No. _____

In the
Supreme Court of the United States

STATE OF KANSAS,
Petitioner,

v.

JEREMY A. CLINE,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of Kansas

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the exclusionary rule apply to suppress evidence where a court has found the use of excessive force in the execution of an otherwise lawful seizure, given that other adequate remedies to deter police misconduct exist?

STATEMENT OF RELATED PROCEEDINGS

District Court of Shawnee County, Kansas, Case No. 2021-CR-504, *State v. Kansas v. Jeremy A. Cline*, Order Suppressing Evidence entered July 14, 2022.

Kansas Court of Appeals, Case No. 125,410, *State of Kansas v. Jeremy A. Cline*, Opinion Affirming the District Court filed March 3, 2023.

Kansas Supreme Court, Case No. 125,410, *State of Kansas v. Jeremy A. Cline*, Order denying review filed June 28, 2023.

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PETITION FOR A WRIT OF CERTIORARI

The State of Kansas respectfully petitions for a Writ of Certiorari to review the judgment of the Kansas Court of Appeals.

OPINIONS BELOW

The published opinion of the Kansas Court of Appeals is reported, *State v. Cline*, 526 P.3d 686 (Kan. Ct. App. 2023), and is reproduced in the appendix at pages 2-31. The opinion of the district court is unreported but reproduced in the appendix at pages 32-36.

JURISDICTION

The Kansas Court of Appeals decided this case on March 3, 2023, and the Kansas Supreme Court denied review on June 28, 2023. Pet. App. 1. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated …" U.S. Const. amend. IV.

STATEMENT OF THE CASE

This case presents a constitutional question that this Court has never answered, and upon which the lower courts are divided: whether the exclusionary rule should be applied to suppress evidence when police use excessive force in effecting an otherwise lawful seizure.

When a Kansas Highway Patrol Trooper activated his emergency lights to signal Jeremy Cline to pull over, Cline instead led the trooper on a chase through residential streets in Topeka, Kansas. The chase ended when the trooper used a tactical vehicular intervention (TVI) maneuver to force Cline's car off the road. Unfortunately, as a result, Cline's car struck a pole and his passenger was killed.

Cline was charged with felony murder, fleeing and eluding police (the felony supporting the felony murder charge), reckless driving, possession of methamphetamine, and eight other crimes. He filed a motion to suppress, asserting the trooper's "use of force, to pursue and seize his vehicle" as he fled from the trooper violated the Fourth Amendment because excessive force was applied in seizing him. Following an evidentiary hearing, the district court ruled the trooper had used excessive force when the trooper bumped Cline's vehicle and forced it off of the roadway.

The State appealed, and the Kansas Court of Appeals affirmed the lower court, holding that the trooper had used excessive force in violation of the Fourth Amendment, and the remedy for this violation was the exclusion of all evidence seized post-seizure. The State then sought discretionary review by the Kansas Supreme Court, but that court declined review.

A. Facts

On the evening of March 6, 2021, Kansas Highway Patrol (KHP) Trooper Dobler was on patrol in a marked KHP vehicle in Topeka, Kansas. While stopped at an intersection, Dobler noticed a passenger

car directly north of his location traveling west. The car made a left turn and approached him, but then made an immediate right. As the vehicle turned directly beside his patrol vehicle, the trooper noticed a damaged front windshield that started in the driver area and continued across the entire windshield down to the lower corner of the passenger side. It had a spider web-style crack. That concerned him because of the obstruction and safety issues created for the driver. Pet. App. 5.

Dobler also suspected that the vehicle might have been stolen as it matched the general description of a vehicle that had been reported stolen in Topeka. Based on the cracked windshield, his suspicion that the vehicle was stolen, and the vehicle's abrupt turn away from him, Dobler activated his emergency lights and followed the vehicle. Pet. App. 5-6.

The vehicle, driven by Jeremy Cline, did not stop, and instead attempted to evade the trooper by turning onto another road and increasing its speed. Dobler activated his emergency siren and gave chase. Pet. App. 6.

