 12, 2019), https://perma.cc/W24A-BLPU. These lawsuits all settled.

finding that Ferguson PD "officers believe[d] criticism and insolence are grounds for arrest, and that supervisors . . . condoned such unconstitutional policing, reflect[ing] intolerance for even lawful opposition to the exercise of police authority."[11]

III. Proceedings Below.

On July 31, 2017, Mr. Watson filed a complaint in the United States District Court for the Eastern District of Missouri pursuant to 42 U.S.C. § 1983 alleging Boyd violated his First, Fourth, and Fourteenth Amendment rights. R. Doc. 1; R. Doc. 35 (amended complaint). The complaint contained four counts:

- Count I: Unlawful search and seizure in violation of the Fourth and Fourteenth Amendments
- Count II: Unlawful retaliation in violation of the First Amendment
- Count III: Malicious prosecution in violation of the Fourth and Fourteenth Amendments
- Count IV: Municipal liability against the City of Ferguson.

Pet. App. 10a–11a.

After discovery, Boyd and Ferguson jointly moved for summary judgment, arguing Mr. Watson's claims failed as a matter of law and that Boyd was entitled to qualified immunity. Pet. App. 11a. The district court granted the motion with respect to Mr. Watson's malicious prosecution and *Monell*[12] failure-to-

---

[11] Ferguson Report, *supra* n.3, at 26.

[12] *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978).

train claims but denied it in all other respects. Pet. App. 11a–12a.

Petitioners filed an interlocutory appeal, and the United States Court of Appeals for the Eighth Circuit reversed and remanded for the district court to reperform the qualified immunity analysis. Pet. App. 12a. Petitioners then filed a second motion for summary judgment. *Id.* This time, "[t]he district court granted the motion on all counts." *Id.* The district court did not address Mr. Watson's First Amendment retaliatory force claim, deciding only his Fourth Amendment excessive force claim. Pet. App. 18a. In holding that Boyd was entitled to summary judgment on the excessive force claim, the district court focused on the pointing of the gun, excising Boyd's threating to shoot Mr. Watson from its analysis. *See* Pet. App. 86a (focusing only on the act of Boyd "pulling his gun"). From there, the court held that Boyd's pointing of his gun did not violate clearly established Fourth Amendment law given Mr. Watson's attempt to reach for his phone. *Id.*

The Eighth Circuit largely affirmed. It narrowly reversed only as to the district court's unexplained grant of summary judgment on Mr. Watson's First Amendment retaliatory force claim (and the related *Monell* claim), which stemmed from Boyd pointing his gun at Mr. Watson's head *and* threatening he could "shoot him and nobody will give a shit." Pet. App. 7a. As to that specific conduct, the Eighth Circuit reasoned that Mr. Watson engaged in protected speech by "asking for Boyd's name and badge number." Pet. App. 37a. "Boyd's action of pulling a gun" on Mr. Watson and threatening to shoot him "easily" would chill a

person of "ordinary firmness" from continuing to engage in protected speech. Pet. App. 36a. And Mr. Watson "raised a genuine issue of material fact as to retaliatory motive" given that Boyd pointed his gun and threatened to shoot Mr. Watson *after* Mr. Watson complied with Boyd's order to put down his phone and his hands were visible on the steering wheel. Pet. App. 37a.

Boyd argued that he was nevertheless entitled to qualified immunity given the district court's ruling that his pointing of his gun did not violate clearly established Fourth Amendment law. Pet. App. 38a. The Eighth Circuit, after canvassing circuit and Supreme Court precedent, rejected this claim, explaining that Fourth and First Amendment claims are distinct because Fourth Amendment claims focus solely on the reasonableness of the seizure, while First Amendment claims focus on the retaliation for speech itself. Pet. App. 38a–39.

Judge Gruender dissented only as to the majority's causation analysis because, in his view, there was an "obvious alternative explanation for Officer Boyd" pulling his gun: "[Mr.] Watson reached for his phone" (but then complied with Boyd's command to place his hands back on the steering wheel). Pet. App. 50a (quotation marks omitted).

Petitioners filed for rehearing and rehearing en banc, which the Eighth Circuit denied with no noted dissents. Pet. App. 94a. Petitioners then moved to stay the mandate, which the Eighth Circuit also unanimously denied. Pet. App. 1a.

