

Nos. 17-1654 & 17-1655

IN THE
Supreme Court of the United States

MATTHEW WISE, ZACHARY JONES,
JEFFREY VANTLIN, *et al.*,
Petitioners,

v.

WILLIAM HURT, DEADRA HURT,
AND ANDREA HURT,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In a case replete with significant factual disputes, including videotaped interrogations that the court of appeals viewed and found adequate to support respondents' claims at trial, does the circuit court's denial of petitioners' interlocutory qualified immunity appeals based on a straightforward application of Rule 56 and settled constitutional law warrant this Court's review of the dozen questions petitioners present?

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STATEMENT OF THE CASE

A. Petitioners' Misstatement of the Record

In proceedings below and before this Court, petitioners ignore long-standing limits on appellate jurisdiction in collateral-order appeals by crediting only their own version of the facts, while simply omitting all unfavorable evidence. The law does not permit this approach. *Johnson v. Jones*, 515 U.S. 204 (1995); *Scott v. Harris*, 550 U.S. 372, 377 (2007).

Pursuant to Supreme Court Rule 15.2, respondents therefore object to petitioners' Factual Background sections. The circuit court reproached petitioners for failing to "fully accept[] the facts in the light most favorable to the plaintiffs," and for impermissibly "asking [the court] to reweigh the evidence." App. A, p.12a, 19a.¹ Yet Petitioners employ the same tactic here. Respondents respectfully ask this Court to reject petitioners' Factual Background sections, their misstatements of the record, and their requests for review predicated on their self-serving factual accounts.

B. Factual Background

On June 17, 2012, the body of Marcus Golike washed up on the banks of the Ohio River. App. B, p.39a. Golike had been released from prison days earlier, where he had been on an extended suicide watch because of the substantial risk that he would kill himself. App. B, p.39a; D-261.4 at 10. Golike was diagnosed with schizophrenia, and he had a significant history of suicidal ideation. *Id.* He had threatened suicide on three prior occasions from Twin Bridges, which was just upstream from where his body was

¹ Citations to "App." refer to petitioners' appendices. Citations to "D-" refer to the electronic docket entries in the district court.

found. App. B, p.39a, 41a; D-262.2 at 2-3; D-261.17 at 9-10; D-262.3 at 1-2. When he was found, Golike carried a letter in his pocket from the Social Security Administration, ripped to display his identifying information, ensconced in a waterproof plastic bag. App. A, p.3a. His body showed no sign of assault or struggle. App. A, p.2a; D-261.2 at 30-31; D-261.4 at 8-9. Petitioners knew all of this information and still chose to investigate the death as a murder. App. A, p.4a; App. B, p.39a.

Ultimately, petitioners would coerce Golike's teenaged nieces and nephew, respondents here, to falsely confess to murdering Golike. App. A, p.2a, 6a-9a. At the time, Andrea Hurt was 16 years old, William Hurt was 18, and Deadra Hurt was 19. Respondents had never been in trouble with the law. Andrea was in high school. Deadra and William were recent graduates; Deadra was working full time, while William was working and planning to attend college. Golike was their beloved uncle, and his death was a family tragedy.

1. The Initial Investigation Reveals Evidence Suggesting Golike Committed Suicide

Kentucky State Police initially led the investigation. The state medical examiner preliminarily labeled the cause of death manual strangulation because Golike had a fractured hyoid bone in his neck and a broken rib. The medical examiner concedes that those injuries could have resulted from jumping off Twin Bridges or collisions with river debris while in the river, and respondents' expert agrees. D-261.2 at 35-36, 41; App. B, p.65a-66a; D-261.4 at 6-9.

There were no other wounds on Golike's body and no signs he had been tied up or beaten. D-261.2 at 22-26, 30-31, 36; D-261.4 at 8-9.

After Golike was identified as an Evansville resident, the Evansville Police Department ("EPD") took over the investigation. One of the EPD officers, Petitioner Vantlin, had previously met Golike and had heard him speak first-hand of his suicidal ideation. Doc. 261-20 at 19-20.

2. There is No Evidence Suggesting the Hurts Committed a Murder

On June 20, 2012, petitioners spoke to respondents' mother, Debbie Hurt, about Golike's death. Debbie said Golike had visited her family on June 16, 2012, joined them for a meal, and played chess with William. App. A, p.3a. Vantlin also spoke with William, who was uncertain of the date of Golike's visit. *Id.*

Construing the facts in their own favor, petitioners contend that their initial investigation provided probable cause to suspect respondents. For instance, they point to wounds on William's hand and inconsistencies in the Hurt family members' stories. But they omit that their own initial investigation thoroughly exonerated respondents. Before any arrests were made, Vantlin verified that William's recent hand injuries likely occurred at work as William had described. App. A, p.4a. And petitioners' pre-arrest reports concluded, after investigating the purported inconsistencies in the Hurt family members' accounts, "William Hurt, Ronald Hurt, Andrea Hurt and Debbie Hurt all told consistent stories." D-254.1 at 1, 4, 6. As the circuit court held, a reasonable jury could find that none of petitioners' cited facts supported probable cause. App. A, p.8a.

3. The Criminal Case Depended Entirely on False Confessions

The circuit court held, “The *only* source of probable cause to arrest [William] was the confession, so everything turns on it.” App. A, p.8a (emphasis in original). Indeed, petitioners conceded below that probable cause to arrest respondents depended entirely on the confessions that petitioners extracted from them. *See* Oral Argument at 8:00-8:08, *Hurt v. Wise*, No. 17-1771 & 17-1777 (7th Cir. Nov. 8, 2017).² Petitioner Vantlin testified that aside from the confessions, there was “no other proof” of respondents’ guilt. D-261.20 at 135 (“We had a dead person and two confessions, that’s it.”). An email from Vantlin sent during the criminal case concluded, “Unfortunately, all we had was the confession in the interview and the jury wanted evidence.” D-261.38.

