No. 24-1099

IN THE

Supreme Court of the United States

KYLE SMITH, et al.,

Petitioners,

v.

ROCHELLE SCOTT, individually, and as co-special administrator of THE ESTATE OF ROY ANTHONY SCOTT, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION

Peter Goldstein
Counsel of Record
Jeremy Friedman
PETER GOLDSTEIN LAW CORPORATION
10161 Park Run Drive
Suite 150
Las Vegas, NV 89145
(702) 474-6400
peter@petergoldsteinlaw.com

Counsel for Respondents

QUESTION PRESENTED

Regarding an excessive force claim that arose when two officers applied their bodyweight on a mentally-distressed prone individual, who then died, did the court of appeals—upon the determination that, construing the facts in favor of the summary judgment nonmovants, the officers used severe and deadly force on the individual, who posed no threat and was not suspected of a crime—correctly determine that Petitioners were not entitled to a grant of summary judgment based on qualified immunity?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes & Rules

INTRODUCTION

Petitioners request this Court's intervention to reassess the lower courts' unanimous, fact-bound determination that Petitioners are not entitled to qualified immunity at summary judgment, since there are genuine issues of disputed material fact. That highly case-specific determination does not warrant this Court's review.

Petitioners do not dispute the statements of law in the court of appeals' and district court's rulings denying summary judgment on the excessive force claim. Nor do Petitioners dispute the fact that mentally-distressed civilian Roy Scott—who was not suspected of criminal activity—died after two officers applied their bodyweight to him, while he was lying face-down on the ground. Instead, Petitioners argue only that the lower courts should have reached a different conclusion in applying the law to the facts of this case.

Petitioners' argument is premised on rejecting the lower courts' unanimous assessments on issues of fact, thereby running afoul of basic legal principles, including: the limited scope of interlocutory appellate review; the summary judgment standard requiring that facts be construed in favor of the nonmovants; and this Court's role as a decider of legal issues, not assertions of factual errors. Also, the Petition contradicts *Petitioners' own prior admissions* that Mr. Scott posed no serious threat.

Petitioners fare no better in their critique of the court of appeals' interpretation of its own clearly-

established case law. The court of appeals was correct to hold unanimously that, taking the facts in the light most favorable to the plaintiffs, a jury could conclude that the officers violated Mr. Scott's Fourth Amendment rights. Nor did the court of appeals err in relying on on-point circuit precedent to conclude that the law was clearly established at the time of this case.

Petitioners also fail in their attempt to manufacture a circuit split. The so-called split is illusory. Rather than show that the Ninth Circuit has departed from a majority rule, the cases Petitioners cite uniformly show that the excessive force analysis is inherently fact-dependent and context-sensitive. Indeed, whereas Petitioners claim that various other circuits are split from Ninth Circuit and Seventh Circuit authority, the out-of-circuit cases relied upon in the Petition—and other cases from those same circuits—frequently cite *with approval* Ninth Circuit and Seventh Circuit authority, including a citation to the Ninth Circuit's ruling in this case.

Nor does the Petition present a proper vehicle for review of the questions presented, which are not genuinely implicated by the facts of this case.

STATEMENT OF THE CASE

Construing the disputed facts in the light most favorable to the summary judgment nonmovant, the lower courts set forth the following facts—which, in key instances, the Petition contradicts and ignores.

Experiencing A Mental Health Crisis, Mr. Scott Calls 911 For Assistance

In the early morning hours on March 3, 2019, 65-year-old[1] Roy Scott was in the throes of a mental health crisis, inside his own apartment. Pet.App.3a. He "called the police for help," "[b]ut he did not get it"—instead they applied force that proved fatal. Pet.App.2a.

Mr. Scott called 911, reporting that he feared being the potential victim of a crime: he told the 911 dispatcher that there were "multiple assailants outside his apartment with a saw." Pet.App.3a, 28a. Las Vegas Metropolitan Police Department Officers Smith and Huntsman assigned themselves to Mr. Scott's call and arrived at his apartment shortly after he placed the call. Pet.App.3a, 28a. Mr. Scott "was distressed and hallucinating when Officers Smith and Huntsman arrived at his apartment." Pet.App.3a.

When the officers knocked on his door and identified themselves, Mr. Scott yelled for them to break down the door, hallucinating that there were people in his apartment. Pet.App.3a, 28a. The officers, not hearing anyone besides Mr. Scott inside the apartment, continued to knock and ordered Mr. Scott to come to the door. Pet.App.3a, 28a. Within about two minutes of knocking on Mr. Scott's door, Officer Smith told Officer Huntsman, "[T]his is a 421A for sure," referring to a department code indicating that Mr. Scott was mentally ill. Pet.App.3a-4a. A minute or so later,

---

[1] Court of Appeals Excerpts of Record, vol. 5, at 881—hereafter, cited in the format, "5-ER-881."