REASONS FOR DENYING THE PETITION

I. Petitioners' First Question Claims a Circuit Split That Does Not Exist and Asks the Court to Grant Immunity for a Constitutional Violation that is Glaringly Obvious.

The first question Petitioners present turns on a claim that Boyd did not violate clearly established law and that the Eighth Circuit's decision below holding otherwise creates a 1-1 circuit split. Pet. 18–22. Petitioners are wrong on both fronts. Over the course of decades, this Court has made clear that government officials cannot retaliate against a person for exercising their free speech rights. And no court—including the Tenth Circuit in the lone case Petitioners cite as the basis for their asserted, shallow split—has suggested that a police officer can threaten to shoot a compliant person (whose hands were clearly visible) in response to being questioned.

Petitioners claim there is no way that Boyd would have known that it was unconstitutional to point his gun at someone's head and threaten to shoot them in retaliation for engaging in protected speech. They therefore ask this Court to grant him qualified immunity. Pet. 17–18. But only a "plainly incompetent" officer would think that they can threaten deadly force against someone in response to their protected speech. *Malley v. Briggs*, 475 U.S. 335, 341 (1986). As this Court explained earlier this year in the habeas context: "certain principles are fundamental enough that when new factual permutations arise, the neces-

sity to apply the earlier rule will be beyond doubt." *Andrew v. White*, 145 S. Ct. 75, 82 (2025). The facts here prove this point. Boyd does not deserve immunity.

The animating concern underlying modern qualified immunity jurisprudence is that officers have "fair warning that their conduct violated the Constitution." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Often, fair warning is provided by prior cases establishing the unlawfulness of the conduct. *See, e.g.*, *Anderson v. Creighton,* 483 U.S. 635, 640 (1987). But when an official's conduct is "obvious[ly]" illegal, no "body of relevant case law" is necessary. *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004) (per curiam). The constitutional claim can proceed. *See, e.g.*, *Taylor v. Riojas*, 592 U.S. 7, 9 (2020) (per curiam) (reversing grant of qualified immunity where "the particularly egregious facts" meant that "any reasonable officer should have realized" their conduct was unlawful); *District of Columbia v. Wesby*, 583 U.S. 48, 64 (2018) (reiterating that unlawfulness can be clearly established "even though existing precedent does not address similar circumstances"); *United States v. Lanier*, 520 U.S. 259, 270–71 (1997) (explaining that particularly egregious conduct may be clearly unconstitutional even if "the very action in question has [not] previously been held unlawful").

It would be perverse to conclude that because there is no decision in which an officer has done what Boyd is claimed to have done here, that he deserves immunity. That Boyd's conduct is singularly flagrant does not mean that he escapes liability.

As this Court has explained, patently unconstitutional conduct is by its nature less likely to lead to

the development of precedent to serve as clearly established law. *See Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 377–78 (2009). Because such conduct is obviously unconstitutional, officials are—or should be—less likely to perpetrate it. "[O]utrageous conduct obviously will be unconstitutional, this being the reason . . . that the easiest cases don't even arise." *Id.* (internal quotation marks and brackets omitted). If the law were otherwise, the most egregious rights violators would be the most immune.

Such would be the case here. Defining the right with particularity and with all evidence viewed in the light most favorable to Mr. Watson, any reasonable officer would know that it is unlawful to train their gun on a person for ten seconds while threatening, "I can shoot you right here and nobody will give a shit," all because they did not like being questioned. Pet. App. 7a. Any competent officer would know that such conduct would chill a person from speaking further. *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274, 287 (1977). Given Boyd's conduct here, one of the many disturbing examples littered throughout his career, it is unsurprising that this precise factual scenario has not reached this Court. There are times where the line between what is and is not acceptable policing is "hazy." *Saucier v. Katz*, 533 US 194, 206 (2001). When an officer is acting in the haze, particularly in the Fourth Amendment context, qualified immunity is justified. *Id.*; *see Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (emphasizing greater specificity is needed in the Fourth Amendment context). But there is nothing hazy here. Boyd's conduct was obviously unconstitutional.

