

No.
IN THE
SUPREME COURT OF THE UNITED STATES

RAMSEY QURASH, Petitioner,
-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a person, who immediately complies with a police officer's unambiguous order to "come here," has been seized for the purposes of the Fourth Amendment.

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The petitioner, Ramsey Qurash, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The decision of the Illinois Appellate Court (Appendix A) is reported at 72 N.E.3d 1272, 2017 IL App (1st) 143412, and is published. The order of the Illinois Supreme Court denying leave to appeal (Appendix B) is reported at __ N.E.3d __, No. 122121, 2017 WL 4390609 (Table) (Ill. Sep. 27, 2017).

JURISDICTION

On March 16, 2017, the Appellate Court of Illinois issued its decision. No petition for rehearing was filed. The Illinois Supreme Court denied a timely filed petition for leave to appeal on September 27, 2017. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides in relevant part that “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated.”

STATEMENT OF THE CASE

As Ramsey Qurash walked to the store in the early evening hours on January 9, 2014, two plainclothes Chicago police officers drove onto the same street. (§§ 6, 8).¹ When the officers were about 15 feet away from Qurash, who was walking on the sidewalk, Officer Stephen Gregory stopped and rolled down his window. (§§ 6, 8). He recognized Qurash from previous encounters and was concerned because Qurash was walking in an area known for criminal activity. (§§ 6, 87). Based only on that concern, Gregory, who was seated in his car, told Qurash to “come here.” (§§ 6, 8, 87). Qurash, also recognizing the officers from prior interactions with them, immediately complied and “walked right up” to them. (§ 8).

As Qurash walked, he dropped a white bottle in the snow. (§ 7). Gregory went to pick up the bottle, opened it, and found a green leafy material inside, which he believed to be cannabis. *Id.* Based on that discovery he told Officer Oppedisano to arrest Qurash, which she did. *Id.* During a search incident to that arrest, Oppedisano found two more bottles on Qurash’s person, containing pills and pill fragments later determined to be diazepam. *Id.* n. 2. The State charged Qurash with possession of a controlled substance (*see* 720 Ill. Comp. Stat. 570/402(c) (West 2014)) and possession of cannabis (*see* 720 Ill. Comp. Stat. 550/4(c) (West 2014)). (§ 1).

At the end of a bench trial, where the preceding testimony was given, defense counsel made an oral motion to suppress evidence. (§ 9). The trial court allowed the

¹ All factual citations are made to the specific paragraph of the Illinois Appellate Court’s decision in which they can be found. *People v. Qurash*, 72 N.E.3d 1272 (Ill. App. Ct. 2017). A copy of that decision is attached to this petition as Appendix A.

motion but ultimately denied it.² *Id.* The court found Qurash guilty of both offenses. (¶ 10). In addition to Qurash’s motion for a new trial, counsel also filed a motion to reconsider the court’s denial of the motion to suppress evidence. (¶ 11). The trial court found that Gregory’s narration of the events had been credible and that because Gregory had “ask[ed]” Qurash to “come here” rather than ordered him to do so, Qurash could have chosen to refuse. (¶¶ 11, 23). The court denied the motion to reconsider, sentenced Qurash to three years in prison, and Qurash timely appealed. (¶ 11).

In the appellate court, Qurash challenged the denial of the motion to suppress evidence on the ground that he had been immediately and unlawfully seized upon his compliance with Gregory’s unambiguous directive to “come here.” (¶ 16). The court initially framed the question before it as a legal one: “as a matter of law, do the words ‘come here,’ uttered by a police officer to a citizen, result in a seizure?” (¶ 17). Endeavoring to answer that question, the court laid out the legal framework announced by a plurality of this Court in *United States v. Mendenhall*, 446 U.S. 544 (1980), which had been most recently applied by the Illinois Supreme Court in *People v. Almond*, 32 N.E.3d 227, 238-39 (Ill. 2015). (¶ 19). But, before answering that question, the court seized on the distinction between Gregory issuing a “request” or a “command” and reframed the question it set out to answer: “the question before us is whether the trial court was manifestly erroneous in determining that the words ‘come here’ were issued as a request.” (¶ 23).

² The Illinois Code of Criminal Procedure expresses a preference that counsel file motions to suppress in writing and prior to trial. 725 Ill. Comp. Stat. 5/114-12(b), (c) (West 2014). The Code allows a circuit court judge to consider a motion that is not timely filed and to rule on its merits. 725 Ill. Comp. Stat. 5/114-12(c) (West 2014).

It is that question that the panel majority ultimately answered, declining to find that Gregory’s “request” was a seizure. (¶¶ 23-8). The majority reasoned primarily that there was nothing “unambiguously or *per se* compulsory” about the phrase “come here.” (¶ 26) It then concluded that there was nothing in the record to suggest Gregory’s tone when he uttered the words “come here,” and that the absence of such testimony was dispositive because the *Mendenhall* test purportedly “combined language *and* tone together” to determine whether a seizure had taken place. (¶ 26) (emphasis added) (citing *Almond*, 32 N.E.3d at 239). Deferring to the trial court’s finding that Gregory merely “request[ed]” that Qurash “come here,” the panel majority concluded that the trial court did not err in denying Qurash’s motion to suppress evidence. (¶¶ 27, 30, 39).