State prosecutors likewise conceded at a suppression hearing that aside from the coerced confessions, there was no incriminating evidence whatsoever. D-261.23 at 6-8.

4. Petitioners Coerce William’s False Confession

On June 28, 2012, eighteen-year-old William went to EPD headquarters and was interrogated on videotape by Vantlin and Jones. He repeatedly and emphatically denied any involvement in or knowledge of his uncle’s death. App. A, p.5a. Four times, William asked to take a polygraph test to prove his innocence.

² The oral argument recording is available on the Seventh Circuit’s website: <http://media.ca7.uscourts.gov/oralArguments/oar.jsp?caseyear=17&casenumber=1771&listCase=List+case%28s%29>

D-256.8 at 8-9, 28, 30. After five hours of petitioners employing coercive and accusatory interrogation tactics—tactics known to “commonly elicit false confessions”—William regurgitated the story that the detectives told to him say. App. A, p.5a-7a. The result, the circuit court concluded, was a coerced confession that a jury could find was 100% fed to William and “replete with easily verified and contemporaneous evidence of inaccuracy and unreliability.” App. A, p.6a.

During the lead up to the so-called confession, the officers instructed William more than one hundred times that he needed to “help” them and created a threatening and untenable choice for him – “help” by telling them what they wanted to hear, or go to prison “forever” and face a fate even “worse than prison.” App. A, p.31a. Petitioners “guaranteed” William that his sibling would implicate him and that his only way out was to “help” the officers by repeating back their story. D-256.8 at 23, 25.

Petitioners played on William’s vulnerabilities as an adopted former-foster child, telling him he was hurting his family and intimating he would never see them again unless he told the officers what they wanted to hear. D-256.8 at 21, 25-26, 32. Less than an hour into the interrogation, the detectives twice told William they had enough incriminating information already to put him in jail. App. A, p.5a.

And Petitioners lied to William about the evidence. They falsely told him, “Your shoeprints are down there by the river.” App. B, p.54a; D-256.8 at 35. Petitioners falsely claimed that William’s DNA could be found on Golike’s body and implied that surveillance videotapes would show him using Golike’s ATM card to make a purchase shortly after the supposed murder. App. B, p.54a; D-256.8 at 16-17, 36, 46.

William quickly and thoroughly fell apart. He dramatically responded to the officers' pressure, sobbing throughout and numerous times declaring that he was having difficulty breathing and that he was feeling the officers' pressure as physical pain. In response to William's obvious panic attack, Jones wheedled William, "Yeah. You're having a hard time breathing . . . you're hurting . . . you're feeling like you're on fire. You know what we want to hear. We don't want to hear all that other stuff. You know what we want to hear." App. A, p.31a; D-256.8 at 32.

At that point, the interrogation tenor shifted and William started trying to deduce and guess what answers the officers wanted. William repeatedly, blatantly flagged that he was relying on the officers to supply him with the facts, explicitly telling his interrogators he was "drawing clues together" from what they told him, to figure out how to answer their questions. App. A, 6a-7a. As William began telling the officers the story that they were feeding him, he prefaced his guesses about what might have happened with phrases like "from what I'm getting . . ." "[from] the way you're telling me . . ." "you said that . . ." "it had to be . . ." and "it had to have been . . .". *Id.*

By the end, William sounded like an amateur actor confirming that he had correctly learned his lines. Jones told him, "[Y]ou did a good job. You did all right. It took you a while to get there, but you did." William responded by asking, "Was I close to it?" App. A, p.7a.

Adopting details that contradicted every piece of physical evidence, William ultimately "confessed" to murdering Golike and dumping his body in the Ohio River at Dress Plaza, Evansville. William recited that Deadra, Andrea, and their foster brother Harley all participated in the crime. William's false confession

contained statements that the teens had punched and kicked Golike until he was unconscious, tied him with sheets, transported him in the family van to the river, and dumped him. Then, at about 2:00 or 3:00 a.m. they supposedly bought \$20-\$30 worth of food from a convenience store using Golike's debit card. App. A, p.6a.

The officers' story, however, was pure fiction. Both respondents' expert and the state medical examiner agree Golike had not been kicked and beaten as the coerced confession indicated. App. A, p.7a. Moreover, there was no evidence that Golike had been tied with sheets, as claimed. App. A, p.7a. Additionally, petitioners scoured the supposed beating scene and the van supposedly used to transport Golike, but found no physical evidence to corroborate the story of a violent and messy crime. App. A, p.7a; App. B, p.45a; D-261.34 at 1; D-261.35 at 2-3; D-254.1 at 14.

The clerk at the convenience store where respondents supposedly used Golike's ATM told Vantlin that because of the neighborhood's demographics, she certainly would have remembered the teenagers coming into the store in the middle of the night and buying so much food had they done so, but they had not. App. B, p.46a-47a; D-261.33. Surveillance video footage surrounding the convenience store also refuted the story, and the officers learned that Golike had only \$.08 in his bank account at all relevant times. App. A, p.7a; App. B, p.45a-46a; D-261.34 at 1; D-254.1 at 16, 19; Doc. 261.23 at 8.

Most tellingly, in order for the coerced confession to have been true, Golike's body would have had to float four to six miles *upstream*, against the current, to end up where it was found. App. A, p.7a; D-261.27 at 6-8.