As Cline fled, his vehicle strayed outside of its lane, rolled through intersections, disregarded stop signs, and appeared to be speeding well above the 35 MPH limit in what was essentially a residential area. Pet. App. 6. As Cline's vehicle approached another intersection, an oncoming vehicle approached and had to stop to avoid a collision. The pursuit continued and Dobler paced the vehicle in excess of 55 MPH in an area where the speed limit was 35 MPH. Pet. App. 6-7.

The fleeing vehicle then entered a trailer court, passing playing children while continuing to speed and drive in the opposite lane of traffic as it navigated the winding road. Dobler learned from dispatch that the vehicle was not the stolen vehicle he had initially suspected, but he continued to follow the vehicle with lights and sirens activated. Pet. App. 6-7.

Cline then returned to the main roadway, backtracking in the opposite direction that he was initially traveling when he had entered the trailer court. Cline's vehicle made another turn, ran another stop sign, and then turned again so that it was heading south. The vehicle often traveled left of the center of the roadway, and as it traveled southbound in the northbound lane, an oncoming vehicle approached at a distance. At that point, Dobler decided to attempt to end the pursuit using a Tactical Vehicular Intervention maneuver. Pet. App. 7.

As the two vehicles approached the northbound vehicle, Dobler performed the TVI, causing Cline's vehicle to leave the roadway and spin into the ditch. In doing so, it collided with a telephone pole. Pet. App. 8. After the impact, Dobler observed the driver, Cline, looking around throwing his hands up in the air, while the female passenger was incoherent and slouched back into her seat. Cline was commanded to exit the vehicle, but he did not comply. Pet. App. 8.

Other law enforcement officers arrived, and Cline was placed into custody. He was then transported to a local hospital. While at the hospital, a different Kansas Highway Patrol Trooper removed a small, zip-up pouch from Cline's person after observing Cline make several attempts to

surreptitiously reach into the pouch hidden in his pants. Inside it was a mirror, a white rag, and a bag containing a substance that the trooper suspected to be methamphetamine. A field test was positive for the presence of methamphetamine. Pet. App. 8.

A different trooper interviewed Cline at the hospital. He advised Cline of his rights per *Miranda*, and Cline agreed to speak with him. Cline made generally incriminating statements and admitted that he fled because he had a warrant for his arrest. Pet. App. 8.

Cline's passenger, Anita Benz, died four days later on March 10, 2021. Pet. App. 8.

Cline was charged with three felonies: (1) felony murder, (2) fleeing and eluding a police officer, and (3) possession of methamphetamine. He was also charged with several misdemeanors. Pet. App. 8-9.

Prior to trial, Cline filed a motion to suppress evidence, alleging that Trooper Dobler, by utilizing the TVI to terminate the pursuit, used excessive force in violation of Cline's Fourth Amendment right against unreasonable seizure. At the suppression hearing, Cline presented evidence and arguments that in conducting the TVI, Dobler violated KHP policies and directives from his supervisor. Pet. App. 9.

B. The District Court Decision

The district court adopted the defense arguments and granted the motion to suppress, finding that Trooper Dobler used excessive force and, as a consequence, evidence flowing from the TVI maneuver had to be suppressed.

The scope of the suppression extended to all evidence discovered "after the point of contact with the car," which included "officers observations of items inside the car, the interview, medical examiner testimony, all that[.]" Pet. App. 35. This even included Cline's identity.

C. The Kansas Court of Appeals Decision

Ruling on the State's appeal, the Kansas Court of Appeals affirmed the district court. In considering whether the exclusionary rule applied to suppress the evidence, the Court of Appeals observed that "federal courts have come down on either side of whether the exclusionary rule is the appropriate remedy in cases involving the unreasonable and excessive use of force by law enforcement officers, or if such a violation should instead be addressed in a civil action under 42 U.S.C. § 1983." Pet. App. 27-28 (citing *United States v. Watson*, 558 F.3d 702, 705 (7th Cir. 2009), and *United States v. Ankeny*, 502 F.3d 829, 836-37 (9th Cir. 2007)). The court ultimately concluded that the purpose of the exclusionary rule would be advanced here because "[s]uppression of the evidence removes the incentive for officers such as Dobler to disregard policies[1] and perform dangerous maneuvers simply to bring a hastier end to an ill-advised pursuit." Pet. App. 29. Finally, the court briefly addressed and dismissed the State's arguments regarding inevitable discovery and attenuation. Pet. App. 30-31.