Presiding Justice Ellis dissented, finding that “[a] reasonable, innocent person, standing in [Qurash]’s shoes here, upon hearing a police officer say ‘Come here’ to him, would believe that he was required to do just that. A holding to the contrary is an unrealistic reflection of how a reasonable person objectively views a police officer’s authority.” (¶ 54). As part of his dissent Justice Ellis indicated that the question of whether compliance with an officer, who tells a defendant to “come here,” effectuates a seizure of that defendant is an open one in this Court, (¶ 55), but relied on cases from other jurisdictions to conclude that words like “stop” or “come here” may be sufficient to constitute a seizure for the purposes of the Fourth Amendment. (¶ 64) (collecting cases). The majority found Justice Ellis’s out-of-state cases unpersuasive on the ground that they were factually distinguishable. (¶¶ 32-6).

Justice Ellis further disagreed with the majority’s focus on the distinction between a request and a command, noting that it was undisputed that the only words

that Gregory spoke were “come here,” and that deference to the trial court’s characterization of those words as a “request” cannot supersede the fact that those were the only words spoken. (¶¶ 65-71). He concluded that “come here” is neither a question nor a request. (¶ 71). Justice Ellis also expressed concern that the majority’s rule will both inspire officers to “do more than a polite ‘come here’” in order to induce citizen compliance, and inspire citizens to refuse to comply with officer orders. (¶ 75). He reasoned that both citizens and officers would benefit from a rule that compliance with an order, like “come here,” is required, as that compliance avoids both escalation and criminal consequences for the defendant. (¶¶ 76-80).

Because he would have found that Qurash was seized when he complied with Gregory’s order to come here, Justice Ellis went on to address the reasonableness of that seizure. (¶ 86). He found that the seizure violated the Fourth Amendment because the only explanation that Gregory gave for his order to “come here” was that Qurash was in a high-crime area. (¶ 87). Justice Ellis further found that suppression was the appropriate remedy, rejecting the State’s argument that Qurash had abandoned the white bottle, since he had dropped it in response to Gregory’s order. (¶¶ 88-9). Justice Ellis would have reversed Qurash’s convictions outright. (¶ 90).

The Illinois Supreme Court denied Qurash’s timely petition for leave to appeal. (Pet. App. B). This appeal follows.

REASONS FOR GRANTING CERTIORARI

Ramsey Qurash was walking alone at night on the streets of Chicago. He was confronted by two police officers, one of whom called out to him telling him to “come here.” He had an instant to decide whether to obey, submitting to the officers’ authority, or to disregard them and risk confrontation. He chose the former and walked right up to the unmarked squad car. Any reasonable person would expect that a direct statement to “come here,” spoken by a police officer, does not give that person an option. He must do what he is told. The Illinois Appellate Court disagreed and found that Qurash was free to defy Officer Gregory and continue about his business. Compliance with Gregory’s order, in the appellate court’s view, was consensual and thus eviscerated any ability that Qurash could have had to challenge the reasonableness of Gregory’s order, which was justified by no more than the neighborhood in which Qurash was walking. The court’s decision requires reasonable people to defy police in order to safeguard their constitutional right to be free from groundless seizures; the Fourth Amendment does not.

I. The Illinois Appellate Court’s decision is in conflict with decisions of the Second and D.C. Circuit Courts of Appeals, and the highest reviewing courts in Arkansas, Connecticut, Kentucky, and Texas.

The Fourth Amendment protects against “unreasonable searches and seizures.” U.S. Const. amend. IV. That protection extends to seizures of the person. *California v. Hodari D.*, 499 U.S. 621, 624 (1991). Before a court determines whether a particular seizure is reasonable, however, it must decide whether a seizure has occurred at all. *United States v. Mendenhall*, 446 U.S. 544, 551 (1980) (opinion of Stewart, J., joined by Rehnquist, J.). A seizure occurs only when “in view of all the circumstances

surrounding the incident, a reasonable person would have believed that he was not free to leave.” *Hadari D.*, 499 U.S. at 627-28. While that remains the test for a “show of authority,” a seizure only takes place upon submission to the officer’s authority. *Id.* at 626-28. To determine whether police officers have made a sufficient “show of authority” such that compliance constitutes a seizure, a plurality of this Court announced a test that considers four disjunctive factors, including: “the threatening presence of several police officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *Mendenhall*, 446 U.S. at 554 (opinion of Stewart, J.). That test has since been adopted by the full Court. *See Hadari D.*, 499 U.S. at 627 (citing *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988); *I.N.S. v. Delgado*, 466 U.S. 210, 2015 (1984)). This case concerns the operation of the fourth *Mendenhall* factor – the effect of an officer’s language *or* tone where that language is the unambiguous imperative phrase, “come here.”

Every police-citizen encounter is unique and, because of those inherent idiosyncracies, this Court has rejected *per se* rules for determining whether a seizure has taken place. *See e.g., Florida v. Bostick*, 501 U.S. 429, 439-40 (1991) (overruling the Florida Supreme Court’s adoption of a *per se* rule for police-citizen encounters on buses in favor of an analysis of a totality of the circumstances). Because the facts surrounding each interaction between citizens and police vary widely, there is a similarly wide variety of analyses concerning the compulsory effects of an officer’s words on a reasonable person. Despite those factual differences, there is disagreement amongst the lower courts on the question presented in this case. Here the panel

majority of the Illinois Appellate Court decided that the words “come here,” construed as a request, are not sufficient to compel a response and thus found that Qurash’s encounter with the police was consensual. That decision is at odds with decisions of at least two Circuit Courts of Appeals and the highest courts of at least four states.

