No. 21-895

IN THE

Supreme Court of the United States

JOHN RODRIGUES, JR.,

Petitioner,

v.

COUNTY OF HAWAIʻI; AND SAMUEL JELSMA, INDIVIDUALLY,

Respondents.

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

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Where the Ninth Circuit's *Memorandum* is based on the constitutionality of Petitioner's arrest for terroristic threatening, and not on Law Enforcement Officers Safety Act 18 U.S.C. § 926C ("LEOSA"), is consideration required of whether: (1) an individual's claimed rights under LEOSA are enforceable under 42 U.S.C. § 1983; and/or (2) LEOSA preempts state firearms laws prohibiting, *inter alia*, carrying loaded firearms

PARTIES TO THE PROCEEDING

John Rodrigues, Jr., petitioner on review, was the plaintiff-appellant below.

The County of Hawai‘i and Samuel Jelsma, in his individual capacity (collectively "Respondents"), are the respondents on review and they were defendants-appellees below. Former Hawai‘i County Police Department ("HCPD") Assistant Chief Jelsma retired from the HCPD in 2021.

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BRIEF IN OPPOSITION

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The U.S. Ninth Circuit Court of Appeals' unpublished *Memorandum* affirming summary judgment against Petitioner on alternate grounds not implicating LEOSA can be found at *Rodrigues v. County of Hawai'i*, No. 20-15097, 2021 WL 4168155 (9th Cir. September 14, 2021).

The United States District Court for the District Court of Hawai'i's unpublished *Order Granting Defendants County of Hawai'i and Samuel Jelsma's Motion for Summary Judgment*, granting summary judgment against Petitioner and dismissing his Fourth Amendment and state-law arrest-related claims because Respondent Jelsma had probable cause to arrest Petitioner for terroristic threatening and firearms offenses, can be found at: *Rodrigues v. County of Hawai'i*, Civ. No. 18-00027 ACK-RLP, 2019 WL 7340497 (D. Haw. December 30, 2019) ("*Order*").

JURISDICTIONAL STATEMENT

Respondents do not dispute this Court's jurisdiction over this case pursuant to 28 U.S.C. § 1254(1), but deny the case satisfies the standard set forth in Supreme Court Rule 10. Petitioner filed his *Petition for Writ of Certiorari* on December 13, 2021.

COUNTERSTATEMENT OF THE CASE

At around 7:30 a.m. on January 26, 2017, Petitioner John Rodrigues, Jr. ("Rodrigues") left his house in Hakalau on Hawai'i Island, got in his truck and left for the District of Puna. 2-ER-132 (Transcript of Testimony of John Rodrigues, Jr., dated September 11, 2019 ("Rodrigues Tr.")).[1] He did not have any specific destination in mind; he just wanted to go cruising around. *Order*, at 3. He was not headed to his place of business at the Mauna Lani resort in Waikoloa, sixty miles in the opposite direction, nor was he going hunting. 2-ER-132—33, -40 (Rodrigues Tr.).

Rodrigues **did**, however, have a 9 mm handgun in an old, worn, leather holster underneath the driver's seat of his vehicle; he also had a shotgun in a zippered soft case in the cab of his truck. 2-ER-140 (Rodrigues Tr.). Both guns were loaded. 2-ER-139, -40 (Rodrigues Tr.); *Order*, at 3.

At around 10:00 a.m., Rodrigues confronted Nathan Figueroa; "br[ought his] guns" out (specifically so that Mr. Figueroa would be "all scared"); and threatened to "put one bullet in [Figueroa's] fucken head." SER-2, -4 (Transcript of Police Commission Executive Session, May 19, 2017); *accord* SER-9 (Declaration of Nathan Figueroa, dated October 18,

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[1] Respondents' citations to Rodrigues' Excerpts of Record ("ER") and Respondents' Supplemental Excerpts of Record ("SER") follow the format prescribed in Ninth Circuit Rules 30-1.6.

2019), SER-13—14 (Declaration of Samuel Jelsma, dated October 17, 2019); *Order*, at 3-4.

Rodrigues also told Mr. Figueroa that no one would ever find his body; and he threatened to murder Mr. Figueroa's family. *Id.*; *see also* 2-ER-156 (Rodrigues Tr.).

At around 10:35 a.m., Rodrigues called 9-1-1 to report gunshots had been fired. 2-ER-134 (Rodrigues Tr.); *Order*, at 5.

When HCPD officers arrived shortly thereafter, Rodrigues allowed them to search his vehicle, whereupon they recovered the two (2) aforementioned loaded firearms. 2-ER-138—40 (Rodrigues Tr.); *Order*, at 5.

