No. 20-518

In the Supreme Court of the United States

DARRIUS MARCEL MASTIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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In the decision under review, the court of appeals expressly recognized a circuit conflict on the question presented: whether *Michigan* v. *Summers*, 452 U.S. 692 (1981), authorizes police officers executing an arrest warrant to detain a bystander without individualized suspicion. After extensive analysis, the court of appeals came down on one side of that conflict, holding that such a suspicionless detention is categorically permissible.

The government wisely does not dispute that a conflict exists. It nevertheless contends that the conflict does not warrant the Court's review. But the government identifies no obstacle to the Court's resolving the conflict in this case, and it offers no valid reason why the Court should refrain from doing so at this time. For the reasons stated in the petition, this case is a straightforward and compelling candidate for certiorari.

A. The Government Acknowledges A Conflict Among The Federal Courts Of Appeals

1. In its brief in opposition, the government concedes the existence of a conflict. See Br. in Opp. 10-11. The Ninth Circuit has squarely held that "the categorical detention rule announced in *Summers* does not apply to arrest warrants." *Sharp* v. *County of Orange*, 871 F.3d 901, 913 (2017). In the decision below, the court of appeals expressly rejected *Sharp*'s holding, concluding instead that the categorical rule of *Summers* "extend[s]" to "cover arrest warrants as well as search warrants." Pet. App. 11a & n.3. The government acknowledges that the decision below conflicts with the Ninth Circuit's decision in *Sharp*, and it contends that the decisions of two other circuits are likewise "contrary" to *Sharp*. See Br. in Opp. 10-11 (citing decisions from the Fifth and Sixth Circuits).

In addition to the direct conflict with *Sharp*, the decision below is also in considerable tension with the Tenth Circuit's decision in *United States* v. *Maddox*, 388 F.3d 1356 (2004), cert. denied, 544 U.S. 935 (2005). The government attempts to explain away that tension by pointing to the fact that it did not specifically rely on *Summers* in *Maddox* (and the Tenth Circuit cited *Summers* only in passing). See Br. in Opp. 11 n.*. But that is beside the point. The Tenth Circuit squarely held that an officer may detain a bystander beyond the "immediately adjoining" area of an arrest only if the officer has a "reasonable belief based on specific and articulable facts" that the bystander "poses a danger." 388 F.3d at 1363 (citation omitted). By contrast, under the court of appeals' rule, detentions of anyone "on the premises" are categorically lawful even if the officers do not possess reasonable suspicion. See Pet. App. 11a.

In any event, whatever the exact dimensions of the circuit conflict, the parties are in agreement that there is in

fact a conflict on the question presented. That conflict, on an important question of Fourth Amendment law, plainly warrants the Court's review.

2. The government offers no valid reason for the Court to delay resolution of the conflict. The government contends only that the conflict does not merit the Court's review "at this time" because there is "intra-circuit tension" in the Ninth Circuit. Br. in Opp. 12-13. But that is simply incorrect. To begin with, contrary to the government's suggestion that the Ninth Circuit's decision in *Sharp* might lack "precedential force," *id.* at 12, *Sharp* is a published opinion that has been recently cited in the Ninth Circuit for its holding on the question presented here. See *Perez Cruz* v. *Barr*, 926 F.3d 1128, 1138 n.5 (2019) (recognizing that *Sharp* "held that *Summers* does not provide the categorical authority to detain co-occupants of a home incident to the in-home execution of an arrest warrant" (internal quotation marks and citation omitted)).

The government suggests that *Sharp* is in tension with three earlier Ninth Circuit decisions. See Br. in Opp. 12-13. But in *Sharp*, the Ninth Circuit not only squarely resolved the question presented, but also explicitly addressed two of the three decisions cited by the government. Specifically, the Ninth Circuit distinguished *United States* v. *Enslin*, 327 F.3d 788, cert. denied, 540 U.S. 917 (2003), explaining that it involved a "fact-specific reasonableness determination" and did not "extend[] the categorical *Summers* rule to the arrest-warrant context." *Sharp*, 871 F.3d at 915. And the Ninth Circuit acknowledged that its unpublished opinion in *Katzka* v. *Leong*, 11 Fed. Appx. 854 (2001), pointed "in the other direction," but noted that it was "non-binding" and chose not to adopt its reasoning. *Sharp*, 871 F.3d at 916.

That leaves the third decision cited by the government, *United States* v. *Vaughan*, 718 F.2d 332 (9th Cir. 1983). But that nearly 40-year-old decision does not conflict with *Sharp* either. In that case, officers detained the passenger of a stopped car while executing arrest warrants for the driver and another passenger. See *ibid.* In sustaining the detention, however, the Ninth Circuit did not purport to extend the categorical *Summers* rule to the arrest-warrant context; instead, the court relied on the unique traffic-stop context to justify the detention while officers conducted a "search [of] the passenger compartment of the car" incident to the arrests. *Id.* at 335; see *Arizona* v. *Gant*, 556 U.S. 332, 343 (2009); *Arizona* v. *Johnson*, 555 U.S. 323, 332 (2009).