The Second Circuit explicitly recognizes the general rule that “[a] police officer’s order to stop constitutes a seizure if ‘a reasonable person would have believed he was not free to leave,’ [citation], and the person complies with the officer’s order to stop.” *United States v. Simmons*, 560 F.3d 98, 105-106 (2d Cir. 2009) (quoting *Mendenhall*, 446 U.S. at 554). In that case the defendant was standing in an apartment building and, as two officers entered the lobby through the vestibule, they twice ordered the defendant to “hold on a second.” *Simmons*, 560 F.3d at 101. The court concluded that “[t]he totality of the circumstances demonstrate that Simmons was seized the moment that he complied with the second order to stop.” *Id.* at 106. The D.C. Circuit applies a similar rule, having found that compliance with an officer’s order to “put [defendant’s] hands on a nearby car,” or “come here” constitute Fourth Amendment seizures. *See United States v. Brodie*, 742 F.3d 1058, 1060-61 (D.C. Cir. 2014) (finding that defendant was seized because he fully complied with officer’s order to “put his hands on a nearby car”); *United States v. Jones*, 584 F.3d 1083, 1085, 1087 (D.C. Cir. 2009) (Government conceded a seizure when officer instructed the defendant to “come here”). Additionally, while addressed in circumstances that are not as similar factually, other circuits also recognize that, coming from police officers, unambiguously imperative phrases constitute sufficient displays of authority such that compliance is required. *See e.g., United States v. Alarcon-Gonzalez*, 73 F.3d 289, 292 (10th Cir. 1996)

(“An order to freeze communicates that suspects are not free to leave and is sufficient to effect a seizure.”) (Citing *United States v. Stanley*, 915 F.2d 54, 56 (1st Cir. 1990) (“we agree with the district court that the relevant point for the purposes of the *Terry* analysis is the moment at which the police order Stanley to ‘freeze.’ Until then, no conduct regulated by the Fourth Amendment had occurred.”)).

Several state courts have come to similar conclusions. Most illustrative are the decisions of the Texas Court of Criminal Appeals and the Supreme Court of Arkansas. See *Jefferson v. State*, 76 S.W.3d 850 (Ark. 2002); *Crain v. State*, 315 S.W.3d 43 (Tex. Crim. App. 2010). In *Crain*, the court laid its legal foundation by quoting this Court’s decision in *Mendenhall* and emphasized “the use of language or tone of voice” indicating that the officer was ordering compliance. *Crain*, 315 S.W.3d at 49 n. 23. The officers in *Crain* saw the defendant walking while on their way to another call. *Id.* at 46. Because one of the officers saw the defendant grab at his waist, he decided to return to where the defendant was. *Id.* Upon his return, the officer rolled down his window, shone his spotlight, and asked the defendant to “[c]ome over here and talk to me.” *Id.* The defendant took a couple more steps and then stopped. *Id.* at 47.

The Texas Court of Criminal Appeals concluded that the words “come over here and talk to me” completely lacked any “words of contingency or option...[n]or do they extend any choice explicit or implicit.” *Id.* at 51. The court ultimately concluded that the officer’s “act of shining his patrol car’s overhead lights in the appellant’s direction, coupled with his request-that-sounded-like-an-order, to ‘come over here and talk to me,’ caused the appellant to yield to [the officer’s] show of authority—a reasonable person in the appellant’s shoes would not have felt free to leave or decline the officer’s

requests.” *Id.* at 52.

The Supreme Court of Arkansas confronted a similar scenario where officers arrived at a trailer park and saw the defendant, who in turn saw their car and began to walk away from them. *Jefferson*, 76 S.W.3d at 852-53. In response, the officers turned on their headlights as the defendant walked in front of the squad car and one of the officers got out and “called to [the defendant] to come to the car.” *Id.* at 853. The defendant initially did not comply, so the officer “told [him] to come to the patrol car the second time,” at which point the defendant turned and started to walk toward the officers. *Id.* The court recognized its task as deciding whether this encounter was one in which “an officer merely approaches an individual on a street and asks if he is willing to answer some questions” or one in which an officer has restrained a person based on purported reasonable suspicion. *Id.* at 855. The court concluded that because the officers “stepp[ed] out of the car and issu[ed] a command that [the defendant] stop and come to them” it was “readily apparent” that the court was not dealing with the former class of encounter. *Id.* The court ultimately concluded that “[a] reasonable person would not have believed he was free to leave once the police had turned on their lights and issued a command to stop and come to their patrol car.” *Id.* at 856.