Officer Huntsman asked Mr. Scott if he had "been diagnosed with any mental health diseases." Pet.App.4a, 28a. The officers were not able to make out Mr. Scott's response. Pet.App.28a.

The officers then took time to regroup. With Mr. Scott still in his apartment, the officers walked downstairs and discussed what they should do next. Pet.App.4a, 28a. Officer Smith called dispatch to see if they could call Mr. Scott back to convince him to open his door; he noted to the dispatchers that Mr. Scott "appeared to be mentally ill." Pet.App.4a. The officers agreed they did not want to enter Mr. Scott's apartment because he seemed "wacky." Pet.App.4a, 29a.

Still contemplating their next steps, the officers called their assigned Sergeant, again noting that Mr. Scott "sound[ed] mentally ill." Pet.App.4a, 29a. While Officer Smith spoke to the Sergeant, Officer Huntsman shined his flashlight into a second story window in Mr. Scott's apartment, where Mr. Scott was visible. Pet.App.29a. Peering into the window and shining the flashlight at Mr. Scott, Officer Huntsman asked Officer Smith if he could see "that crazed look in [Mr. Scott's] eye." Pet.App.4a, 29a.

After Officer Smith ended the call, he reported the response from their Sergeant: "[A]t the end of the day we can't do anything if we don't hear any reason to have an exigent circumstance." Pet.App.4a. Yet Officer Smith "then abruptly yell[ed] toward the window at Scott: 'Sir, go to the door.'" Pet.App.29a. The officer approached Mr. Scott's apartment door and resumed knocking, and yelled, "Police Department come to the

door." Pet.App.4a, 29a. Mr. Scott opened his door. Pet.App.4a, 29a.

Mr. Scott Immediately Complies With The Officers And Explains That He Is Mentally Distressed

After opening his door, Mr. Scott was "compliant and walk[ed] out of his apartment." Pet.App.29a. When Mr. Scott walked out, Officer Smith went down the stairs in front of Mr. Scott's apartment. Pet.App.4a. Mr. Scott followed the officer down the stairs holding a metal pipe at his side. Pet.App.4a, 29a. Officer Smith flashed a light at Mr. Scott and ordered him to drop the pipe; Mr. Scott "immediately" complied. Pet.App.4a, 29a.

"Disoriented," Mr. Scott asked the officers once, then twice: "What am I supposed to do?" Pet.App.4a, Pet.App.29a. When the officers directed Mr. Scott to stand near a wall at the base of the stairs, he "immediately complied." Pet.App.4a. Officer Huntsman asked Mr. Scott if he had any other weapons. Pet.App.4a-5a. Mr. Scott, again complying immediately, took a knife out of his front pocket and apologized to the officers, saying, "I am so sorry." Pet.App.5a. He then safely "handed the knife to Huntsman handle-side out and did not make any threatening gestures." Pet.App.5a.

The officers shined a flashlight at Mr. Scott again and ordered him to face the wall. Pet.App.5a. Mr. Scott told them that the light bothered him and stated that he had paranoid schizophrenia. Pet.App.5a, 30a. Looking for help, he asked the officers twice, "Can you

just put me in the car please?" Pet.App.5a, 30a. When asked about the pipe and knife, Mr. Scott explained that he thought "people [we]re after [him]," and told the officers he was "scared." Pet.App.5a, 30a.

Officer Smith again directed Mr. Scott to face the wall, to which Mr. Scott explained, "I'm paranoid, I can't turn around." Pet.App.5a, 30a. When the officer told Mr. Scott, "You're fine," Mr. Scott repeatedly replied, "I'm not fine." Pet.App.5a, 30a. The Petition asserts Mr. Scott then reached inside his jacket pocket, Pet.9, but that is heavily disputed. Pet.App.7a.

Without ever discussing it, the officers at some point in this interaction claim to have "concluded [Mr. Scott] met the qualifications for a medical hold for his mental health and safety." Pet.App.5a. The district court found there was a genuine dispute of material fact whether there was probable cause to detain Mr. Scott for a mental health hold. Pet.App.51a.

Despite His Compliance, The Officers Perform A Takedown And Then Restrain Mr. Scott Using Bodyweight Force That Kills Him

The officers next went up to Mr. Scott and grabbed his arms. Pet.App.5a. Mr. Scott, "in a plaintive voice," "repeatedly" said "please, please, please." Pet.App.30a. Each officer held one of Mr. Scott's arms as they placed his hands behind his back. Pet.App.30a. Over and over, he asked the officers "'what are you doing' in a distressed voice." Pet.App.5a, 30a. He "plead[ed] with the officers to 'stop.'" Pet.App.30a. Mr. Scott "visibly appear[ed] increasingly concerned and scared by the officers'

actions" and asked the officers "[w]hy are you all doing this to me?" as they continued to grab and hold him. Pet.App.30a.