Petitioners stress that William guessed during the interrogation that Golike's hat had been found in his right pocket, citing that fact as proof the entire confession was reliable. However, the circuit court found that in the totality of the circumstances of this case, a reasonable jury could easily conclude William's "common-sense guess[]" was insufficient to establish probable cause. App. A., p.7a.

Viewing the evidence in the light most favorable to respondents, the district court concluded that there were genuine disputes of fact about whether a murder had even occurred, whether William had been coerced into involuntarily, falsely confessing, whether petitioners had acted with malice and had an agreement to try to frame respondents, and whether petitioners had a reasonable belief that there was probable cause to arrest respondents. *See, e.g.*, App. B, p.52a-61a, 74a-79a, 80a-86a. The circuit court reviewed the evidence in the same light and agreed. App. A, p.2a.

5. Petitioners Coerce Deadra's False Confession

Officers used William's coerced and unreliable "confession" as the basis to arrest nineteen-year-old Deadra. App. B, p.43a. Petitioners aggressively interrogated Deadra in a videotaped interrogation. They told her that William had confessed and implicated her in Golike's murder, relating the details of William's false confession to push Deadra to confess. App. B, p.43a; D-256.9 at 2-3, 7, 9-13. Deadra adamantly denied involvement. App. B, p.43a. She twice asked to take a polygraph. Petitioners denied her requests. App. B, p.82a.

Petitioners threatened Deadra she would "spend the rest of [her] life in prison" and that she was "going to

hang” if she did not confess, and they told her that her story had to match William’s, which they related to her. App. A, p.28a; App. B, p.83a; D-256.9 at 9, 15-16.

Petitioners also threatened to arrest Deadra’s entire family, including her uninvolved mother, unless she confessed. App. A, p.8a, 28a; D256.8 at 4-5, 10, 16. “Jones even counted everyone out for her, saying, ‘There’s one, two, three, four, five of you, all of you’s [*sic*] going to jail for murder.’” App. A, p.28a.

Additionally, Petitioners lied to Deadra and falsely told her that her footprints had been found by the river, her fingerprints were on Golike, and Golike’s debit card had been used on the night he died. D-256.8 at 8, 11, 15.

Eventually Deadra gave in and falsely confessed to driving the van purportedly used in Golike’s murder. App. A, p.8a. This coerced, false confession was suppressed by the state criminal court. App. B, p.83a.

As it had with William, the district court found that the record construed in respondents’ favor revealed material disputes about whether Deadra had been strong-armed into falsely confessing, whether the officers did so intentionally and maliciously, and whether Deadra’s false confession provided probable cause for Andrea’s arrest. App. A, p.82a-83a. Again, the court of appeals reviewed the record, construed the record in the light most favorable to respondents, and affirmed the district court’s conclusion that disputes of fact precluded summary judgment. *Id.*

6. Petitioners Interrogate Andrea

Lastly, petitioners interrogated sixteen-year-old Andrea, and she too adamantly denied being involved in Golike’s death. App. B, p.44a. Officers seized

Andrea from her bed in the middle of the night, took away her medically prescribed crutch, handcuffed her, and hauled her to the police station for questioning. D-261.24 at 6. As with Deadra, petitioners fed Andrea facts from the previous false confessions that they had extracted from William and Deadra. D-256.27 at 1-4.

During the combative videotaped interrogation, Andrea briefly admitted being in the van with the others on the night in question, but then immediately recanted, declaring she only made the admission because it was what her interrogators wanted her to say. *Id.* at 15 (“The only reason that I said that I was there was because that’s what you told me. You know, you told me who was in the van, you know . . . I’m agreeing with him, stuff that he’s already told me.”). Andrea asked to take a polygraph test. *Id.* at 26.

The district court found that a reasonable jury could conclude petitioners intentionally coerced Andrea’s recanted, false “confession.” App. B, p.57a-58a, 81a-85a.³

7. Petitioners Fabricate Corroborating Evidence

The district court also found that the summary-judgment record presented material disputes about whether petitioners and the other defendants conspired to frame respondents by fabricating numerous items of evidence used to inculcate them. App. B, p.92a-97a. In particular, one defendant officer “fabricated a police report of a trip to Dress Plaza with

³ Because she was not prosecuted, Andrea does not bring a Fifth Amendment claim. For the purposes of Andrea’s Fourth Amendment claim, her arrest was predicated on William and Deadra’s coerced, false confessions, not her own interrogation.

William on June 29, 2012, where William allegedly showed him where Marcus' body was dumped." App. B, p.92a. This trip did not happen. *Id.*

Petitioner Vantlin "fabricated [a] police report of [the] Kangaroo Express clerk recalling four teens being at store and using [a debit] card [on the] night of June 17, 2012." *Id.* The store clerk testified that she never saw respondents come in on the night in question. *Id.* The record also shows that Vantlin and a defendant officer fabricated a police report of the clerk identifying some of the Hurt family in a photo array; the clerk avers she told the officers that she thought she just recognized the Hurt teens from television news coverage, not from coming into the store. App. B, p.92a-93a.

Finally, two defendant officers fabricated a police report (seven months after the "fact") claiming that William made an incriminating statement while they were transporting him to jail. App. B, p.93a. William denies making the statement. *Id.*

Viewing the record in respondents' favor, the district court found that a reasonable jury could decide that each of these pieces of fabricated evidence contributed to respondents' prosecution. App. B, p.92a-93a. Again, the Seventh Circuit agreed. App. A, p.16a.