The Kentucky Supreme Court takes a similar view of a citizen’s response to an officer’s orders and has found that where a person “was directed to move over to the police cruiser” and does so “promptly and peacefully,” that compliance “cannot convert that order into a request which [the defendant], or any citizen, should feel free to resist.” *Strange v. Commonwealth*, 269 S.W.3d 847, 851 (Ky. 2008). The Supreme Court of Connecticut considers it “well settled that a reasonable citizen would not feel free

to disregard a verbal command to stop issued by an armed, uniformed police officer.” *State v. Edmonds*, 145 A.3d 861, 877 (Conn. 2016) (collecting cases). Similarly, the Courts of Appeal in Florida routinely hold that “a police officer’s direction to a person to do a particular thing, such as to get out of a car, to take hands out of pockets, or to open a mouth are indicative of a seizure.” *F.E.H., Jr. v. State*, 28 So. 3d 213, 216 (Fla. Dist. Ct. App. 2010) (collecting cases).

The Illinois Appellate Court itself is split on this question. In *People v. Williams*, 62 N.E.3d 318 (Ill. App. Ct. 2016), an officer, looking in his rearview mirror, saw the defendant getting out of his car. *Williams*, 62 N.E.3d at 327. The officer turned the car around, pulled up behind the defendant’s car, got out of the police car and said, “[p]olice, can I talk to you?” as the defendant was walking away. *Id.* (alteration in original). The officer walked to where the defendant’s car was parked and told the defendant “to come here to where [he was] at.” *Id.* A different division of the Illinois Appellate Court held that “when considering the *Mendenhall* factors, we find that although there were only two officers present, and they did not display their weapons or physically touch defendant, [the officer]’s testimony shows that he used language or tone of voice to compel defendant’s compliance with his requests and, in doing so, conveyed that he was not free to leave***.” *Id.* The court therefore concluded that, at that moment, the “defendant was immediately seized.” *Id.*

While there are several jurisdictions that disagree with the panel majority in this case, several others agree with its conclusion regarding compulsory language, spoken by a police officer, that results in citizen compliance. For example, the Seventh Circuit has found that a person’s immediate compliance with an officer telling him to

“stop and to take his hands out of his pockets” did not amount to a seizure. *United States v. Broomfield*, 417 F.3d 654, 655-56 (7th Cir. 2005). Several State courts hold similarly. See e.g., *State v. Smith*, 544 N.E. 2d 239, 242 (Ohio 1989) (finding “hey, come here a minute,” uttered by a plain-clothes police officer to be an insufficient show of authority to “indicate[] that if appellant did not come toward the officer he would be under arrest.”), *rev’d on other grounds sub. nom. Smith v. Ohio*, 494 U.S. 541 (1990); *People v. Dawkins*, 617 N.Y.S.2d 172, 173 (N.Y. App. Div. 1994) (order to “come here” not an unlawful seizure) (citing *People v. Bora*, 634 N.E.2d 168, 169-71 (N.Y. 1994) (rejecting arguments based on both the Fourth Amendment and the New York Constitution that an order to “stop” constituted a seizure); *Baldwin v. Commonwealth*, 413 S.E.2d 645, 649 (Va. 1992) (finding that an order to “come over here,” even when accompanied by the shining of a light, failed to rise to the level of a seizure).

The disagreement in the lower courts spans factual circumstances; however, the cases reveal that there is conflict, at a fundamental level, about the constitutional significance of a citizen’s compliance with an officer’s unambiguous directive. The disagreement is entrenched and widespread. This Court’s intervention is necessary to definitively establish that compliance with an officer’s order, like “come here,” is sufficient to constitute a seizure for the purposes of the Fourth Amendment.

II. The question presented is critically important to the maintenance of safe and constitutional interactions between police officers and the communities they serve.

This Court has recognized that “hostile confrontations [between citizens and police] are not all of a piece. Some of them begin in a friendly enough manner, only to take a different turn upon the injection of some unexpected element into the

conversation.” *Terry v. Ohio*, 392 U.S. 1, 13 (1968). The Illinois Appellate Court’s decision turns an unexpected element – overt defiance of a police officer’s order – into an expected one. In other words, the court expects that a citizen, confronted with an order to “come here,” will (and in fact must) refuse if he wishes to retain his Fourth Amendment right to be free from groundless seizures. This ignores the reasonable reaction a citizen will have to an officer’s order to “come here.” *Cf. California v. Hodari D.*, 499 U.S. 621, 627 (1991) (“policemen do not command ‘Stop!’ expecting to be ignored”); *Crain v. State*, 315 S.W.3d 43, 54 (Tex. Crim. App. 2010) (Cochran, J. concurring, joined by Holcomb, J.) (“Even a five-year-old child knows the difference between a command (‘Eat your spinach.’) and a request (‘Would you like to eat your spinach?’).”). The Illinois Appellate Court’s holding creates a Fourth Amendment regime with two impermissible results: (1) a citizen who chooses to safeguard his Fourth Amendment rights by refusing to comply with an officer’s order risks escalating every police-citizen encounter into anything ranging from a chase, to a physical confrontation, to outright violence; and (2) a citizen who chooses to safeguard his Fourth Amendment rights by refusing to comply with an officer’s order risks either the constitutional consequence of actually creating formerly absent grounds for a *Terry* stop or arrest, or the practical consequence of committing a separate criminal offense.