Then, the officers performed a takedown maneuver, forcing Mr. Scott to the ground, though the precise sequence of events is disputed. Pet.18 n.5; Pet.App.22a, 31a, 38a-39a, 51a, 57a. Mr. Scott again asked the officers why they were doing this to him. Pet.App.31a.[2]

After the takedown, "[w]hile on the ground, Scott's pleas escalate[d] in intensity—eventually turning to screams." Pet.App.31a. The officers held Mr. Scott's arms to his sides while he laid on his back. Pet.App.5a. "In this position, Scott screamed, struggled, and pled with the officers to leave him alone for over two minutes." Pet.App.5a. Mr. Scott pleaded "over and over 'please leave me alone.'" Pet.App.31a.

The officers then rolled Mr. Scott on to his stomach and repeatedly ordered Mr. Scott to "stop." Pet.App.5a. "With Scott on his stomach and with his hands restrained behind his back, Huntsman put his

---

[2] Unconnected to any assertion of legal error, Petitioners aver that "both body-worn cameras show that the degree of force is indisputably minimal," Pet.10; however, Petitioners are mistaken in calling the characterization "indisputabl[e]." Petitioners elsewhere concede that "the body-worn camera is inconclusive" as to how Mr. Scott ended up on the ground, Pet.18 n.5, thereby negating their assertion that the video footage shows that "the degree of force is indisputably minimal," Pet.10. Moreover, this issue has already been disputed. *See* CA9 AB 45 ("Under Defendants' own policy, a takedown can be intermediate force – or 'Deadly Force', i.e., 'likely to produce death or serious bodily injury.'") (quoting 4-ER-801, 803).

bodyweight on Scott's back and neck for about one to two minutes. At the same time Smith put his weight on Scott's legs, restraining his lower body." Pet.App.5a. As Officer Huntsman applied his bodyweight to Mr. Scott, Mr. Scott's "pleas turned increasingly incoherent and breathless." Pet.App.6a.

After the officers handcuffed Mr. Scott, they tried to roll him to his side; all the while, Mr. Scott "continued to incoherently cry out that he wanted to be left alone." Pet.App.6a.

Officer Huntsman then called paramedics to the scene because Mr. Scott's lip had been cut when he was pushed to the ground. Pet.App.6a, 31a. After a few minutes, Mr. Scott stopped yelling and moving. Pet.App.6a, 31a. He did not respond to the officers' attempts to wake him. Pet.App.6a, 31a.

Mr. Scott was still unresponsive when paramedics arrived. Pet.App.6a, 32a. He was pronounced dead after he was removed from the scene. Pet.App.6a. "[T]he parties dispute Scott's cause of death, including whether cardiac failure, resulting from hypoxia caused by the officers' use of force, was a proximate cause of his death." Pet.App.32a. Plaintiffs' position was supported by an expert's medical opinions. Pet.App.6a, 39a.

The Administrators Of Mr. Scott's Estate Sue The Officers, And Summary Judgment Is Denied

Mr. Scott's daughter, Rochelle Scott, and another administrator of Mr. Scott's estate sued the officers and the Las Vegas Metropolitan Police Department.

Pet.App.6a. Plaintiffs brought a claim under 42 U.S.C. § 1983 for violation of Mr. Scott's Fourth Amendment right to be free from excessive force, along with other claims not at issue here. Pet.App.6a. As to the excessive force claim, Plaintiffs "contend[ed] that the force the officers subjected Scott to during their interaction with him was not objectively reasonable." Pet.App.37a.

The officers moved for summary judgment based on their assertion of qualified immunity. The summary judgment record included both officers' express admissions that Scott had no intent to harm them (2-ER-198:20; 2-ER-199:7-11; 2-ER-227:14; 2-ER-268:12-17) and opinions from Plaintiffs' medical and police-practices experts (Pet.13-14; Pet.App.6a, 14a, 39a, 62a; 3-ER-381-431).

The district court denied summary judgment, based on genuine issues of disputed fact. Pet.App.49a, 51a, 57a.

Under summary judgment standards, the district court set forth assessments of the factual record, including as follows:

- "Scott posed *no threat* to the officers or anyone else during this incident." Pet.App.40a (emphasis in original); Pet.App.45a ("Scott posed no threat to anyone or himself.").

- "[S]evere, and ultimately lethal, force was used against [Mr. Scott]," Pet.App.43a-44a, which

"proximate[ly] cause[d]" his death, Pet.App.32a.