8. Criminal Proceedings Against Respondents

Deadra and Andrea were arrested after William's coerced false confession. Andrea was detained for seven days, after which she was released without charges. D-254.18 at 2. William and Deadra were charged with murder, robbery/attempted robbery resulting in serious bodily injury, and obstruction of justice. App. B, 47a-48a. Deadra was imprisoned for more than four

months, until the state criminal court suppressed her false confession and state prosecutors dropped all charges. *Id.* William remained in prison for about eight months, until he was acquitted by a jury. *Id.*

C. Proceedings Below

Respondents filed a Section 1983 action against petitioners alleging violations of their Fourth and Fifth Amendment rights, failure to intervene, conspiracy, *Monell* claims, and supplemental state-law claims. The district court granted in part and denied in part petitioners' motion for summary judgment and denied their claims of qualified immunity. App. B. Specifically relevant here, the district court found the numerous genuine disputes of material facts precluding summary judgment on the issue of qualified immunity delineated above.

Invoking the collateral-order doctrine, petitioners appealed the district court's denial of qualified immunity. A unanimous panel of the Seventh Circuit applied well-settled constitutional law to resolve the straightforward legal issues presented in the appeal and affirmed. App. A.

The circuit court imposed well-established standards for reviewing an interlocutory qualified immunity claim: "Once a defendant asserts qualified immunity, the plaintiff can proceed only if she can show two things: first, that the 'facts taken in the light most favorable to the plaintiff make out a violation of a constitutional right,' . . . and second, that the right was 'clearly established at the time of the alleged violation.'" App. A, p.15a (citing *Allin v. City of Springfield*, 845 F.3d 858, 862 (7th Cir. 2017)). The court emphasized that the showing "must be grounded in the particular context in which the problem arises"

and cautioned that “glittering generalities” are insufficient. App. A, p.15a. The court also recognized that its review was to be conducted *de novo*. *Id.*

The circuit court went on to apply longstanding principles of Fourth and Fifth Amendment law, relying heavily on this Court’s rulings and uncontroverted constitutional principles.

With regards to the due process claims, the court recognized that qualified immunity is available if the arresting officers “reasonabl[y] . . . could have believed the arrest to be lawful, in light of clearly established law and the information the arresting officers possessed.” App. A, p.16a (citing *Gutierrez v. Kermon*, 722 F.3d 1003, 1007-08 (7th Cir. 2013) (citations and internal quotation marks omitted)). *See also Sornberger v. City of Knoxville*, 434 F.3d 1006, 1014 (7th Cir. 2006) (quoting *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (the relevant question for qualified immunity is whether “a reasonable officer could have believed that probable cause existed[.]”); *Malley v. Briggs*, 475 U.S. 335, 345 (1986) (an officer is not entitled to qualified immunity when a reasonable official in his position would have known that the facts did not establish probable cause); *Maxwell v. City of Indianapolis*, 998 F.2d 431, 435-36 (7th Cir. 1993) (an officer has “arguable probable cause” entitling him to qualified immunity when “a reasonable police officer could have mistakenly believed that probable cause existed.”).

Applying this standard, the circuit court held:

Taking the inferences in the Hurts’ favor, a jury could reasonably conclude it was objectively unreasonable for an officer to have believed there was probable cause. The district court included an explicit discussion of

arguable probable cause in its opinion, and it went on to apply that standard faithfully.

App. A, p.18a.

For its Fifth Amendment adjudication, the circuit court began its analysis with this Court's fundamental Fifth Amendment dictates. *See* App. A, p.26a (citing, *inter alia*, *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973) and *Miller v. Fenton*, 474 U.S. 104, 116 (1985), for principles related to determining the voluntariness of a confession and determining when an interrogated person's will was overborne).

The court then turned to cases where this Court made it clear that coercing a suspect to confess by issuing threats is unconstitutional. *See* App. A, p.26a (citing *Colorado v. Connelly*, 479 U.S. 157, 164 (1986); *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991); *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960); *Miller*, 474 U.S. at 109; *Miranda v. Arizona*, 384 U.S. 436, 448 (1966)). The court applied those cases to find that the district court properly denied qualified immunity based on "the fact that the interrogators had threatened both Deadra and William." App. A, p.28a.

The circuit court also applied time-honored cases demonstrating that petitioners' particular brand of coercion was clearly established to be unconstitutional. *See, e.g.*, App. A, p.27a-28a (citing *Lynum v. Illinois*, 372 U.S. 528, 534 (1963); *Rogers v. Richmond*, 365 U.S. 534, 543-45 (1961); and *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1023 (7th Cir. 2006), to demonstrate that it is clearly established that making threats against a suspect's family is impermissibly coercive); App. A p.28a (recounting petitioners' threats).

Petitioners presented many of the arguments raised in their certiorari petitions in petitions for rehearing *en banc*. The circuit court denied *en banc* review. This petition for certiorari followed.

REASONS FOR DENYING THE WRIT

I. THIS CASE PRESENTS AN EXCEPTIONALLY POOR VEHICLE FOR CONSIDERING THE DOZEN QUESTIONS PRESENTED IN THE PETITIONS

This case presents an exceptionally poor vehicle for adjudicating any of the dozen issues raised by the two petitions for certiorari. Most of the numerous questions of law presented in the petitions would require this Court to resolve messy factual disputes and wade into a voluminous summary judgment record to assess which evidence is entitled to crediting. This is the exact common circumstance that motivates the Court's limits on collateral order appeals.