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[1] In affirming the district court's excessive-force finding, the Court of Appeals observed that "Dobler violated KHP policies and had been discouraged from engaging in vehicle pursuits like the one with Cline." Pet. App. 21.

From this ruling, the State sought discretionary review by the Kansas Supreme Court, challenging both the Court of Appeals' finding of a Fourth Amendment violation and its application of the exclusionary rule.[2] Pet. App. 37-55. The Kansas Supreme Court denied review on June 28, 2023. Pet. App. 1.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted in this case for four reasons. First, the question presented—whether the exclusionary rule should be applied to suppress evidence when police use excessive force—is one that this Court has never answered and upon which lower courts are divided. In *United States v. Ramirez*, 523 U.S. 65 (1998), the Court hinted at potential answers to this question, but did not definitively rule. Federal and state courts have since drawn different conclusions from *Ramirez*, leading to a split of opinion about the application of the exclusionary rule. For example, the Ninth Circuit has suggested that the exclusionary rule would apply, and the Kansas Court of Appeals here agreed. But the Seventh Circuit, First Circuit, and Third Circuit have held that the exclusionary rule should not apply because a civil lawsuit provides an adequate remedy for victims of excessive force, and thus the cost to society of excluding evidence outweighs the remedial purposes

[2] While the State of Kansas does not agree with the Kansas Court of Appeals' conclusion that the trooper's actions constituted a Fourth Amendment violation, in this Petition it only seeks review of the court's holding regarding the exclusionary rule, and for that purpose assumes that a Fourth Amendment violation occurred.

of the exclusionary rule. A handful of state courts fall on either side of this split.

Second, the decision of the Kansas Court of Appeals here comes down on the wrong side of the split. Not only does it ignore the existence of other adequate remedies, it stretches application of the exclusionary rule beyond its intended purpose. The court's reasoning goes beyond deterring future constitutional violations, and instead seeks, at least in part, to enforce select law-enforcement-agency policies that are not themselves compelled by the Constitution.

Third, by applying the exclusionary rule, the lower court's decision needlessly endangers the public by creating a "perverse incentive" for criminals to flee from police, *see Scott v. Harris*, 550 U.S. 372, 385-86 (2007).

And finally, even if the exclusionary rule is applicable to cases involving excessive force in effecting a seizure, the Kansas Court of Appeals' decision here that all post-seizure evidence must be suppressed, is far too expansive and broad, and does not take into account the reasonable parameters of the deterrent purpose of the exclusionary rule, nor other factors that could and should limit its reach.

1. The lower courts are split on whether the exclusionary rule should apply based on an excessive-force finding.

The exclusionary rule is an extreme remedy fashioned by the courts to deter police misconduct. *Davis v. United States*, 564 U.S. 229, 236-37 (2011) (citations omitted). This Court has noted the rule's

significant cost to society and held that it should only be applied when "its remedial objectives are thought most efficaciously served." *Id.* at 237; *Arizona v. Evans*, 514 U.S. 1, 11 (1995). Accordingly, the Court has "repeatedly emphasized that the rule's 'costly toll' upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application"; suppression of evidence is a "last resort[.]" *Hudson v. Michigan*, 547 U.S. 586, 591 (2006).

Moreover, "whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from . . . whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." *Evans*, 514 U.S. at 10 (citations omitted). This means "exclusion may not be premised on the mere fact that a constitutional violation was a 'but-for' cause of obtaining evidence." *Hudson*, 547 U.S. at 592. Rather, exclusion is only warranted if the deterrent benefits of suppression outweigh the substantial social costs incurred. *Id.* at 591 (citing *United States v. Calandra*, 414 U.S. 338, 348 (1974)).