- Mr. Scott "was never suspected of a crime," not even "a minor crime." Pet.App.28a, 50a.

- Mr. Scott had "obvious and known mental health difficulties." Pet.App.68a.

The district court denied the officers' qualified immunity defense for three independent reasons. First, "[t]he use of force alleged by Plaintiffs is unconstitutional" because (i) there was no legal justification for the use of force; (ii) even if Mr. Scott's arrest was legally supportable, "it was unconstitutional for [the officers] to use substantial or nontrivial force on a passive and compliant individual like Scott"; and (iii) "it is unconstitutional for an officer to use substantial force against an individual suspected of a minor crime and who posed no threat to officer safety." Pet.App.48a-50a.

Second, "the law regarding [the officers'] unconstitutional conduct was clearly established at the time of the officer's [sic] March 2019 encounter with Scott." Pet.App.50a.

Third, the district court denied qualified immunity because there were several "genuine issues of disputed fact" including:

> a.) whether there was probable cause to even detain Scott under Nevada law, b.) whether Scott exhibited any conduct or behavior that warranted even placing hands on him,

> c.) whether the officers used a takedown maneuver on Scott to force him to the ground, d.) how actively Scott was resisting the officers at various stages of the encounter, e.) how long Huntsman's knee was on Scott's neck, f.) when Scott was subdued and handcuffed, and g.) whether there were less intrusive or nonintrusive tactics available to the officers.

Pet.App.51a.

The Court Of Appeals Unanimously Affirms

The officers appealed. Pet.App.6a. The officers' appellate briefing was notable in various respects. In particular, the officers conceded that Mr. Scott did not pose a serious or significant threat:

- "The Officers acknowledge that Scott did not present a serious immediate threat …." CA9 OB 32.

- "[I]t is admitted [Mr. Scott] was not resisting in a manner that significantly threatened the Officers' safety …." *Id.*

- "[T]he Officers have conceded that Scott did not present a serious threat of death or bodily injury." *Id.* at 38.

These concessions are notable, because the Petition ignores them—and takes the opposite position, alleging that Mr. Scott posed an "immediate threat" and "significant danger to the officers." Pet.19, 21.

Otherwise, as they do here, the officers "devote[d] much of their [appellate] briefing to *their* version of events that [Plaintiffs] dispute[]." Pet.App.7a. For example, the officers sought to characterize the amount of force that they used as "only … minimal force," CA9 OB 7, even though this was contrary to the district court's assessment that "severe, and ultimately lethal, force was used against [Mr. Scott]," Pet.App.43a-44a.

The court of appeals unanimously affirmed the district court's denial of summary judgment. The court of appeals noted that "the district court denied the officers' request for qualified immunity because the record presents multiple genuine issues of fact." Pet.App.7a. The panel went on to hold that it "lack[ed] jurisdiction to redecide factual disputes" and "assuming each dispute is resolved in favor of" the Plaintiffs, the officers were not entitled to qualified immunity on the Plaintiffs' Fourth Amendment claim. Pet.App.8a.

The court of appeals echoed the district court's key factual assessments, including as follows.

- "Scott did not pose a danger to the officers or others." Pet.App.13a; *see also id.* ("[A] jury could find he posed no threat to the officers.").

- The officers used "severe, deadly force" in "the specific circumstances of the case." Pet.App.10a.

- Mr. Scott "was not suspected of a crime." Pet.App.2a; *see also* Pet.App.12a ("Smith and Huntsman did not suspect Scott of a crime.").

- "Scott was mentally ill," as was apparent to the officers. Pet.App.3a, 12a; *see also* Pet.App.4a, 5a, 13a-18a, 22a.

The court of appeals also stated that, far from being a criminal suspect, Mr. Scott had in fact "called 911 because he feared he was a *victim* of a crime." Pet.App.12a (emphasis in original); *see also* Pet.App.2a ("Scott called the police for help.").

The court of appeals held that "viewing the facts in the light most favorable to Plaintiffs," the officers violated Mr. Scott's Fourth Amendment rights. Pet.App.9a. Specifically, the panel held "that Smith and Huntsman were not justified in using deadly force against Scott, a mentally ill person who was not suspected of committing a crime and presented little or no danger." Pet.App.15a.