The sheer volume of the questions presented, the vagueness of many, the assorted areas of the law implicated by those questions, and the reality that this Court would have to resolve every one of those legal issues in order to fully resolve this appeal weighs strongly against granting certiorari in this case. The petitions present a dozen questions spanning the scope of appellate jurisdiction, the proper interpretation of Rule 56, the types of evidence that can be considered at summary judgment and how, and the contours of a variety of areas of federal constitutional law.

Many of the questions presented are entirely independent of one another, meaning that resolution of one does not bear in any way on resolving the others. Instead, because many of the issues are not outcome determinative, resolution of each and every one of

these issues would be necessary to fully resolve the appeal. Because this is an interlocutory appeal at summary judgment, should the Court wish to avoid the situation where it is “faced with approximately the same factual issue again, after trial, with just enough change brought about by the trial testimony[] to require it, once again, to canvass the record,” *Johnson*, 515 U.S. at 316-17, then it would need to decide all of the dozen issues raised in the petitions in favor of petitioners.

Compounding the number and complexity of legal issues raised are the intense factual disputes underlying the inherently fact-bound questions presented. And exacerbating that problem is petitioners’ refusal to acknowledge, much less credit, respondents’ evidence, as is required by Rule 56 and as a matter of appellate jurisdiction in this qualified-immunity appeal. *Johnson*, 515 U.S. at 305 (“[C]onsiderations of delay, comparative expertise of trial and appellate courts, and wise use of appellate resources argue in favor of limiting interlocutory appeals of ‘qualified immunity’ matters to cases presenting more abstract issues of law.”); *Scott*, 550 U.S. at 377 (“courts are required to view the facts and draw reasonable inferences ‘in the light most favorable to the party opposing the [summary judgment] motion.’ . . . In qualified immunity cases, this usually means adopting (as the Court of Appeals did here) the plaintiff’s version of the facts.”) (citation omitted). For these reason, too, this case is a poor vehicle for examining any of the legal issues raised in the petitions.

The factual disputes in this appeal also manifest themselves as faulty premises in many of the questions presented. For example, Vantlin’s petition offers the alarmist argument heading, “The Seventh Circuit

decision mandates officers may not rely on medical examiners in the course of an investigation.” Vantlin Pet. at 16. But the court of appeals made no such ruling. Rather, it viewed the record in a light favorable to respondents and concluded, “Taking the inferences in the Hurts’ favor, a jury could reasonably conclude it was objectively unreasonable for an officer to have believed there was probable cause.” App. A, p.18a.

To resolve whether the medical examiner’s report definitively eliminates any possible dispute of fact on the issue of probable cause, the Court would need to lumber through the evidence of what the officers knew, and when, about Golike’s suicide risk and his lack of medical injuries consistent with the crime alleged, along with the abundant evidence refuting probable cause. It would also have to consider the officers’ counsel’s concession at oral argument below that the probable cause issue rose and fell exclusively on the reliability of the confessions, rendering this argument moot. *See* Oral Argument at 8:00-8:08.

Resolving these factual issues would lead only to the conclusion that there is at best a factual dispute for trial. It would not allow this Court to resolve a pressing legal issue, principally because there is no legal pronouncement in the Seventh Circuit’s decision that law enforcement officers are not entitled to rely on evidence from medical examiners. Many similar examples make this case a bad one in which to resolve many of the questions presented. Accordingly, certiorari should be denied. *See City of Springfield, Mass. v. Kibbe*, 480 U.S. 257, 259 (1987) (writ dismissed as improvidently granted due to inability to reach the issue presented); *Smith v. State of Miss.*, 373 U.S. 238, 238 (1963) (writ dismissed as improvidently granted

where the record was insufficient to support the petitioner's constitutional claims).

As detailed below, there are significant substantive reasons not to grant certiorari in this case: (1) there is no circuit split, violation of this Court's authority, or other compelling reason for review; and (2) the circuit court's fact-bound decision was correct. But even casting such profound defects aside, this case would not allow for the clean resolution of any of the issues raised. Accordingly, certiorari should be denied.

II. THE PETITIONS SHOULD BE DENIED BECAUSE THEY DO NOT IMPLICATE ANY OF THE CONSIDERATIONS GOV- ERNING REVIEW ON CERTIORARI

The circuit court's analysis of the constitutional issues presented in this appeal is grounded in uncontroversial, uniform, and clearly established law—law that the petitioners notably do not contest. Instead, petitioners' complaints solely relate to the application of the clearly settled law to the particular facts of this case, skewed in petitioners' own favor. The decision below correctly applies this Court's rulings, it does not evidence a circuit split, and it does not present any other compelling reason for review. *See, e.g., Nunez v. United States*, 554 U.S. 911 (2008) (Scalia, J., dissenting) ("I had thought that the main purpose of our certiorari jurisdiction was to eliminate circuit splits"). For these reasons as well this Court should deny the petitions.

A. There Is No Circuit Split on the Fourth Amendment Law that the Seventh Circuit Applied

There is no circuit split about the rote Fourth Amendment standards the circuit court applied: “A claim of false arrest is an allegation that a plaintiff was arrested without probable cause, in violation of the Fourth Amendment.” App. A, p.15a-16a (citing *Gutierrez v. Kermon*, 722 F.3d 1003, 1007-08 (7th Cir. 2013), to discuss what constitutes arguable probable cause in cases where the officer asserts qualified immunity); *see also* App. A, p.17a (citing *Illinois v. Gates*, 462 U.S. 213, 230 (1983), and *Beck v. Ohio*, 379 U.S. 89, 91 (1964), to discuss what constitutes probable cause). By 2012, when the interrogations took place, this law had long been clearly established.