- a. The Illinois Appellate Court’s decision demands escalation of every police-citizen encounter prior to the attachment of Fourth Amendment rights.*

Justice Ellis, dissenting from the panel majority’s conclusion that Qurash had not been seized, recognized the majority’s holding as “signaling to police officers that if they truly want compliance...they will have to do more than a polite ‘come here’—whether that be something less polite or significantly more aggressive, none of

which the law should encourage.” (Pet. App. A at ¶ 74). In fact the law, as announced by this Court, does not encourage such escalation. In *California v. Hodari D.*, this Court held that the defendant was not seized until he was physically tackled because his non-compliance with an officer’s command to “halt” precluded a finding that he was seized by that “show of authority.” *Hodari D.*, 499 U.S. at 629. That holding was based, in part, on the idea that it is outside the realm of an officer’s expectations to “command ‘Stop!’” only to be brusquely ignored. *See id.* at 627. *Hodari D.* illustrates the risks that result from reversing those expectations and demanding that citizens instead disobey an officer’s order – a lengthy foot chase ending in a physical altercation. *Id.* at 622-23; *see also Brower v. County of Inyo*, 489 U.S. 593, 594 (1989) (defendant drove at high speeds for 20 miles in order to evade capture by the police and was not seized in a constitutional sense until he fatally crashed into a police roadblock).

Cases decided since *Hodari D.*, and in reliance on it, reflect its recognition that “fleeing suspects place in danger the officers who pursue them and the general public.” *Henson v. United States*, 55 A.3d 859, 865 (D.C. 2012); *see also e.g., Johnson v. State*, 912 S.W.2d 227, 234-35 (Tex. Crim. App. 1995) (relying on *Hodari D.* to depart from Texas precedent because such a departure “serve[d] the public policy of encouraging compliance with police orders.”); *State v. Young*, 717 N.W.2d 729, 743 (Wis. 2006) (“*Hodari D.* encourages compliance with police orders, thereby obviating the need for police pursuits that pose risks to the public.”). The risks to the public are obvious and range from the trite (trampling a flower garden during a foot chase) to the tragic (leading police on a car chase ending, not with a crash into a police blockade, but into another person).

The risks to the person being seized, created by the panel majority's theory in this case, are also obvious. Police officers routinely defend their use of excessive force using a suspect's defiance of a direct order. *See e.g., Shafer v. County of Santa Barbara*, 868 F.3d 1110, 1117 (9th Cir. 2017) (finding that, for the purposes of qualified immunity, an officer does not violate clearly established law "when he progressively increases his use of force from verbal commands, to an arm grab, and then a leg sweep maneuver, when a misdemeanor refuses to comply with the officer's orders***."); *Bell v. Kansas City Police Dept.*, 635 F.3d 346, 347 (8th Cir. 2011) (finding a dispute as to a material fact because of disagreement as to whether the plaintiff was complying with officer orders when he was tasered); *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009) (finding that an officer's decision to shoot did not constitute excessive force where the suspect "in defiance of the officers' contrary orders, reached under the seat of his vehicle and appeared to retrieve an object...reasonably believed to be a weapon."). Vindication of the Fourth Amendment should not require behavior that leads to potentially deadly risks for officer and citizen alike.

The Illinois Appellate Court's decision in this case depends on the notion that a reasonable person can defy an officer's direction to "come here" without facing consequences. Neither experience nor the law support that proposition. This Court's review is necessary to correct the misguided policy that the appellate court's decision creates, requiring every citizen to risk escalation of every encounter with police. The panel majority's view of the Fourth Amendment necessarily forces the person subject to seizure to choose between relinquishment of his constitutional protections and imperiling either himself or others. The Fourth Amendment should not, and does not,

put citizens to such a choice.

- b. *The Illinois Appellate Court's decision demands that reasonable people act unreasonably by creating once-absent reasonable suspicion or by placing themselves in peril of prosecution for defying police orders.*

In addition to announcing a policy that injects unnecessary risk into every police-citizen encounter, the Illinois Appellate Court's decision also traps Qurash and anyone confronted with an officer's direct order in an untenable constitutional Catch-22: obey and lose his Fourth Amendment protections because he has now complied voluntarily; or, disobey and risk creating the suspicion justifying his detention that was absent at the outset. As Justice Ellis noted in dissent, Qurash faced the additional consequence of possible criminal prosecution had he disobeyed Officer Gregory.

At trial, Gregory admitted that the only reason that he told Qurash to "come here" was because he saw Qurash in a high crime area. (Pet. App. A at ¶ 87). It is well-established, both in this Court and in Illinois, that mere presence in an area known for criminal activity, without more, does not amount to reasonable suspicion. *See e.g., Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (presence in area known for criminal activity, standing alone, is insufficient to support reasonable suspicion); *Brown v. Texas*, 443 U.S. 47, 52 (1979) ("The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct."); *People v. Surles*, 963 N.E.2d 957, 966 (Ill. App. Ct. 2011). Gregory needed more than Qurash's presence in an area of frequent criminal activity to justify a seizure.