In *Ramirez*, this Court was presented with the question of whether police destruction of property during the execution of a "no-knock" warrant violated the Fourth Amendment. The Court held that in the circumstances of the case, it did not, but also noted, "Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful *and the fruits of the search are not subject to suppression.*" 523 U.S. at 71 (emphasis added). In a footnote,

however, the Court explained that it did not need to rule on the propriety of the lower court's suppression decision, stating, "Because we conclude that there was no Fourth Amendment violation, we need not decide whether, for example, there was sufficient causal relationship between the breaking of the window and the discovery of the guns to warrant suppression of the evidence." 523 U.S. at 72 n.3.

Subsequently, in *United States v. Ankeny*, 502 F.3d 829, 837 (9th Cir. 2007), the Ninth Circuit, relying on the language in the *Ramirez* footnote, observed that exclusion of evidence would be proper if it found a causal relationship between the police's use of excessive force and the discovery of evidence. On the other hand, the Seventh Circuit has held that the exclusionary rule does not apply to instances of excessive force. In *United States v. Watson*, 558 F.3d 702 (7th Cir. 2009), that court acknowledged the Ninth Circuit's language in *Ankeny* and disagreed with it, saying it "flies in the face of *Ramirez*." *Id.* at 705. Rather, the *Watson* court found that if the police use excessive force, "a suit for damages under 42 U.S.C. § 1983 (or state law)" would be the appropriate remedy, "rather than exclusion from [the] criminal trial of evidence that had been seized in an otherwise lawful search[.]" 558 F.3d at 704. Likewise, the First Circuit in *United States v. Garcia-Hernandez*, 659 F.3d 108, 113-14 (1st Cir. 2011), rejected the argument that excessive force in the execution of a warrant should result in exclusion of the evidence seized. And in an unpublished opinion, the Third Circuit has also held that "in the suppression context" the use of excessive force "is immaterial." *United States v. Morales*, 385 F. App'x 165, 167 (3rd Cir. 2010).

In reaching its decision here, the Kansas Court of Appeals acknowledged this split of opinion among the federal courts. Pet. App. 28. And, given the split of authority, the court felt relatively unconstrained with respect to the question at hand, determining that it could come down on whichever side it concluded was consistent with the purposes of the exclusionary rule. So it joined the *Ankeny* side of the split, agreeing with the Ninth Circuit's view that the exclusionary rule should apply in the context of an excessive force case and that exclusion of the evidence here would fall "within the purpose of the exclusionary rule." Pet. App. 28. Thus, the Kansas Court of Appeals' decision here both relies on and adds to the existing split of authority among the federal courts of appeal.

The Kansas Court of Appeals' decision also adds to a growing split on this issue among state courts. Some such courts have, like the Court of Appeals here, held that the exclusionary rule is an appropriate remedy when police use excessive force. *See State v. Gregg*, 615 N.W.2d 515, 523 (N.D. 2000) ("[T]he exclusionary rule's purpose of discouraging [police misconduct], includes … use of excessive force."); *Cornwell v. State*, 714 N.E.2d 764, 767-69 (Ind. Ct. App. 1999) (finding police chokehold constituted excessive force and holding such as an alternative basis for excluding evidence); *State v. Tapp*, 353 So. 2d 265, 268-69 (La. 1977) (holding evidence should have been excluded on the basis of excessive police force in conduct of search). *People v. Jones*, 209 Cal. App. 3d 725 (Cal. Ct. App. 1989) (upholding suppression of evidence based on use of excessive force, albeit on statutory grounds).

On the other hand, several other state courts have agreed with the Seventh Circuit's view that the exclusionary rule should not be applied in cases of excessive force because the cost to society of excluding evidence is too high given that other adequate remedies exist. *See State v. Sundberg*, 611 P.2d 44, 50-52 (Alaska 1980) (concluding that application of the exclusionary rule is inappropriate sanction for police use of excessive force); *State v. Herr*, 828 N.W.2d 896, 899 (Wis. Ct. App. 2013) (rejecting argument that evidence should be suppressed because police "used excessive force in the manner in which they seized [the defendant]" in violation of the Fourth Amendment); *Brito v. State*, 2016 WL 7377180 (Nev. 2016) (unpublished opinion) (rejecting argument that excessive force requires exclusion of evidence); *State v. Ward*, 2021 WL 4127189 (Idaho Ct. App. 2021) (unpublished opinion) (holding that even if police used excessive force in violation of Fourth Amendment, suppression of evidence was not appropriate remedy when excessive force was the result of the defendant's own conduct in fleeing police).