It is among our nation's most foundational and established principles that the "First Amendment prohibits government officials from retaliating against individuals for engaging in protected speech." *Lozman v. Riviera Beach*, 585 U.S. 87, 90 (2018) (citing *Crawford-El v. Britton*, 523 U.S. 574, 592 (1998)). This Court has reaffirmed this principle time and again. This Court has held that government officials cannot fire you for engaging in protected speech. *See Elrod v. Burns*, 427 U.S. 347, 372–73 (1976). They cannot demote you for engaging in protected speech. *See Heffernan v. City of Paterson*, 578 U.S. 266, 273 (2016). They cannot terminate your contract for engaging in protected speech. *See Bd. of Comm'rs, Wabaunsee Cty. v. Umbehr*, 518 U.S. 668, 685 (1996). They cannot arrest you for engaging in protected speech. *See Reichle v. Howards*, 566 U.S. 658, 668 (2012). And they cannot prosecute you for engaging in protected speech. *See Hartman v. Moore*, 547 U.S. 250, 256 (2006).

This case presents the question of whether a government official can threaten to *shoot* you for engaging in protected speech. To ask this question is to answer it. If firing a person, demoting them, terminating their contract, or arresting them for engaging in protected speech violates the First Amendment, then surely pointing a gun at them and threatening to kill them would, too. That is the unremarkable upshot of the Eighth Circuit's decision.

In search of a more persuasive hook, Petitioners claim that the Eighth Circuit's decision is in "conflict with" one other circuit decision. Pet. 18.[13] It is not.

Petitioners cite *Hoskins v. Withers*—a recent Tenth Circuit decision that affirmed a district court's grant of qualified immunity—and characterize it as a "factually analogous case in which a petition for certiorari is pending." Pet. at 18–19 (citing *Hoskins v. Withers*, 92 F.4th 1279 (10th Cir. 2024)). But this Court has since denied certiorari in *Hoskins*.[14] And for good reason. As the respondents in *Hoskins* explained, "there is no actual conflict." Respondent's Br. in Opp'n at 5, *Hoskins v. Withers,* No. 24-504 (U.S. 2025).

Instead, there are "key factual differences" between the two cases. *Id.* at 7. In *Hoskins*, the trooper pulled his gun while Hoskins's hands were "in or near his pockets." 94 F.4th at 1284. When Hoskins showed his hands, the trooper holstered his weapon. *Id.* And despite being cursed at by Hoskins, at no time did the trooper threaten to shoot him. By contrast, here, Boyd trained his gun on Mr. Watson for ten seconds while threatening: "I can shoot you right here and nobody will give a shit." Pet. 7a. And "[c]rucially," Boyd did so *after* Mr. Watson complied with his commands and placed his hands back on the steering wheel. *Id.* at 37a. In other words, Boyd pulled his gun, pointed it directly at Mr. Watson's head for ten seconds, and threatened to kill him after any plausible safety threat

---

[13] Petitioners also vaguely claim that the Eighth Circuit's decision conflicts with decisions from "various other circuits," Pet. 9, 21, but do not purport to identify any such decisions.

[14] This Court denied the petition for a writ of certiorari on March 31, 2025.

from Mr. Watson reaching for his phone in plain sight to call 911 was over.

"These are not small differences." Respondent's Br. in Opp'n at 8, *Hoskins v. Withers,* No. 24-504 (U.S. 2025). They are the reason Boyd had "fair warning that [his] conduct violated the Constitution," *Hope*, 536 U.S. at 741, while the trooper in *Hoskins* lacked it. Because of these critical factual differences, Petitioners fail to show any circuit split. Indeed, there is every reason to think that the Tenth Circuit would have reached the same conclusion as the Eighth Circuit if it had been presented with the same facts.

In sum, Petitioners have failed to identify even a shallow, 1-1 split among the circuits. Instead, they ask this Court to grant immunity for a clear constitutional violation absent any confusion. This Court should deny the petition.

II. Petitioners' Second Question Was Not Raised Below and Is Not Subject to Debate in the Lower Courts.

Petitioners next ask this Court to grant certiorari to "extend" its retaliatory prosecution and arrest precedents to the retaliatory force context. Pet. 22. Without purporting to identify any confusion in the lower courts, they ask this Court to fashion a new rule "requiring a plaintiff to plead and prove that the conduct complained of was objectively unreasonable." *Id.*

Petitioners did not make this "extension" request below. This argument was not even gestured toward in the district court. And in the court of appeals, Petitioners referenced objective reasonableness only in the context of arguing that Boyd was entitled to

qualified immunity. In other words, they contended the law was not clearly established; they did *not* argue *Nieves* should be "extend[ed]." See Pet. App. 38a–40a. As Petitioners recognize, the Eighth Circuit followed existing precedent, applied the correct elements of a retaliatory force claim, and held that Mr. Watson has raised genuine issues of material fact precluding summary judgment. Pet. 25.