Neither petition contests the validity of the law the circuit court relied on or even contends that the Fourth Amendment law is different in other circuits. Instead, in order to manufacture the appearance of a circuit split, petitioners construe the facts heavily in their favor to contend that the decision below is an anomaly in how it applied clearly established law. In other words, petitioners complain about how the evidence was construed against them and credited, not about the law itself or what constitutional rights were clearly established in 2012. *See, e.g.*, Vantlin Pet. at 16-17, 20; Wise Pet. at 24-25.

This aggressive campaign against the facts and factual inferences drawn at summary judgment is impermissible at this juncture. *Scott*, 550 U.S. at 377. It is also not a basis for certiorari. *See* Sup. Ct. Rule 10 (“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”); E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, *Supreme Court Practice* § 5.12(c)(3), p. 351 (9th ed. 2007) (error correction is “outside the mainstream of the Court’s functions”).

Thus, for example, when petitioner Vantlin contends that the circuit court heightens the probable cause standard beyond that imposed by sister circuits (Vantlin Pet. at Argument II), he presents an argument that assumes crediting the rejected probable cause evidence and ignores the patent unreliability of the confessions. But all of the cited evidence was rightly disputed below and is simply not entitled to such credit. Indeed, petitioners conceded that such evidence was irrelevant to the probable cause adjudication. *See supra* at 5. When the non-movants’ evidence is credited, the evidence petitioners list in support of arguable probable cause was refuted and debunked well before any arrest decisions were made.

The law the circuit court relied on for its probable cause analysis, and the way the court applied that law, is consistent with the law’s application in other circuits. *See, e.g., Livers v. Schenck*, 700 F.3d 340, 358 (8th Cir. 2012) (“No reasonable officer could believe statements from a coerced confession could alone provide probable cause to arrestThe district court properly denied qualified immunity.”); *Garnett v. Undercover Officer C0039*, 838 F.3d 265, 275 (2d Cir. 2016) (“a reasonable jury could find, based on the evidence, that defendants . . . violated the plaintiffs’ clearly established constitutional rights by conspiring to fabricate and forward to prosecutors a known false confession almost certain to influence a jury’s verdict. These defendant police officers are not entitled to summary judgment on the ground of qualified immunity.”); *Gregory v. City of Louisville*, 444 F.3d 725, 759

(6th Cir. 2006) (a reasonable jury could infer a lack of probable cause when the supposed basis “was so contrary to the facts known to [the officer] at the time”); *Brewster v. Shasta Cty.*, 27 F. App’x 908, 913 (9th Cir. 2001). Petitioners cannot recast their dispute of the facts as a circuit split.

B. There Is No Circuit Split on the Fifth Amendment Law that the Seventh Circuit Applied

Petitioners also contend that there is a circuit split on Fifth Amendment law that justifies review. But again, considering the tactics used in the interrogations and drawing inferences in favor of respondents, as the courts below did, the circuit court’s decision denying qualified immunity is grounded in decades of established law. There is no split among the circuits on this question either.

Wise and Jones’ petition argues exclusively about whether the Seventh Circuit followed its own law relating to the Fifth Amendment. *See* Wise Pet. at 13-19. Their petition fails to even allege a circuit split on this issue. The circuit court had ample opportunity to consider all of the arguments presented here, including in an *en banc* petition. In rejecting petitioners’ *en banc* petition, the circuit court indicated that it sees no inconsistencies in its own jurisprudence. Certiorari is not warranted on this basis. *See* Sup. Ct. Rule 10; *Supreme Court Practice* § 5.12(c)(3), at p. 351.

The circuit court found that the officers’ multiple coercive threats to William and Deadra that if they did not confess, their uninvolved mother would suffer the price and go to jail, is a tactic that plainly violated clearly established constitutional rights, as set forth in *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963); *Rogers v.*

Richmond, 365 U.S. 534, 543-45 (1961); and *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1023 (7th Cir. 2006). App. A, p.27a-28a.

Neither petition points to any law anywhere in the country that suggests that threats against a suspect's uninvolved family members are a constitutionally permissible tactic to induce a confession. Instead, such threats are plainly part of the totality of the circumstances that can render a confession involuntary under this Court's precedents, as interpreted by the circuits. *See, e.g., Id.*; *United States v. Finch*, 998 F.2d 349, 356 (6th Cir. 1993) (unfounded "threats to arrest members of a suspect's family may cause a confession to be involuntary."); *United States v. Tingle*, 658 F.2d 1332, 1336 (9th Cir. 1981) (in the totality of circumstances of the case, threats to a mother that she might not see her child for a while unless she cooperated were "patently coercive"); *Streetman v. Lynaugh*, 812 F.2d 950, 957 (5th Cir. 1987) ("police threats to an accused or his family render a resulting confession involuntary").

Petitioners have not demonstrated a circuit split on this Fifth Amendment violation, and the circuit court correctly ruled that the officers are not entitled to qualified immunity for the resulting Fifth Amendment violation.

The circuit court also recounted that this Court has "long acknowledged the potency of psychological coercion" in inducing a confession. App. A, p.26a (citing *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991) ("[C]oercion can be mental as well as physical, and . . . the blood of the accused is not the only hallmark of an unconstitutional inquisition.") (quoting *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960)); *Miller v. Fenton*, 474 U.S. 104, 109 (1985) (confessions procured by

either physical or psychological torture can be “revolting to the sense of justice” and thus inadmissible); *Miranda v. Arizona*, 384 U.S. 436, 448 (1966) (“[W]e stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented”).