The court of appeals next turned to the question of whether the law was clearly established. Pet.App.16a-18a. The panel determined that "any reasonable officer should have known that bodyweight force on the back of a prone, unarmed person who is not suspected of a crime is constitutionally excessive." Pet.App.16a-17a. Citing the Ninth Circuit's decision in *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1059 (9th Cir. 2003), the panel reasoned that it was clearly established "that it is unconstitutional to use bodyweight force on the back and neck of a prone and unarmed individual" "[l]ong before Scott's death." Pet.App.17a. In fact, the panel wrote, "[t]he law is especially clear where, as here, the officers know the prone individual is suffering from a mental illness and is not suspected of a

crime." Pet.App.17a. Indeed, the panel found that "[t]he similarities between this case and *Drummond* are striking." Pet.App.17a; *contrast* Pet.App.19a n.3 (citing *Perez v. City of Fresno*, 98 F.4th 919 (9th Cir. 2024), as an example where the facts of a case were *not* like *Drummond* because there was an "intervening decisionmaker").

The panel reversed the denial of summary judgment on selected other causes of action. Pet.App.23a-24a.

The officers filed a petition for panel rehearing and rehearing en banc. Pet.App.74a. The panel voted to deny the petition, and no judge requested a vote on whether to rehear the matter en banc. Pet.App.74a.

REASONS TO DENY CERTIORARI

I. The Decision Below Is Correct.

The Petition should be denied. The Petition relies on a litany of improper and meritless criticisms of the panel's opinion on issues of fact, without challenging the panel's statements of the law; and the decision below correctly applied the summary judgment standard and this Court's precedents regarding qualified immunity.

A. The Petition relies on factual challenges that exceed the limited scope of interlocutory appellate review.

The Petition challenges the lower courts' denial of summary judgment in a manner that is improper in

an interlocutory appeal and contradicts Petitioners' prior positions in this case.

"[A] district court's denial of a claim of qualified immunity," at the summary judgment stage, is the basis for an interlocutory appeal only "to the extent that it turns on an issue of law." *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). Under this limited scope of interlocutory appellate review of summary judgment rulings, the plaintiff's factual allegations must be accepted unless they are "blatantly contradicted by the record." *Scott v. Harris*, 550 U.S. 372, 380 (2007); *see* Pet.App.8a (quoting same). A blatant contradiction occurs where the simple facts are indisputable: e.g., where the lower court states that a vehicle's driver posed "little, if any, actual threat to pedestrians or other motorists"—yet video footage conclusively shows numerous extremely dangerous, illegal driving maneuvers that "endanger human life." *Scott v. Harris*, 550 U.S. at 378-80. The limits on interlocutory review apply strictly in this Court, whose function is to decide significant legal questions—and not to engage in review when "the asserted error consists of erroneous factual findings." S. Ct. R. 10.

Here, the Petition contests the lower courts' factual assessments on several critical issues in this case without any evidence that remotely approaches blatant contradiction. Indeed, the Petition does not actually directly allege a blatant contradiction—although its position is clearly premised on challenges on factual issues.

First, Petitioners assert that "[t]here is no dispute that … [Mr. Scott] posed an immediate threat to [the

officers'] safety," Pet.19, and that Mr. "Scott *did* pose a significant danger to the officers," Pet.21; *see also* Pet.20.[3] The determination of whether a subject posed danger is a "factual issue." *Scott v. Harris*, 550 U.S. at 380.[4] The Petition's assertions directly contradict the court of appeals' factual assessment that Mr. "Scott did not pose a danger to the officers or others," Pet.App.13a, and the district court's identical assessment, Pet.App.40a, 45a. Petitioners assert that Scott's "nonverbal" conduct posed danger, Pet.20; yet there is no "nonverbal" conduct that blatantly contradicts the lower courts' assessments.

Remarkably, the Petition's assertion that Mr. Scott posed a threat is directly contrary to Petitioners' own prior express factual admissions. As stated above (*supra* 11), Petitioners' *own appellate brief* admitted that "Scott did not present a serious immediate threat" (CA9 OB 32), that Mr. Scott "was not resisting in a manner that significantly threatened the Officers' safety" (*id.*), and that Mr. "Scott did not present a serious threat of death or bodily injury" (*id.* at 38). Likewise, both officers expressly admitted that Scott had no intent to harm them. 2-ER-198:20; 2-ER-199:7-11; 2-ER-227:14; 2-ER-268:12-17.

---

[3] *See also* Amicus Br. 2 (describing the issue of how officers "respond[] when delirious individuals threaten the wellbeing of themselves or others").

[4] *See also Rice v. Morehouse*, 989 F.3d 1112, 1123 (9th Cir. 2021); *Hayes v. Cnty. of San Diego*, 736 F.3d 1223, 1234 n.6 (9th Cir. 2013); *see also Robinson v. Pezzat*, 818 F.3d 1, 9 (D.C. Cir. 2016); *Roberts v. City of Omaha*, 723 F.3d 966, 974 (8th Cir. 2013); *Abraham v. Raso*, 183 F.3d 279, 290 (3d Cir. 1999).