By holding that compliance with an officer's order to "come here" is not a seizure, the panel majority has demanded that Qurash, and others in similar circumstances,

actually create the reasonable suspicion for a stop by disobeying the officer's orders. This Court has recognized that flight upon seeing officers in a high-crime area is sufficient to establish reasonable suspicion. *Wardlow*, 528 U.S. at 124-25. While not every act of disobedience will result in actual flight – Qurash could have simply kept walking, for example – “nervous, evasive behavior” includes far more than sprinting from the scene. *See id.* at 124 (citing *e.g.*, *United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975) (erratic or evasive driving); *Florida v. Rodriguez*, 469 U.S. 1, 4, 6 (1984) (strange movements, akin to running in place)). While the Illinois Supreme Court has held that merely ignoring a “baseless” police order “is not a license to conduct investigatory stops,” *People v. Thomas*, 759 N.E.2d 899, 905-06 (Ill. 2001), it is not difficult to imagine a situation in which Qurash's desire to “go about [his] business,” would have required more evasive behavior than simple non-compliance. Had the officers persisted in their unlawful attempts to get Qurash to “come here,” Qurash may have attempted to cross the street or duck into an alley. The Illinois Supreme Court has suggested that a change in direction when confronted with police presence is different than merely going about one's business. *See People v. Timmsen*, 50 N.E.3d 1092, 1097-98 (Ill. 2016). Had Qurash done anything but continue on his preexisting path, Gregory would have had the reasonable suspicion he once lacked. This is particularly true in this case because Gregory would have been able to combine Qurash's evasive maneuver with his presence in a high-crime area. *Timmsen*, 50 N.E.3d at 1098.

The Wisconsin Supreme Court has taken the possibility of defiance of an order creating reasonable suspicion even further. In *State v. Young*, 717 N.W.3d 729 (Wis.

2006), the court grappled with the question of whether to retain *Hodari D.*'s requirement of submission to authority under the State constitution. *Young*, 717 N.W.2d at 739-44. As part of its consideration, the court recognized the possibility that the requirement of submission creates a perverse incentive for officers "to manufacture reasonable suspicion by attempting to seize individuals in expectation that they will flee...induc[ing] flight or other suspicious conduct." *Id.* at 744. The court ultimately rejected that possibility on the facts, preferring the presumption that citizens will, in the main, comply with officer orders. *Id.* The Illinois Appellate Court's decision in this case flips that presumption and demands disobedience.

Beyond the immediate Fourth Amendment risk of creating reasonable suspicion that the officers initially lacked, Justice Ellis explained that "at some point refusing to comply with a police officer's communication can turn into a crime." (Pet. App. A at ¶ 77) (citing 720 Ill. Comp. Stat. 5/31-1(a) (West 2014)). The majority dismissed the dissent's suggestion "that now people are going to be prosecuted for ignoring commands [as] simply a red herring." (Pet. App. A at ¶ 37). Under Illinois law, the threat of prosecution for defiance of officer orders, far from a red herring, is clear. (Pet. App. A at ¶ 77) (citing *People v. Synnott*, 811 N.E.2d 236, 241 (Ill. App. Ct. 2004)); *see also* *People v. Shenault*, 25 N.E.3d 703, 705, 709-711 (Ill. App. Ct. 2014) (affirming defendant's conviction for resisting or obstructing a peace officer on the grounds that defendant repeatedly refused officer orders to get out of her car). This interpretation of obstruction is not unique to Illinois. *See e.g.*, *C.E.L. v. State*, 24 So. 3d 1181, 1189 (Fla. 2009) ("C.E.L.'s continued flight in knowing defiance of the officer's lawful order to stop constituted the offense of obstructing"); *cf. State v. Stone*, 756 A.2d 785, 788-90

(Vt. 2000) (finding that “failure to obey an officer’s command” without more did not constitute obstruction and collecting cases both in accordance with and contrary to that conclusion). Qurash risked the commission of a criminal offense if he defied, and certainly if he continued to defy, orders from Gregory. While not itself part of the analysis of the compulsory nature of an order to “come here,” the possibility of future prosecution places on stark display the error in the Illinois Appellate Court’s analysis. Invoking Fourth Amendment protection should not require the commission of a separate criminal offense.

Defiance of an unambiguous order from a police officer has the potential to lead to either prosecution or the generation of suspicion that the officers lacked at the outset. The Illinois Appellate Court’s decision sends a message that such defiance should be the rule, rather than the exception, if a person confronted with an officer’s order wishes to retain his protections under the Fourth Amendment. The safety of officers, the public, and the person under suspicion are threatened where disobedience with officer orders is encouraged. The question presented in this case is critical to the maintenance of safe interactions between citizens and officers that do not create constitutional or criminal liability for those citizens. This Court should intervene to prevent this distortion of settled expectations between officers and the communities they serve.

III. This case presents an ideal vehicle to answer the question of whether an officer’s unambiguous directive to “come here” constitutes a seizure, and this Court’s answer to that question will be outcome determinative.

Mr. Qurash’s case presents a clean vehicle to answer the question presented. It is not disputed that the only *Mendenhall* factor at issue in this case is the effect of an

officer's language or tone of voice – there were only two officers, they did not display weapons, and they did not touch Qurash . (Pet. App. A at ¶ 22). Similarly, there are no words at issue besides “come here.” It is undisputed that Officer Gregory did not say anything else. (Pet. App. A. at ¶¶ 22, 70). This Court need not consider the effect of softening language like “please” or a more specific phrase like “come here for a minute I would like to talk to you.” The only question presented, therefore, is whether a reasonable person, confronted with the unambiguous imperative phrase “come here,” would have felt that he could decline that request.

A finding that Qurash was seized by his compliance with Gregory's order to “come here,” while the first step in the Fourth Amendment inquiry, would be outcome determinative in this case – the seizure was plainly unreasonable and there is no impediment to Qurash's invocation of the suppression remedy for that unreasonable seizure.