Rodrigues alleges he showed the police, including Jelsma, an identification card stating he is a retired HCPD detective. 2-ER-90—91 (Rodrigues' identification only card), 2-ER-141—42 (Rodrigues Tr.); *Order*, at 5. The identification card explicitly states, on the back, it:

> DOES NOT perm[i]t the holder to carry a concealed firearm pursuant to [18 USC § 926C] and in of itself is not inte[n]ded to comply with or be applicable to State statutes and administrative rules governing identification for the purpose of carrying a concealed and/or unconcealed firearm.

2-ER-91 (emphasis in original); *see also Order*, at 6.

Rodrigues did **not** show any police officers any firearms qualifications certification(s). 2-ER-142 (Rodrigues Tr. (admitting he had no other LEOSA identification, besides 2-ER-90—91, and therefore

did not "have anything else to show" the police)); *Order*, at 6.

There are two (2) firearms qualifications certifications at issue here.

The first was issued on December 24, 2015, and it was expired on January 26, 2017. 2-ER-143, 144 (Rodrigues Tr.); *Order*, at 7.

The second was issued on February 19, 2016, and qualified Rodrigues to use and carry **only** the Remington 870 12-gauge shotgun bearing serial number RS01242Y, and no other firearms. 2-ER-145 (Rodrigues Tr. (authenticating qualification card for RS01242Y at 2-ER-94—95)), 2-ER-146 (Rodrigues Tr.); *Order*, at 7.

Rodrigues had no other firearms qualifications certifications issued between February 19, 2016, and January 26, 2017. 2-ER-152 (Rodrigues Tr.).

On January 26, 2017, at around 3:00 p.m., Rodrigues was arrested and charged with firearms violations and terroristic threatening (of Nathan Figueroa). 2-ER-147 (Rodrigues Tr.); *Order*, at 8.

Later that day, a press release was issued advising an incident (involving Rodrigues) was "initially reported as shots fired," but later it was determined "no shots had been fired." 2-ER-261, -63 (media releases); *Order*, at 8-9.

Thereafter, Rodrigues brought the underlying lawsuit, seeking remuneration for his arrest, which he alleged violated federal and state law. 4-ER-634—798 (Rodrigues' *Third Amended Complaint*); *Order*, at 10-11.

On December 30, 2019, the district court entered its *Order* granting summary judgment dismissing Rodrigues' federal and state-law claims, arising from his arrest. 1-ER-2—43.

On September 14, 2021, the Ninth Circuit affirmed, determining summary judgment was proper against Rodrigues on his claims his arrest for terroristic threatening and weapons offenses deprived him of: (1) his constitutional right to be free from arrest unsupported by warrant or probable cause under the Fourth Amendment; and (2) his federal right to carry and transport concealed weapons under LEOSA. *Memorandum*, No. 20-15097, 2021 WL 4168155, *1 (9th Cir. Sept. 14, 2021). "Because the officers had probable cause to arrest Rodrigues for terroristic threatening of Figueroa in the first degree, Rodrigues's Fourth Amendment rights were not violated in connection with that arrest." *Id.* at *2.

Regarding LEOSA, the Ninth Circuit stated it had "no occasion to address whether Rodrigues is correct in contending that an individual's claimed rights under LEOSA are enforceable under § 1983. *Id.* n.3 (citing *Carey v. Throwe*, 957 F.3d 468, 481 (4th Cir. 2020) (noting spilt of authority on that issue)).

The Ninth Circuit emphasized Rodrigues' claimed LEOSA violation rests on the premise his arrest on *firearms* charges was inconsistent with his LEOSA rights. *Id.* at *2. However, because: (1) Rodrigues' arrest "was fully valid based solely on the separate charge of terroristic threatening[;]" and (2) "Rodrigues does not contend . . . his arrest on *that* charge was inconsistent with LEOSA[,] Rodrigues's single arrest thus did not infringe on his LEOSA rights, regardless

of whether or not he could properly have been arrested based only on the weapons charges." *Id.*