Vantlin counters this abundant law with a lone district court case out of California merely holding that, in the totality of circumstances in that case, “appeals to conscience are not coercive.” Vantlin Pet. at 33 (citing *Ramirez-Marentes v. Ryan*, No. SACV 05-551 GHK (CW), 2010 U.S. Dist. LEXIS 72381, at *38 (C.D. Cal. June 18, 2010)). This simply does not make for a circuit split. See *Collazo v. Estelle*, 940 F.2d 411, 416 (9th Cir. 1991) (“Interrogation tactics need not be violent or physical in nature to be deemed coercive. Psychological coercion is equally likely to result in involuntary statements, and thus is also forbidden.”). See also *Cooper v. Scroggy*, 845 F.2d 1385, 1390 (6th Cir. 1988) (“Convictions based upon involuntary confessions extracted by police overreaching, *i.e.*, the result of either physical or psychological coercion by the State, offend the Due Process Clause and must be set aside.”); *Miller v. Fenton*, 796 F.2d 598, 604 (3d Cir. 1986) (psychological coercion by law enforcement may render a confession involuntary); *United States v. Bailey*, 468 F.2d 652, 660 (5th Cir. 1972) (“police overreaching, mental coercion, and actual or implied promises . . . may render the statement obtained involuntary.”).

Vantlin’s petition also endeavors to show that some of the officers’ additional tactics that troubled the circuit court have been deemed permissible in other circuits. He does so by impermissibly relying on his favorable spin on the interrogations. But, regardless,

this case is not a good vehicle for examining each and every tactic discussed by the circuit court. As described above, the ruling rests on solid law, universally followed by all circuits, establishing that officers must not overbear the will of the suspect. Accordingly, regardless of whether there is a circuit split on the specific applications of one or another maneuver in a particular context, all circuits apply the totality of the circumstances test to determine whether a person's will was ultimately overborne. The petition does not present an opportunity to resolve a circuit split so much as an invitation to conduct a survey of fact-bound cases across many circuits, without actually resolving the issues presented in this case.

C. The Circuit Court Applied This Court's Precedent in Adjudicating Qualified Immunity

The circuit court properly applied the law from this Court in adjudicating qualified immunity on the constitutional claims. Petitioners cite a number of cases that they argue the circuit court failed to strictly follow, but, significantly, none are outcome determinative of this appeal. Thus, even if petitioners were correct about the circuit court misapplying the law—a nonstarter, as argued below—their concerns would be merely academic and thus do not warrant this Court's review.

First, in an effort to suggest that the circuit court ruling is an outlier, petitioners condemn the court's failure to cite to *White v. Pauly*, 137 S. Ct. 548 (2017). *White* explicitly claimed to “reiterate” a “longstanding principle.” *White*, 137 S. Ct. at 552. The circuit court was plainly aware of the current state of the law and discussed *White* during the oral argument. See Oral Argument at 2:06-2:24. The court issued legally sound

reasoning that is consistent with *White*, and it was under no obligation to cite any particular case. The circuit court cautioned that “plaintiff cannot rest on glittering generalities,” and required specific, particularized proofs. App. A, p.15a. The court honored what *White* requires, and, in any case, *White* did not substantively change the law.

Petitioners also argue that the circuit court misapplied this Court’s law in assessing whether William was in custody, but this contention again merely underscores the petitions’ efforts to dispute the facts, rather than raise legal questions. The circuit court found that crediting respondents’ facts supported the contention that William “was not free to go during his four-hour interrogation, during which Jones and Vantlin accused him of murder.” App. A, p.25a. In that context, the circuit court correctly decided that a jury could find that William’s Fifth Amendment rights were implicated. *Id.* This ruling does not conflict with the law of this Court. On the contrary, it is faithful to this Court’s decisions. See App. A, p.25a (citing *Stansbury v. California*, 511 U.S. 318, 323 (1994) (“Whether a person is in custody depends on the objective surrounding circumstances.”)). Instead, petitioners again raise a dispute about the application of facts to undisputed law. The Seventh Circuit did not depart from this Court’s decisions, and certiorari is not warranted on that basis.

D. The Circuit Court’s Application of *Scott v. Harris* Does Not Necessitate Review

The petitions for certiorari claim that the Seventh Circuit refused to consider the videotaped interrogations in assessing qualified immunity, and then they argue that this refusal created a circuit split on the application of *Scott v. Harris*, 550 U.S. 372 (2007). But

the Seventh Circuit plainly reviewed the video evidence and considered whether that evidence supported or controverted respondents' factual accounts, just as *Scott* requires. App. A, p.15a. *See also* Oral Argument at 14:00-14:50 ("I watched the interrogations and they are, [sigh] they're pretty brutal I watched the tape, and it's very disturbing to see fact after fact after fact fed focusing on William, we have him breaking down in tears, we have him just brow-beaten.").

Petitioners complain that, despite watching the videos, the circuit court failed to "independently review" them. Vantlin Pet. at 14; Wise Pet. at 31. It is hard to ascertain petitioners' precise argument, but they appear to contest the sufficiency of the circuit's degree of review of the videotaped interrogations.

Under *Scott*, "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott*, 550 U.S. at 380. According to *Johnson*, "a defendant, entitled to invoke a qualified immunity defense, may not appeal a district court's summary judgment order insofar as that order determines whether or not the pretrial record sets forth a 'genuine' issue of fact for trial." 515 U.S. at 319-20. Below, both the district and circuit courts plainly adhered to both rulings.

First, the district court reviewed the videotapes and concluded that they supported the plaintiffs' claims that their confessions were unreliable and coerced. App. B, p.53a, 55a, 57a, 75a, 77a, 82a, 84a. Then, the circuit court also reviewed the videotapes and held that it agreed with the district court's assessments

that the tapes support allegations of coercion and unreliability and that the district court did not err. App. A, p.14a-15a; Oral Argument at 14:00-14:50. This adjudication abided by both *Scott* and *Johnson*.