Petitioners' newfound assertions that Mr. Scott posed an "immediate threat" and "significant danger to the officers" (Pet.19, 21) are based purely on their say-so and come nowhere near setting forth evidence that blatantly contradicts the lower courts' factual findings.

Second, the Petition goes astray regarding the level of force used—another issue of fact. *Chew v. Gates*, 27 F.3d 1432, 1442 (9th Cir. 1994) (what constitutes "deadly force" is a factual question).[5] Petitioners characterize the "bodyweight pressure employed here" as "low-level force to effect an arrest." Pet.32; Pet.5 (contrasting "bodyweight pressure" with "an escalation to deadly force"). This characterization is incoherent at the outset because there was no crime and thus no attempted "arrest." More importantly, however, Petitioners' assertions that the officers did not use deadly force are directly contrary to the court of appeals' and the district court's assessments of the record.

The court of appeals explained that, based on the "specific circumstances of the case," what the officers applied "was severe, deadly force." Pet.App.10a. The district court stated that "severe, and ultimately

---

[5] *See also Santos v. Gates*, 287 F.3d 846, 855 (9th Cir. 2002) ("the inference that the force used was substantial" is made by "a jury"), *overruled on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009); *Meadours v. Ermel*, 483 F.3d 417, 423 n.6 (5th Cir. 2007) ("the district court found that … use of the beanbag gun constituted deadly force," which was "a finding of fact we cannot review at this stage"); *Omdahl v. Lindholm*, 170 F.3d 730, 734 (7th Cir. 1999) ("whether bean bag rounds constitute deadly force" is a "material issue of fact").

lethal, force was used against [Mr. Scott]," Pet.App.43a-44a, which "proximate[ly] cause[d]" Mr. Scott's death, Pet.App.32a. In support of these factual assessments, both courts cited Plaintiffs' medical expert's opinions (Pet.App.6a, 14a, 39a) and the facts of the incident, including the prolonged "bodyweight compression on Scott's back and neck," "while Scott's pleas turned increasingly incoherent and breathless." Pet.App.10a; *see also* Pet.App.31a. Petitioners have no basis for rejecting the lower courts' factual determinations on this point—much less evidence that blatantly contradicts those determinations.[6]

Because the Petition is premised on the foregoing factual mischaracterizations, it should be denied. Interlocutory review of the denial of qualified immunity at summary judgment is available for legal issues only and requires viewing the record in the light most favorable to Mr. Scott. *Mitchell*, 472 U.S. at 530. Petitioners do not argue that they would be entitled to relief under the facts as articulated by the lower courts for summary judgment purposes—whereby the officers applied severe and deadly force to Mr. Scott, despite his posing no threat and not being suspected of a crime. And Petitioners present no evidence that "blatantly contradict[s]" those characterizations in a manner that would place their version of the facts beyond genuine dispute. *Scott v. Harris*, 550 U.S. at 380. The Petition is therefore premised on assertions of factual error that exceed the scope of interlocutory

[6] Likewise, on a matter that is outside the scope of the Petition's questions presented, the Petition makes erroneous assertions regarding the level of force used in the takedown maneuver. *See supra*, note 2.

appellate review, and it should be denied for that reason alone. Furthermore, as explained *infra*, the Petition fails to show any error on the merits of denying summary judgment based on the record as properly characterized.

B. Summary judgment was properly denied because a reasonable jury could find the officers violated Mr. Scott's Fourth Amendment rights.

The Petition fails to show any legal error. Viewing the record as required in the summary judgment posture, qualified immunity was properly denied. The decision below correctly applied this Court's qualified immunity case law to the facts before it. And the court of appeals was correct in its determination that sufficient disputes of material fact precluded summary judgment.

As noted, in this appeal of the denial of summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). While Petitioners gesture toward that standard, Pet.17, they ask this Court to ignore it. They declare, as if undisputed, multiple factual assertions that flatly contradict what both the district court and the court of appeals recited as either established against Petitioners or, at best, disputed. *See supra* § I.A; *see also* Statement of the Case, *supra.* And Petitioners ignore the rule that "a 'judge's function' at summary judgment is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" *Tolan v.*

Cotton, 572 U.S. 650, 656 (2014) (quoting *Anderson*, 477 U.S. at 249) (noting "[t]his is not a rule specific to qualified immunity"). The Court should decline Petitioners' invitation to "improperly 'weigh[] the evidence' and resolve[] disputed issues in favor of the moving party." *Id.* at 657 (quoting *Anderson*, 477 U.S. at 249).