Now, Petitioners assert that the Eighth Circuit should have applied a "threshold objective reasonableness requirement." Pet. 27. But as the Eighth Circuit explained, Petitioners did "not present[ ]" any argument to extend this Court's precedents in this fashion. Pet. App. 40a. And it's not for lack of opportunity—this case has been on-going for close to seven years. To change the pleading standard now would be particularly improper. This Court's "normal practice . . . is to refrain from addressing issues not raised in the Court of Appeals." *E.E.O.C. v. Fed. Lab. Rels. Auth.*, 476 U.S. 19, 24 (1986). There is no reason to deviate from that normal practice here. This Court should "consider the argument forfeited." *United States v. Jones*, 565 U.S. 400, 413 (2012).

Because Petitioners are asking this Court to "extend" its doctrine, they necessarily concede that the Eighth Circuit did not err in applying the law as it stands. And Petitioners cannot even claim that there's any confusion among the courts of appeals—in part because few retaliatory force claims even percolate through the circuits. *See* Respondent's Br. in Opp'n at 1, *Hoskins v. Withers,* No. 24-504 (U.S. 2025). By any metric, this question does not warrant the Court's review.

III. Petitioners' Third Question Asks This Court to Engage in Fact-Bound Error Correction When There Was No Error.

The third question Petitioners raise involves pure error correction: "whether the panel majority properly applied the but-for causation standard established by this Court for First Amendment retaliation claims." Pet. 28. This question—the lone basis for Judge Gruender's dissent below—plainly does not merit this Court's review.

To start, this Court's rules make clear that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10; *see* S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice § 5.12(c)(3), p. 352 (10th ed. 2013) ("[E]rror correction . . . is outside the mainstream of the Court's functions and . . . not among the 'compelling reasons' . . . that govern the grant of certiorari"). But error correction is all Petitioners seek: They gesture to purported "analytical variances amongst circuits on causation," Pet. 32, but cannot dispute that the Eighth Circuit applied the proper "but-for caus[ation]" standard, Pet. App. 37a.

Beyond that, the error Petitioners ask this Court to correct was no error at all. Again, the majority below applied the correct test for a retaliatory force claim, including the but-for causation standard. *See id.* (holding that a "reasonable factfinder could conclude that retaliation was a but-for cause of Officer Boyd pulling his weapon on Watson"). Petitioners are therefore left to fight over the facts, hanging their hats

on Judge Gruender's fact-bound dissent. They point out that Judge Gruender believed there to be "an obvious alternative explanation" for Boyd's use of force—"the intervening act where [Mr.] Watson reached for his phone"—such that no reasonable factfinder could find but-for causation. Pet. App. 49a.[15] But the majority disagreed, *as a factual matter*, because "[c]rucially, . . . it was *after* [Mr. Watson] had already complied with Officer Boyd's command [to put down the phone] that Officer Boyd pulled his gun and said, I could shoot you right here and nobody will give a shit." Pet. App. 37a (emphasis in original; quotation marks and backets omitted). This disagreement, which boils down to a dispute over the best view of the record, is proof that there is a genuine dispute of material fact that precludes summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And at this juncture, the majority's view of the record is the proper one, given that, at summary judgment, all evidence must be viewed and all reasonable inferences drawn in Mr. Watson's favor. *See id.* at 255.

---

[15] The "obvious alternative explanation" phrasing is the Eighth Circuit's own gloss on the but-for causation standard. That is why the primary conflict Petitioners perceive is "with established *Eighth Circuit* law," Pet. 28–29 (emphasis added)—hardly a basis for *this Court* to grant certiorari. In all events, if the decision below were in fact out of step with Eighth Circuit precedent, the court of appeals would have heard the case en banc. It declined to do so, presumably because there was no conflict to resolve. *See* Pet. App. 94a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Daniel S. Harawa
Counsel of Record
Adam B. Murphy
New York University
School of Law
Federal Appellate Clinic
245 Sullivan Street, 5th Fl.
New York, NY 10012
(212) 998-6420
daniel.harawa@nyu.edu

Counsel for Respondent