To be clear, the circuit court's decision does not suggest that a reviewing court is never permitted to consider a videotape in adjudicating a qualified immunity appeal, nor did the court abdicate its responsibilities in this case. Rather, the circuit court explains that *Scott* requires "that a factual account should not be credited when the record contains evidence that is flatly contradictory to that account." Pet. App. A, p.13a. In *Scott*, the district court and appellate court erred by refusing to take into account a videotape that "blatantly contradicted" the plaintiff's claims. *Id.* (citing *Scott*, 550 U.S. at 376). Neither the district court nor the circuit court committed such an error here.

Although they do not argue it directly, in taking aim at the level of the circuit court's review of the videotapes, petitioners appear to perhaps be contending that *Scott* implicitly overruled *Johnson*, particularly when the factual questions in a qualified immunity appeal are influenced by a videotape that could be subject to multiple interpretations. On that issue, however, there is no circuit split—the circuits agree that this Court did not overrule *Johnson* with *Scott*. See *Blackwell v. Strain*, 496 F. App'x 836, 849 (10th Cir. 2012) ("*Scott* simply does not overrule or abrogate the holding of *Johnson v. Jones* that *it is for the district court to make the determination of what is supported by the record.*") (emphasis in original); *Romo v. Largen*, 723 F.3d 670, 675-76 (6th Cir. 2013) ("It is up to the Supreme Court to overrule *Johnson*, and *Scott* does not provide us a basis for anticipating—much less

predicting with compelling confidence—that the Supreme Court will do so”); *Stinson v. Gauger*, 868 F.3d 516, 523 (7th Cir. 2017) (*en banc*) (noting that *Scott* did not overrule *Johnson*). Should this Court nevertheless be interested in exploring the intersection between *Scott* and *Johnson*, respondents urge the Court to wait for a petition that at least articulates and addresses the issue directly and presents a compelling reason for review on that basis. The petitions before this Court fail to do so.

The circuit court properly applied both *Scott* and *Johnson*. This record simply does not support the question of law presented in the petitions regarding the scope and application of *Scott*.

In sum, the petitions should be denied because none of the considerations governing review on certiorari are implicated by this appeal.

III. THE FACT-BOUND DECISION BELOW IS CORRECT AND DOES NOT WARRANT THIS COURT’S REVIEW

The circuit court properly denied the officers’ assertions of qualified immunity.

Petitioners contend that if one were to credit their version of the facts, then the outcome of the arguable probable cause assessment, for Fourth Amendment purposes, would have gone their way. But they are not entitled to have their version of the facts credited at this juncture. The petitioners remain free to argue their version of the facts to a jury, but at summary judgment they must proceed using the facts in the light most favorable to the opposing party. *See, e.g., Johnson*, 515 U.S. at 319-20; *Scott*, 550 U.S. at 377.

In the proceedings below and before this Court, petitioners have refused to accept the basic procedural reality that in a qualified immunity appeal, evidentiary conflicts are resolved in favor of the party opposing immunity. *See* App. A, p.19a (“Essentially, all of the defendants are asking us to reweigh the evidence . . . and come to an independent conclusion about the existence of arguable probable cause. That is plainly inappropriate[.]”).

The circuit court correctly analyzed probable cause from the perspective of what the officers knew at the time of the arrest. The court cited the district court findings that crediting the non-movants’ evidence, the officers could not rely on the coerced “confessions” for arguable probable cause because those statements defied the laws of physics, contradicted all of the known physical evidence, and were exclusively fed by the officers with no indicia of reliability. App. A, p.16a.

The circuit court found arguable probable cause undermined by such facts as: Golike likely committed suicide (which the officers knew before the arrest); “Deadra’s and William’s ‘confessions’ are unreliable (because almost all of the facts were either fed to them or the result of guesswork [the officers witnessed])[;] that some of the evidence against the Hurts was fabricated (William’s supposed identification of the drop-off spot and his alleged incriminating remarks)[;] and that physical evidence conclusively undermined William’s ‘confession’ (since Golike’s body was found upstream of the alleged drop-off spot, and inert objects would drift downstream, not upstream).” App. A, p.16a. The court concluded, “Assuming that the disputes over those facts were resolved in the Hurts’ favor, the case for even arguable probable cause to

arrest any of the three Hurts falls apart.” App. A, p.16a.

Petitioner plainly disagrees with this factual assessment. A jury may ultimately see it their way. But the considerations that went into the court’s review of the record at summary judgment were proper and consistent with the law of this Court.

The circuit court’s Fifth Amendment analysis is likewise sound. Defendants attempt to argue that some of the tactics they used were permissible. But using some constitutional methods cannot erase the violation caused by the unconstitutional tactics. The court did not err in concluding that a jury could find petitioners violated respondents’ Fifth Amendment rights.

Finally, William’s confession came long after he, sobbingly, expressly told the officers that he understood he was no longer free to leave. D-256.8 at 15; D-259.1 at 49:26. In that context, the circuit court correctly decided that a jury could find that his Fifth Amendment rights were implicated. App. A, p.25a. As for Deadra’s involuntary confession, it is enough that her criminal prosecution was initiated and commenced because of her coerced, false confession. *See Sornberger*, 434 F.3d at 1026-27. Neither ruling warrants a grant of certiorari, as both involve the proper and consistent application of long-standing law.

CONCLUSION

The petitions for writ of certiorari should be denied.

Respectfully submitted,

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