1. The courts below were correct in concluding that a reasonable jury could find that bodyweight force was severe and deadly. *See supra* § I.A; Pet.App.10a-11a, 38a-39a. Petitioners have articulated no basis for rejecting those assessments.[7]

Nor is Petitioners' position supported by their bizarre assertion that Mr. "Scott never complained about his breathing." Pet.21. If Petitioners are questioning the cause of death, that, too, is obviously a fact

---

[7] The Amicus seeks to turn this case into a broad referendum on the level of medical risk of death from the application of bodyweight force to a prone subject. Amicus Br. 6-12. Yet the Amicus fails to address plaintiffs' expert's opinions regarding the dangers of applying bodyweight force to a prone person's neck, "even if only done for several seconds" (Pet.App.39a, *see also* 3-ER-381-93); the dangers include not only the risk of death by hypoxia—but also, even absent death, the force poses other threats of significant harm, including brain damage and kidney damage. 3-ER-391-92. Risking such severe harm would not have been warranted on the non-dangerous, non-criminal Mr. Scott. Nor does the amicus address relevant case law, such as *Abdullahi v. City of Madison*, 423 F.3d 763, 765 (7th Cir. 2005), where the individual in a prone position died from the application of bodyweight pressure lasting "30–45 seconds."

question, on which Plaintiffs' expert has opined. If Petitioners are trying to cast doubt on whether Mr. Scott indicated distress, Petitioners are simply contradicting the court of appeals' conclusion that "Scott … cried out with increasing distress and incoherence as the officers' force escalated." Pet.App.17a-18a; Pet.App.10a (Mr. "Scott's pleas turned increasingly incoherent and breathless"). At best, Petitioners are raising a fact question as to whether Mr. Scott failed to say that he could not breathe—and, if so, whether it was because he had become incapable of clear thought and speech.

2. Turning to the government's interest in using force, this Court has emphasized three factors: (i) "the severity of the crime at issue," (ii) "whether the suspect poses an immediate threat to the safety of the officers or others," and (iii) "whether he is actively resisting arrest or attempting to evade arrest." *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Petitioners do not challenge the lower courts' assessment that the officers did not suspect Scott of any crime (Pet.App.2a, 12a, 28a, 50a, Statement of the Case, *supra*), or that it was apparent that he was in mental distress (Pet.App.3a-5a, 12a-18a, 22a; Statement of the Case, *supra*). Rather, he called the police, because he feared being a *victim* of crime. Pet.App.12a; *see also* Pet.App.2a.

Under summary judgment standards, Petitioners come nowhere near overcoming the lower courts' determinations that Scott did not pose a threat. *See supra* § I.A. Petitioners observe that Mr. Scott previously had two weapons and argue that the courts

below "ignore[d] the nonverbal ways in which Scott's *behavior* posed a threat to the officers' safety." Pet.20. As to the former, the courts below correctly noted that Mr. Scott "immediately relinquished both objects when directed to do so, handing the knife to the officers with the handle out." Pet.App.13a. As to the latter, Mr. Scott did not engage in any nonverbal threatening or aggressive behavior. The importance of any of those facts is for a jury—certainly not this Court—to weigh.

Similarly, the courts below held that the "genuine issues of fact" "include whether Scott tried to reach for his jacket pocket before falling to the ground." Pet.App.7a; *see id.* at 32a. So, Petitioners achieve nothing by asserting, as if undisputed, that Mr. Scott reached inside his jacket "contrary to the officers' orders not to reach there." Pet.17; *see also id.* at 8, 9.

Indeed, Petitioners have previously *expressly admitted* that Mr. Scott posed no serious or immediate threat (*see supra* § I.A) and that Mr. Scott did not intend to harm the officers. *See supra* 11.

Nor is it accurate or pertinent for Petitioners to assert that "[t]here is no dispute that the officers had cause to support a mental health hold of Scott." Pet.19. The district court found "there are genuine issues of disputed fact as to whether the officers even had legal authority to detain Scott, let alone arrest him." Pet.App.43a. And, regardless, a mental health hold would not weigh in favor of using the severe and deadly force that was employed here.

Moving to the final factor, the court of appeals properly observed that there are disputes of material fact as to whether Mr. Scott was actively resisting arrest: "[H]e stood where officers directed him to stand and made no threatening movements." Pet.App.14a. While Mr. Scott asked the officers not to touch him and attempted to pull away from the officers when he was on the ground—after repeatedly explaining to the officers that he had a mental illness and suffered from paranoia—he "did not attack the officers or anyone else, nor did he threaten to do so." Pet.App.14a. Viewing the summary judgment record in the light most favorable to Plaintiffs, the gestures Mr. Scott allegedly made (characterized by Petitioners as "thrashing," Pet.13) may be interpreted as indicative of his paranoid schizophrenia and mental distress (Pet.App.5a, 30a), rather than a conscious decision to actively resist. Furthermore, those gestures occurred after the takedown was performed.