In short, *Sharp* is undoubtedly the law of the Ninth Circuit, as the court of appeals below recognized in acknowledging a conflict with that decision. See Pet. App. 11a n.3. The government does not argue that further percolation on the question presented would be helpful to the Court—nor could it, in light of the thorough examination of both sides of the question by the lower courts. The Court's review is therefore warranted.

B. The Decision Below Is Erroneous

Perhaps foretelling its recognition of a valid conflict, the government uncharacteristically begins its cert-stage brief with an extended discussion of the merits. See Br. in Opp. 5-10. For present purposes, it should suffice to note that the parties' sharply contrasting views about the applicability of the *Summers* rationales underscore the need for this Court's review. Compare *ibid.* with Pet. 12-17. But two points demand a response here.

1. The government defends the decision below on the ground that the Court has a "general preference" for "cat-

egorical rules" in this context. Br. in Opp. 6 (citation omitted). Yet that assertion is foreclosed by *Bailey* v. *United States*, 568 U.S. 186 (2013)—the Court's most recent decision involving the *Summers* rule. There, the Court emphasized that the *Summers* rule "must be circumscribed" because the authority to detain someone without "individualized suspicion" is an "exception" to the "traditional rules of the Fourth Amendment." *Id.* at 200.

2. The government suggests that an officer-safety rationale is sufficient to sustain the extension of the *Summers* exception to the arrest-warrant context. See Br. in Opp. 6-9. The government thereby misunderstands this Court's decisions in *Summers* and *Bailey*. The Court in *Summers* identified three justifications for its categorical exception to the requirement of individualized suspicion: (1) the detention would be an "incremental intrusion on personal liberty"; (2) the "search warrant" provides an "objective" basis for believing that "someone" on the premises "is committing a crime"; and (3) such a detention furthers "law enforcement interest[s]" in preventing flight, minimizing the risk of harm to officers, and facilitating the completion of the search. 452 U.S. at 702-703. Accordingly, officer safety was just a factor within a factor justifying the *Summers* exception. See Pet. 14-15.

The government does not dispute that the first two of the three *Summers* justifications have less force in the arrest-warrant context. See Pet. 13. Instead, the government defends the court of appeals' narrow focus on officer safety by claiming that *Bailey* precludes extending *Summers* only where "*none*" of the interests identified in *Summers* applies. See Br. in Opp. 7. But that is not what *Bailey* said. Instead, the Court explained that application of the *Summers* exception "must not diverge from its purpose and rationale" and that "*[a]ny* of the individual [law-

enforcement] interests is * * * insufficient, on its own, to justify an expansion of the rule." 568 U.S. at 194, 199.

If officer safety alone were sufficient to justify a suspicionless detention, it would threaten to swallow up the Court's ordinary mode of Fourth Amendment analysis, with its bedrock requirement of individualized suspicion. See Pet. 14. The sweeping implications of such an approach illustrate why review of the court of appeals' decision, and clarification of the scope of the *Summers* exception, is so badly needed.

C. This Case Is An Optimal Vehicle For The Court's Review

The government does not dispute that the question presented is a frequently recurring question of law that was fully briefed and resolved below, and it does not contend that there is any obstacle to the Court's reaching and resolving that question here. Instead, the government suggests in passing that this case is an "unsuitable vehicle" because "petitioner's detention was objectively reasonable under the circumstances here." Br. in Opp. 13.

That is nothing more than a clumsy effort to repackage a forfeited alternative ground for petitioner's detention. As the government conspicuously fails to note, the magistrate judge rejected the government's argument that petitioner's initial seizure was justified under *Terry* v. *Ohio*, 392 U.S. 1 (1968), holding that the government had failed to establish that the officers had a "reasonable suspicion" that petitioner "was, or was about to be, engaged generally in any criminal activity at all." Pet. App. 33a; see *id.* at 28a-29a. The government did not challenge that holding in the court of appeals, instead arguing only that the categorical exception of *Summers* authorized petitioner's detention. See Pet. 6-7, 16-17. The government cannot revive that argument simply by artfully avoiding

the phrase "reasonable suspicion." Cf. Br. in Opp. 13 (contending that the officers "could reasonably believe that the occupants were associates of the named suspects").

But even if the government's reasonable-suspicion argument were still in play, it would pose no obstacle to the Court's review. The question presented here is whether the categorical exception of *Summers* extends to the arrest-warrant context. That question is distinct from any case-specific question concerning the objective reasonableness of *petitioner's* detention. Should this Court reverse the court of appeals' holding that *Summers* extends to the arrest-warrant context, it could leave any available alternative ground for petitioner's detention to the court of appeals on remand. That is exactly what the Court did in *Bailey* in identical circumstances. See 568 U.S. at 202.

* * * * *

As petitions for certiorari go, this one is not complicated. There is plainly a conflict on the extension of the *Summers* exception to the context of arrest warrants, and the decision below expressly recognized and solidified that conflict. The decision below rested entirely on its resolution of the question presented; the facts are simple and undisputed; and there are no impediments to the Court's consideration of the question. The Court should therefore grant review and resolve this important question of Fourth Amendment law.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

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