No. 17-1641

IN THE

Supreme Court of the United States

BARBARA ANN THOMAS;
JOHN THOMAS,

Petitioners,

v.

J.J. WILLIAMS,

Respondent.

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

PETITION FOR REHEARING

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January 4, 2019

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I. ARGUMENT

This case requires re-hearing because officers will inevitably cite hereto for the absurd propositions that:

(1) the People do not have reasonable expectations of privacy in their homes, even when officers (a) subjectively believe the People actually possess said expectation under the circumstances therein,[1] (b) cannot see inside the home,[2] (c) make no observations of illegal

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[1] App. 73a ("Q: Do you believe the Thomases were entitled to privacy inside their home before you entered it? A [Williams]: Yes."). See also *Smith v. Maryland*, 442 U.S. 735, 740, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (1979) ("Consistently with *Katz*, this Court uniformly has held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a 'justifiable,' a 'reasonable,' or a 'legitimate expectation of privacy' that has been invade by government action.") (citations omitted).

[2] Compare App. 73a (Williams "could not see inside [Petitioners'] home from outside the premises.") with *Smith,* 442 U.S., at 740 (the Court's inquiry into the People's expectations of privacy considers "whether the individual, by his conduct, has 'exhibited an actual (subjective) expectation of privacy,'…whether, in the words of the *Katz* majority, the individual has shown that 'he seeks to preserve [something] as private.'") (internal citations omitted); *id.,* at 743 (Petitioner's "conduct was not and could not have been calculated to preserve the privacy of the number he dialed.") and *id.,* at 744 (Petitioner "assumed the risk" of disclosure and "voluntarily conveyed numerical information to the telephone company and 'exposed' that information to its equipment in the ordinary course of business.").

activity,[3] and (d) **admit they lack probable cause** to believe criminal activity was occurring inside said homes;[4]

(2) the People's right to remain free from unreasonable searches and seizures inside their own homes is not clearly established, even when (a) the address in the warrant does not exist, (b) the officer has no personal knowledge[5] of the place to be searched, (c) there is neither consent nor probable cause; and (d) officers satisfy each fact identified in the sub-paragraph (1), *supra*;

(3) warrantless protective sweeps inside the home are no longer searches;

(4) qualified immunity can be awarded based on "evidence" that (when viewed in the light most favorable to the People) a jury could disbelieve;

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[3] App. 73a-74a (Williams did not make "any personal observations of illegal activity occurring in [Petitioners'] home.").

[4] App. 93a (citing Request for Admission #11) (Williams did not have probable cause to believe criminal activity was occurring in Petitioners' home).

[5] Williams also lacks *admissible* evidence of his purported knowledge because the only evidence tending to prove the truths of the underlying "facts" is hearsay which is neither subject to an exception nor supported by *any* reasonable indicia of reliability (*e.g.,* her existence). See generally App. 54a ("These ***facts***…demonstrate that Williams genuinely believed that the location was numbered 5818, and that the C.I. had purchased drugs from that apartment.") (emphasis added).

(5) search warrant affidavits can permissibly refer to non-particularized areas to be searched; and

(6) officers can permissibly utilize their discretion to resolve ambiguities they deliberately create via material misrepresentations to a magistrate.

This result unjustifiably ignores the People's clearly established privacy protections inside their homes and warrants rehearing in order to preserve the integrity of our federal judiciary.

At a minimum, this case should be GVR'd so that the Fifth Circuit can reconcile its holding herein with its holding in *Barnes v. Gerhart*.[6] Together, these two cases unreasonably (1) obfuscate the People's rights and (2) extend qualified immunity to plainly incompetent officers who knowingly violate the law despite the fact that qualified immunity doctrine:

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[6] See Petitioners' Reply Brief at 9, *Barnes v. Gerhart,* No. 18-99 (Nov. 21, 2018) ("It would be entirely appropriate to GVR both [*Barnes*] and *Thomas* and signal to the Fifth Circuit that it's treatment of the two cases was improper. Regardless of which case is right or which case is wrong, parties are entitled to consistency. The Fifth Circuit gave these cases precisely the type of 'disturbing' treatment that two Justices highlighted in *Plumley v. Austin*, 128 S.Ct. 828 (2015) (Thomas and Scalia, J.J., dissenting from denial of certiorari).") (**set for conference January 4, 2019) *record requested* (January 3, 2019**).