Gregory recognized Qurash from previous encounters, but the only justification that he gave for ordering Qurash to “come here” was that he was in a high-crime neighborhood. Were this Court to find a seizure and remand, the Illinois Appellate Court has repeatedly held that the rote invocation of a defendant's presence in a “high crime area” is insufficient to justify an investigatory detention. *See e.g., People v. Surles*, 963 N.E.2d 957, 966 (Ill. App. Ct. 2011) (citing *People v. Harris*, 957 N.E.2d 930, 936-37 (Ill. App. Ct. 2011)). This Court has suggested the same. *See Brown v. Texas*, 443 U.S. 47, 52 (1979) (“The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct.”). Should this Court find that Qurash was

seized at the moment of his compliance with Gregory's command to "come here," given Gregory's insufficient justification for issuing that order, a finding that the seizure was unreasonable is a foregone conclusion on remand.

Notably the State did not offer any argument in support of the reasonableness of the seizure in the event that Qurash was seized upon compliance with Gregory's order to "come here." (Pet. App. A at ¶ 87). Instead, the State raised the specter of abandonment in order to avoid suppression, arguing that because Qurash dropped the white pill bottle in the snow as he walked to the police car, he abandoned it. (Pet. App. A at ¶ 88). Again, this Court's determination that the seizure occurred at the moment of compliance with Gregory's order to "come here" would preclude the State from relying on abandonment principles on remand.

When considering whether discovered contraband is the fruit of unlawful police action, courts examine: (1) the temporal proximity between the illegal police conduct and discovery of the contraband, (2) the presence of any intervening circumstances, and (3) the purpose and flagrancy of the official misconduct. *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975). In this case, there was no passage of time between the order to "come here" and Qurash's dropping of the white pill bottle. (Pet. App. A at ¶ 7).

This Court's decisions, as far back as *Wong Sun v. United States*, 371 U.S. 471 (1963), indicate that there was insufficient attenuation between the illegality of Gregory's actions and the discovery of the evidence. In *Wong Sun*, the police were given heroin by Johnny Yee, after being told of its presence in Yee's apartment by Hom Way ("Blackie Toy"), who was interrogated after an illegal entry into his apartment. *Wong Sun*, 371 U.S. at 473-74, 485-88. This Court found that the heroin had to be suppressed

because the heroin was “come at by the exploitation of that illegality,” namely the statement from Toy which was illegally obtained by the unlawful entry into his home. *Id.* at 486-87. This Court’s suppression of drug evidence handed directly to officers, where there was no intervening circumstance sufficient to purge the taint, applies with all the more force to Qurash, who passively dropped a bottle in the snow.

In Qurash’s case the chain from the illegal stop to the exploitation of that illegality is unbroken. Gregory issued his order to “come here;” Qurash dropped the pill bottle; Gregory opened the pill bottle and ordered Qurash arrested; Oppedisano detained him and frisked him incident to that arrest, thereby discovering the pills on his person. (Pet. App. A at ¶¶ 6-7). There is no dissipation of the taint of the unlawful police action, as the causal chain from the order to “come here” to the discovery of the contraband remained uninterrupted.

Finally, Gregory’s conduct in this case was flagrant where he told Qurash to “come here” for no reason. The Illinois Appellate Court has found flagrant conduct in a situation similar to this one where “the stop was essentially based on nothing other than defendant’s mere presence in the area.” *People v. Shipp*, 34 N.E.3d 204, 218-19 (Ill. App. Ct. 2015) (citing *People v. Mitchell*, 824 N.E.2d 642 (Ill. App. Ct. 2005) (flagrant conduct where officers pulled over a car for no other reason than a random check for warrants)). Similarly here, Gregory stopped Qurash, not because he suspected he had committed a crime, but out of an apparent desire to see if he could get lucky and find contraband based on nothing more than Qurash’s presence in the “high-crime” neighborhood.

This case presents a clean and concise set of facts on which to decide the

question presented. A decision from this Court in Qurash's favor signals success on the remaining aspects of his Fourth Amendment claim on remand. Gregory did not have reasonable suspicion justifying his order to "come here" and the discovery of both the cannabis and the pills of diazepam were fruits of that unlawful order. This case presents no impediment to this Court's ability to answer the question presented and this Court's answer in Qurash's favor will be outcome determinative.

IV. The Illinois Appellate Court's decision is wrong.

The Illinois Appellate Court's decision is unsound as a matter of policy, (pp. 13-20, *supra*), but the panel majority also committed two legal errors that directly misapply this Court's precedent. First, the panel majority materially misapplied *Mendenhall* by combining "language *and* tone," holding that both must be coercive before a person has been seized by compliance with an officer's request. (Pet. App. A at ¶¶ 25-6) (emphasis added). Second, the panel majority focused on the trial court's characterization of Officer Gregory's words as a "request," erroneously concluding that any difference between the trial court's label of the words "come here" as a "request" as opposed to an "order" is of constitutionally significant magnitude. (Pet. App. A at ¶¶ 23, 27).