REASONS FOR DENYING THE PETITION

I. THE QUESTION PRESENTED DOES NOT ARISE FROM A CONFLICT IN THE COURTS OF APPEAL OR STATE SUPREME COURTS

Petitioner's suggestion of a split among circuits warranting certiorari is misleading. *Petition* at 34. Rodrigues' perceived split concerns LEOSA and "qualified retired law enforcement officer[s]" ("QRLEO") thereunder. *Id.*; *see* 18 U.S.C. § 926(C). But the Ninth Circuit passed on addressing LEOSA, opting to focus solely on the probable cause for the terroristic threatening charge. It held the indisputable probable cause for the terroristic threatening charge completely validated Rodrigues' arrest, and Rodrigues never challenged his arrest based on inconsistencies between that charge and LEOSA. Consequently, the Ninth Circuit did not substantively address LEOSA in any way. It did not discuss preemption, whether LEOSA is enforceable through 42 U.S.C. § 1983, or whether Rodrigues could have been properly arrested based only on weapons charges. *See Memorandum*, at *2, n.3 (acknowledging it had "no occasion to address whether Rodrigues is correct in contending that an individual's claimed rights under LEOSA are enforceable under § 1983").

Instead of LEOSA, the *Memorandum* is wholly based on the following a well-established legal principle: "Where, as here, there was a single arrest for multiple offenses, the Fourth Amendment requirement of probable cause is satisfied if any *one* of the offenses is supported by probable cause." *Memorandum*, 2021 WL , 4168155, at *1 (citing *Barry v. Fowler*, 902 F.2d 770, 773 n.5 (9th Cir. 1990)); *see also U.S. v. Bizier*, 111 F.3d 214, 218 (1st Cir. 1997) ("a finding of probable cause for any offense justifying full custodial detention can validate the search in this case as incident to a lawful arrest"); *Barna v. City of Perth Amboy*, 42 F.3d 809, 819 (3d Cir. 1994) ("Probable cause need only exist as to *any* offense that *could be* charged under the circumstances") (emphases added).

This principle is beyond controversy. In *Devenpeck v. Alford*, 543 U.S. 146 (2004), the Court resolved a circuit split in addressing the circumstances in which an arrest is lawful even though none of the crimes identified by the arresting officer at the time of arrest are supported by probable cause. *Id.* at 153 (holding probable cause inquiry is based upon whether facts known by arresting officer at time of arrest objectively provided probable cause to arrest).

But before *Devenpeck*, there was consensus among the courts of appeals an arrest is lawful if one charged crime on which a suspect is arrested is supported by probable cause, even if other charged crimes are not supported by probable cause. *See Jaegly v. Couch*, 439 F.3d 149, 153 n.1 (2d Cir. 2006) (citing *Lyons v. City of Xenia*, 417 F.3d 565, 573 (6th Cir.2005) ("To the extent probable cause exists for

any one of the[ ] charges, the arrest was lawful . . . ."); *Price v. Roark*, 256 F.3d 364, 369 (5th Cir.2001) ("Claims for false arrest focus on the validity of the arrest, not on the validity of each individual charge made during the course of the arrest."); *Barry*, 902 F.2d at 773 n. 5 (noting an officer need only show probable cause for one of the charged offenses for a seizure to be constitutional, even if the defendant was arrested for more than one offense); *Edwards v. City of Philadelphia*, 860 F.2d 568, 576 (3d Cir.1988) ("The existence of probable cause [with respect to one charge] . . . justified the arrest—and defeats [plaintiff's] claim of false arrest—even if there was insufficient cause to arrest on the aggravated assault claim alone."); *cf. Linn v. Garcia*, 531 F.2d 855, 862 (8th Cir.1976) ("[W]hen a peace officer has probable cause to believe that a person is committing . . . [an] offense, he is justified in arresting that person, and it is immaterial that the officer may have thought, without probable cause, that the defendant was committing or had committed other offenses as well.")).

Following *Devenpeck*, a claim for false arrest turns only on whether probable cause existed to arrest a defendant, and it is not relevant whether probable cause exited with respect to each individual charge, or, indeed, any charge invoked by the arresting officer at the time of arrest. *Jaegly*, 439 F.3d at 154. When faced with a claim for false arrest, courts focus on the validity of the arrest, and not on the validity of each charge. *Id.* Because the arresting officer in this case had probable cause to arrest Rodrigues for terroristic threatening, the Ninth Circuit had no

need to consider whether Rodrigues could have been properly arrested based only on the weapons charges. *Id.*

The Ninth Circuit's *Memorandum* is consistent with solid legal principles. And it does not, contrary to Rodrigues' assertion, contribute to a circuit split on whether an individual's claimed rights under LEOSA are enforceable under 42 U.S.C. § 1983, or whether LEOSA preempts state firearms law.