Thus, both federal and state courts have come down on opposite sides of the question presented. The decision of the Kansas Court of Appeals here only adds to that split. If left unresolved, this creates a patchwork of constitutional law across the United States, where evidence may or may not be excluded based on similar police conduct depending on the jurisdiction, this Court should act to resolve the split and clarify the law regarding application of the exclusionary rule.

2. The Kansas Court of Appeals joined the wrong side of the lower-court split on this issue, ignoring the existence of other adequate remedies and expanding application of the exclusionary rule beyond its intended purpose.

The position taken by the Seventh Circuit and like-minded courts is the correct one, and the opposite view taken by the Kansas Court of Appeals is wrong and should be reversed. As already noted, the exclusionary rule is an extreme remedy, with significant costs to society. *Davis*, 564 U.S. at 236-37. It is "'not a personal constitutional right,' nor is it designed to 'redress the injury' occasioned by an unconstitutional search." *Id.* at 236. Rather, it is a prudential doctrine whose sole purpose "is to deter future Fourth Amendment violations." *Id.* at 236-37.

And while "[r]eal deterrent value is a 'necessary condition for exclusion,' … it is not a 'sufficient' one." *Id.* at 237 (quoting *Hudson*, 547 U.S. at 596). Rather, even if some deterrent effect could be achieved through exclusion, courts are nonetheless required to "account for the 'substantial social costs' generated by the rule," which could include—as it did in this case—"suppress[ing] the truth and set[ting] the criminal loose in the community without punishment." *Id.* Accordingly, exclusion should be the "last resort." *Id.* And in cases involving the use of excessive force by police, there are other remedies that can be used to deter police misconduct. It is not necessary to use the extreme "last resort."

As the Seventh Circuit has repeatedly observed, "a suit for damages is the better remedy to address

excessive force because a civil action is 'better calibrated to the actual harm done to the defendant' than exclusion, which can impose great social cost." *United States v. Collins*, 714 F.3d 540, 543 (7th Cir. 2013) (quoting *United States v. Watson*, 558 F.3d 702, 705 (7th Cir. 2009); *see also State v. Sundberg*, 611 P.2d 44, 51-52 (Alaska 1980) (observing that "[p]otential deterrents exist in the possibility of criminal sanctions; police departmental proceedings; civil rights actions; and common law tort suits against the offending officer"). Thus, other adequate remedies exist to address and deter the police use of excessive force, and those remedies come without the significant costs to society and justice that accompany the exclusionary rule.

Here, the Kansas Court of Appeals' decision is especially problematic because it links the purpose of the exclusionary rule to non-constitutional factors. Pet. App. 28-29. While the exclusionary rule is intended to deter police misconduct, that purpose must be understood in the constitutional context—as this Court said in *Davis*, the purpose of the exclusionary rule "is to deter future *Fourth Amendment* violations." 564 U.S. at 236-37 (emphasis added). The exclusionary rule is not intended to deter police misconduct that does not rise to the level of a constitutional violation. And it is especially not to be used to deter police from violating departmental policies, whose purposes are as varied as the policies themselves, which can and do differ from location to location and time to time, and are motivated by a wide range of non-constitutional factors. *See Whren v. United States*, 517 U.S. 806, 815 (1996) (rejecting use of local police regulations as a standard for evaluating

constitutionality of police conduct); *see also Christiansen v. Eral*, 52 F.4th 377, 379-80 (8th Cir. 2022) ("Just because [an officer] chose to violate department policy doesn't mean that he acted unreasonably from a constitutional perspective."); *Pasco ex rel. Pasco v. Knoblauch*, 566 F.3d 572, 579 (5th Cir. 2009) ("[T]he fact that [the officer] acted contrary to his supervisor's order is constitutionally irrelevant."). Again, there are other remedies for police officers violating departmental policies. Invoking the exclusionary rule for that purpose stretches the exclusionary rule beyond its intended purpose.