- "regularly denies justice to those deprived of federally guaranteed rights";[7]
- "regularly excuses law enforcement for unconstitutional misconduct";[8]
- "imposes prohibitive and unjustified costs on civil-rights litigants";[9]
- "harms law-enforcement officials by eroding public trust and undermining the rule of law";[10]
- "lacks a sound legal basis";[11]
- "fails to achieve its own goals;"[12]
- "is legally unjustified and ought to be reconsidered;"[13] and
- is absent from the text of 42 U.S.C. § 1983.[14]

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[7] Brief amici curiae of Cross-Ideological Groups Dedicated to Ensuring Official Accountability, Restoring the Public's Trust in Law Enforcement, and Promoting the Rule of Law ["Cross-Ideological Groups"]), at 10, *Almighty Supreme Born [_]llah v. Lynn Milling*, 17-8654 (July 11, 2018).

[8] *Id.,* at 14.

[9] *Id.,* at 18.

[10] *Id.,* at 21.

[11] Brief amici curiae of Scholars of the Law of Qualified Immunity ["Scholars"], at 5, *Almighty Supreme Born [_]llah v. Lynn Milling*, 17-8654 (July 11, 2018).

[12] *Id.,* at 10.

[13] *Id.,* at 11.

[14] See generally 42 U.S.C. § 1983. See also Scholars, at 11. Cf. Brief amici curiae of CATO Institute ["CATO"], at 13, *Almighty Supreme Born [_]llah v. Lynn Milling*, 17-8654 (May 25, 2018) ("From the founding through the

Finally, every American lawyer knows out-of-court statements cannot be introduced to prove the truths of the matters asserted therein without a Rule-based exception supported by reasonable indicia of reliability. The alleged confidential informant herein purportedly made out-of-court statements to Williams which Williams then used to prove the truths of the matters asserted therein[15] (*i.e.,* that the informant went to specific places at a specific time and had specific conversations with a second specific person thereat who proceeded to say and gesticulate "facts"[16] which were crucial to the courts' erroneous analyses below). This Court's denial of certiorari protects State-sponsored deprivations (and denigrations) of the People's clearly established constitutional rights while inexplicably denying Equal Protection to the Thomases despite unambiguous constitutional protections and the lower courts' consistent refusals to honor time-honored rules painstakingly designed to govern and protect our shared foundations of justice.

II. CONCLUSION

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passage of Section 1983, good faith was not a defense to constitutional torts.") and *id.,* at 17 ("The common law of 1871 provided limited defenses to certain torts, not general immunity for all public officials.").

[15] Alternatively, these statements were introduced to prove his state of mind (which remains irrelevant hereto as a matter law).

[16] See App. 54a ("These ***facts***…demonstrate that Williams genuinely believed that the location was numbered 5818, and that the C.I. had purchased drugs from that apartment.") (emphasis added).

This Court's denial of certiorari:

(1) implicitly holds officers may reasonably believe (*inter alia*) they are authorized to detain the People in their own homes under the "facts" herein; and

(2) creates the precise "crazy quilt of the Fourth Amendment"[17] that it already knows will threaten the People's clearly established and fundamental rights.[18]

These injustices must be addressed, particularly given the Fifth Circuit's insistence on fabricating facts to achieve its desired objective and the unconscionable impact *Thomas* will have on the People's ability to hold government actors accountable for warrantless searches and seizures inside their homes.

III. PRAYER

Petitioners respectfully beseech this Honorable Court to grant re-hearing in order to prevent this devastating injustice to the People's heretofore clearly established rights.

IV. CERTIFICATE OF COUNSEL

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17 *Smith,* 442 U.S., at 745.

18 See *id.* (declining to create said quilt).

As counsel for Petitioners, I hereby certify that the foregoing Petition for Rehearing is: (1) presented in good faith, (2) not for delay, and (3) restricted to grounds identified in Supreme Court Rule 44.2 insofar as (a) it is limited to the substantial, controlling, and deleterious effects of this Honorable Court's denial of certiorari herein on the People's heretofore clearly established constitutional rights and (b) this Honorable Court is scheduled to conference ***today*** in *Barnes v. Gerhart,* No. 18-99 (where the petitioning officer agrees the instant case should at least be GVR'd so the Fifth Circuit can clarify its Fourth Amendment jurisprudence concerning warrantless entries into homes) and the record therein was requested ***yesterday***.

Respectfully submitted,

William Pieratt Demond
Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

No. 17-1641

BARBARA THOMAS AND JOHN THOMAS,
Petitioners

V.

J.J. WILLIAMS
Respondent

As required by Supreme Court Rule 33.1(h), I certify that Petitioner's PETITION FOR REHEARING contains 1,369 words, excluding the parts that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 4, 2019.

_____

William Pieratt Demond
Counsel for Petitioners