II. RODRIGUES SEVERELY MISCHARACTERIZES THE NINTH CIRCUIT'S *MEMORANDUM*

Rodrigues' claims the *Memorandum* gives "police, prosecutors and courts, unlimited discretion to decide whether a QRLEO's actions in any particular instance would be protected under LEOSA." *Petition*, at 33. He asserts it "renders LEOSA meaningless, as applied to QRLEOs", *id.* at 36, "allows for thousands of different interpretations of state, city, county and village laws by local police, local prosecutors, state and federal courts", *id.*, and it "could be used to negate the application of LEOSA entirely[.]" *Id.* There is no risk of Rodrigues' parade of horribles because the *Memorandum* expressly dissociates from LEOSA.

Rodrigues posits the Ninth Circuit interpreted LEOSA to mean a QRLEO does not qualify for LEOSA protection if they violate any other state law. *Petition* at 38. This is a gross mischaracterization. As explained *supra*, the *Memorandum* does not

implicate LEOSA, nor did the District Court's *Order* or the arrest.

The Court should not grant certiorari to address the validity of a holding the Ninth Circuit did not issue. At minimum, basic principles of prudence and restraint counsel in favor of waiting for the right case involving a QRLEO's 42 U.S.C. § 1983 challenge to an arrest on state weapons charges. Indeed, Rodrigues' failure to comply with LEOSA's identification requirements alone makes this case unworthy of certiorari. *See Order*, at 5-7, 23-26(explaining Rodrigues was not LEOSA qualified because he failed to comply with: (1) 18 U.S.C. § 926C(a)'s limitation on carrying "a firearm", *see* 18 U.S.C. §§ 926C(a) (allowing qualified individuals to carry "a firearm"), 926(C)(e)(1) (defining "a firearm" in the singular); and (2) 18 U.S.C. § 926C(d)'s certification requirement. *See* 18 U.S.C. § 926(C)(d).

III. THIS CASE DOES NOT WARRANT CERTIORARI WHERE THE NINTH CIRCUIT *MEMORANDUM* IS LEGALLY SOUND

It would be improper to grant certiorari to address Rodrigues' claim the Ninth Circuit's decision is "wrong". *See Petition*, at 27-33. "The United States Supreme Court is not a court of error correction." Stephen G. Breyer, *Reflections on the Role of Appellate Courts: A View from the Supreme Court*, 8 J. APP. PRAC. & PROC. 91, 92 (2006). It does not generally determine whether the lower courts have

correctly disposed of a particular case. *Id.* "Rather than correcting errors, then, the Supreme Court is charged with providing a uniform rule of federal law in areas that require one."

Furthermore, cases involving error correction are concerned only with the proper application of settled laws and procedures. Thus, they generally have little precedential value or importance to anyone beyond the immediate parties. For this reason, many Justices have argued against granting cert to such cases. See Christopher R. Drahozal, *Error Correction and the Supreme Court's Arbitration Docket*, 29 OHIO ST. J. DISP. RESOL. 1, 5-6 (2014) (discussing the opposition of many Supreme Court Justices to error-correction cases); William Howard Taft, *The Jurisdiction of the Supreme Court Under the Act of February 13, 1925*, 35 YALE L.J. 1, 2 (1925) ("The function of the Supreme Court is conceived to be, not the remedying of a particular litigant's wrong, but the consideration of cases whose decision involves principles, the application of which are of wide public or governmental interest.").

In addition to Justices Breyer and Taft, Justice Scalia observed that "it's not the job of the Supreme Court of the United States to correct the states . . . . Error correction--unless it's a capital case--is not what we do." *U.S. Supreme Court Justice Antonin Scalia Addresses ABA Midyear Meeting in New Orleans*, AM. BAR ASS'N (Sept. 29, 2011, 2:51 PM) http://www.americanbar.org/news/abanews/aba-newsarchives/2013/08/u_s_supreme_courtj.html [https://perma.cc/3ZUZ-FJPF] (quoting Supreme Court Justice Antonin Scalia).

And Justice Ginsburg noted "factbound" cases "in which the Court of Appeals unquestionably stated the correct rule of law" are " 'the type of case in which [the Court is] *most* inclined to deny certiorari.' " *Cavazos v. Smith*, 132 S. Ct. 2, 12 (2011) (Ginsburg, J., dissenting) (quoting *Kyles v. Whitley*, 514 U.S. 419, 460 (1995) (Scalia, J., dissenting)).

Further embodying this sentiment is Rule 10 of the Court's rules of procedure, which states, "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."

This case is fact-bound and, as discussed *supra*, the Ninth Circuit unquestionably stated the correct rule of law under *Devenpeck* without any need to delve into LEOSA.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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FEBRUARY 2022