For these reasons, the lower court's decision here is wrong, and more significantly, adds to the wrong side of the split among lower courts described above. If left unaddressed, it adds fuel for other courts to use in continuing to stretch the exclusionary rule beyond its intended purpose, at great social cost.

3. The Kansas Court of Appeals' misuse of the exclusionary rule in the circumstance presented creates "perverse incentives" for criminals to act recklessly and put the public at risk.

While the question presented is one of public importance generally, it is especially important in the context here, involving a criminal suspect fleeing from police in a vehicle. If the exclusionary rule is applied here, it will end up promoting the very thing this Court sought to dissuade in *Scott v. Harris,* 550 U.S. 372, 385-86 (2007)—it will create "perverse incentives" for criminals to recklessly flee from police, knowing that if the police use force to terminate the

pursuit, there is a good chance that incriminating evidence will be excluded. Indeed, the Kansas Court of Appeals' decision here effectively rewards a wrong-doer for his actions by focusing all of the blame for the end result on the law enforcement officer while ignoring the fact that it was Cline's own dangerous conduct that set in motion the chain of events leading to Benz's death. As this Court noted in *Scott*, the Constitution does not countenance such "impunity-earned-by-recklessness." 550 U.S. at 385-86.

Moreover, the Kansas Court of Appeals' decision will introduce a new element of uncertainty into law enforcement decision-making at the very point and time when uncertainty can have catastrophic effects. Law enforcement officers engaged in the pursuit of fleeing criminals may be hesitant to take the necessary action to terminate the pursuit, allowing pursuits to go on longer in distance and duration, putting the public at greater risk. The lower court's decision to exclude the evidence in this case thus undermines the sensible rule this Court laid down in *Scott*. If the decision is allowed to stand, it will essentially eviscerate the holding of *Scott* within the State of Kansas, and could provide persuasive authority for courts in other jurisdictions to do the same thing. This Court should stop the inevitable creep of "this invitation to impunity-earned-by-recklessness," 550 U.S. at 386, created by the lower court's decision here, by granting certiorari and reversing the Kansas Court of Appeals.

4. Even if the exclusionary rule does apply, the Kansas Court of Appeals' sweeping application of it goes beyond the parameters necessary to achieve its purpose.

Finally, even if one were to agree that the exclusionary rule should be applied in at least some instances of excessive force, the Kansas Court of Appeals' sweeping ruling, excluding all evidence discovered post-seizure, goes too far. If the exclusionary rule is to be applied in such a circumstance, then authoritative guidance on the parameters of the rule's application is necessary.

For example, those courts that have held or suggested the exclusionary rule is applicable in an excessive force case have also limited its application only to where there is "[a] sufficient causal relationship" between the excessive force and the specific evidence suppressed. *See, e.g.*, *Ankeny*, 502 F.3d at 837. But the Kansas Court of Appeals here engaged in no such analysis. It simply held, in sweeping fashion, that all evidence following the seizure should be suppressed. Pet. App. 29-30.

This included, for example, even the defendant's *Mirandized* statements made later at the hospital. Pet. App. 30-31. This is at odds with other courts. For example, in *People v. Wells*, 805 N.W.2d 374, 378-79 (Mich. Ct. App. 1999), the Michigan Court of Appeals observed, "even if we were to accept defendant's claim that excessive force was used to effectuate his arrest, the facts fail to show a causal connection between the circumstances of his arrest and his subsequent statement at the hospital sufficient to render the conclusion that his statement

was involuntarily made." Indeed, the Kansas Court of Appeals' blanket application of the exclusionary rule to all post-seizure evidence is at odds with the deterrent purpose of the exclusionary rule and imposes an unwarranted cost on society. Even if the lower court was correct in concluding that the exclusionary rule should apply, the broad sweep of its application in this case goes too far. But, as this Court has never applied the exclusionary rule in the context of an excessive force claim, there is no authoritative guidance to lower courts regarding the rule's reach. This is yet another reason why certiorari should be granted.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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