In purported reliance on an Illinois Supreme Court case interpreting *Mendenhall*, the panel majority in this case concluded that it could not find a seizure unless the "combined language and tone together" indicated that a reasonable person could not walk away. (Pet. App. A at ¶ 26) (citing *People v. Almond*, 32 N.E.3d 535, 547 (Ill. 2015) (in turn relying on *United States v. Mendenhall*, 446 U.S. 544, 553-54 (1980))). The appellate court's interpretation is directly contrary to the test this Court

has adopted. *Mendenhall*, 446 U.S. at 554 (opinion of Stewart, J.) (“Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be...the use of language *or* tone of voice indicating that compliance with the officer’s request might be compelled.”) (Emphasis added); *see also Hodari D.*, 499 U.S. 627 (noting the full Court’s adoption of that test).

The Illinois Appellate Court’s distortion of the *Mendenhall* test has demonstrably absurd consequences. Phrases like “come here,” “stop,” and “get out of the car,” aside from possessing linguistic features that demand compliance, are even more compulsory when spoken by a police officer. These types of orders are all imperative and are not amenable to being spoken as a question. They are also not conditional – they have no limitation on the scope of the officer’s order, they reveal nothing about the purpose of the officer’s order, and they do not offer an opportunity for refusal. *Contra e.g., I.N.S. v. Delgado*, 466 U.S. 210, 220 (“The manner in which respondents were questioned, *given its obvious purpose*, could hardly result in a reasonable fear that respondents were not free to continue working”) (emphasis added). When words like these are spoken, information about an officer’s tone is unnecessary to understand the officer’s meaning. Under the Illinois Appellate Court’s interpretation, an officer could lace his order with profanity or threats, and any compliance with those words would be deemed consensual as long as the officer’s tone was cordial. Such a result is absurd.

The Illinois Appellate Court’s second error is in similar company with its first—it ignores the substance of Gregory’s order. The court held that deference to the trial court’s finding of fact that Gregory “asked” Qurash to “come here” was dispositive. (Pet.

App. A at ¶¶ 23, 27). That holding elevates the trial court's label of Gregory's statement over the undisputed words that he actually said: "come here." It is not the fact-finder's denomination of the speech as an "order" or a "request" that controls; either can be compulsory depending on the actual words spoken. This Court has suggested that the label is irrelevant by using the word "request" in the language of the *Mendenhall* test itself, describing the fourth factor as "language or tone of voice indicating that compliance with the officer's *request* might be compelled." 446 U.S. at 554 (emphasis added); *see also e.g., Florida v. Bostick*, 501 U.S. 429, 434-35 (1991) (collecting cases) (describing an officer's ability to approach a citizen and ask questions "as long as police do not convey a message that compliance with their *requests* is required.") (Emphasis added).

This Court has further suggested that the relevant line, for the purposes of the Fourth Amendment, is the distinction between an officer's words that do no more than seek information and an officer's words that go further and demand compliance in the form of an action. *See Mendenhall*, 446 U.S. at 555 ("The respondent was not seized simply by reason of the fact that the agents approached her, asked her if she would show them her ticket and identification, and posed to her a few questions."). The now-controlling plurality opinion suggested that *Mendenhall* would have come out differently if it had involved officers "summoning the [person] to [the officers'] presence" instead of "approaching her and identif[ying] themselves as federal agents." *Mendenhall*, 446 U.S. at 555 (opinion of Stewart, J.) The concurring justices who did not join Justice Stewart recognized that even the question of whether the defendant reasonably could have thought she was free to walk away after a simple request for her

travel documents was “extremely close.” *Mendenhall*, 446 U.S. 544, 560 n. 1 (opinion of Powell, J. joined by Burger, C.J. and Blackmun, J.). Mr. Qurash’s case does not require this Court to broach the “extremely close” factual scenario in *Mendenhall*. The line that this Court has already suggested is the appropriate one, between requests for information and commands that require an action, is administrable and clear. Gregory’s “request” to “come here,” falling into the latter category, is an unambiguous order that demands compliance. The Illinois Appellate Court’s holding to the contrary is wrong and should be reversed.

* * * * *

Justice Ellis succinctly described the bottom line of this case: “A reasonable, innocent person, standing in [Qurash]’s shoes here, upon hearing a police officer say ‘Come here’ to him, would believe that he was required to do just that. A holding to the contrary is an unrealistic reflection of how a reasonable person objectively views a police officer’s authority.” (Pet. App. A at ¶ 54). Not only is a holding to the contrary unrealistic, it is dangerous. The risk presented by non-compliance with a direct imperative – “come here” – is felt by the officers, the suspect, and the public alike. Escalation of a police-citizen encounter in order to force compliance carries with it the possibility of flight, a physical altercation, or perhaps even the firing of a gun. A rule leading to that type of escalation should not be. Instead, “[i]t is better to encourage citizens to settle their disputes with police in a courtroom than to encourage them to settle them on the street with the potential for violence—especially when the violence could be deadly.” *Faust v. State*, 491 S.W.3d 733, 756 (Tex. Crim. App. 2016) (Yeary, J. concurring). Unfortunately, the Illinois Appellate Court’s decision tells citizens that,

by the time they get to the courtroom, their compliance with an unlawful order has no remedy because it will be seen as consent. The Fourth Amendment does not require relinquishment of the rights it protects in order to avoid escalation of encounters with the police to the point of possible violence. This Court should grant review.

CONCLUSION

For the foregoing reasons, petitioner, Ramsey Qurash, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court.

Respectfully submitted,

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