The panel also noted that Officers "Smith and Huntsman ignored less intrusive alternatives to the force they employed." Pet.App.14a. And the officers clearly had time to consider alternatives but instead, "[a]t each stage of the encounter, it was the officers who escalated the level of force, not Scott." Pet.App.41a. The officers had time to call their sergeant and consider next steps, and Mr. Scott repeatedly asked for instructions and attempted to deescalate the situation. This is *not* a situation where a judge is applying hindsight to the officers' viewpoint. Rather, the officers, with plenty of time to assess, needlessly escalated the situation.

Indeed, Petitioners repeatedly cite case law regarding officers "mak[ing] split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." Pet.4, 17, 31 (quoting *Graham*, 490 U.S. at 396-97). Yet those assertions do not fit the facts of this case, where "[t]here was no urgency for [the officers] to act because Scott never threatened or attacked them." Pet.App.53a.

"In sum, because Scott was mentally ill, was not suspected of a crime, and did not present a risk to officers or others, the government's interest in applying force was limited." Pet.App.14a. Petitioners' attempt to reinterpret the facts is insufficient to undermine the court of appeals' application of this standard to the record before it.

C. Mr. Scott's Fourth Amendment rights were clearly established at the time of his death.

Petitioners attack the court of appeals' conclusion that the law was clearly established at the time of his death. But they do not—indeed, cannot—dispute that the panel applied the correct legal standard: The law is "clearly established" when a "reasonable officer would know the officers' conduct was unconstitutional." Pet.App.16a; Pet.22. All that Petitioners present is a garden-variety challenge to the panel's application of that standard to a specific factual context. Even that attempt fails.

Petitioners' bizarre assertion that the Ninth Circuit misconstrued its own case law, Pet.26, is

implausible, given that not a single Ninth Circuit judge requested a vote on rehearing, Pet.App.74a.

Closer analysis only confirms the validity of the lower courts' decisions. The summary judgment context matters again in evaluating whether a right was clearly established. Of course, "courts should define the 'clearly established' right at issue on the basis of the 'specific context of the case.'" *Tolan*, 572 U.S. at 657 (citation omitted). But this Court has instructed that "courts must take care not to define a case's 'context' in a manner that imports genuinely disputed factual propositions." *Id.* Yet this is what Petitioners seek to do.

The court of appeals held that Mr. Scott's Fourth Amendment rights were clearly established as of March 2019. The decision below pointed to *Drummond*, a case with "striking" similarities to this one. Pet.App.17a. "Police officers were called to take a mentally ill individual into custody for his own safety" but instead applied bodyweight force that led to grievous injury, as Mr. Drummond's injuries "caused him to fall into a coma that … left him in a vegetative state." *Drummond*, 343 F.3d at 1062-63.

Like Mr. Scott, Mr. Drummond "had a history of mental illness," including schizophrenia, and "was hallucinating and paranoid." *Id.* at 1054. As here, the officers knew Mr. Drummond was mentally ill and not suspected of any crime but still "lean[ed] on his neck and upper torso" when Mr. Drummond was lying prone on the ground. *See id.* The officers "maintained that pressure for a significant period of time, ignoring his pleas for air." *Id.* at 1063. The court there held

that "any reasonable officer would have understood such force to be constitutionally excessive." *Id.*

As they did below, Petitioners argue that *Drummond* did not clearly establish the law because officers forced their weight on Mr. Drummond *after* they had handcuffed him. That is an illusory distinction. As the court of appeals explained, construing the facts in Mr. Scott's favor, "officers used their bodyweight on Scott while he was restrained with his hands behind his back, which is the functional equivalent of being handcuffed." Pet.App.18a. Furthermore, in contrast to the courts' assessments that Mr. Scott posed no threat, Mr. Drummond "represented a threat (to himself or possibly others) before he was handcuffed," thereby providing some government interest in handcuffing him, 343 F.3d at 1057—which was absent in the present case. Yet the Ninth Circuit *still* found the officers' conduct to be unreasonable, establishing the conduct here as unreasonable *a fortiori*. And *Drummond* speaks to "the dangers of pressure on a prone, bound, and agitated detainee"—which aptly describes Mr. Scott. *Id.* at 1061.

Petitioners split hairs pointing out immaterial differences between this case and *Drummond* in an attempt to argue that the decision below ignored this Court's precedents.[8] Not so. This Court does "not

[8] Further, there is no conflict between the decision below and this Court's holding in *Rivas-Villegas*. Pet.26. There was no dispute in *Rivas-Villegas* that the officer, responding to a violent domestic dispute, "placed his knee on [the plaintiff] for no more than eight seconds and only on the side of his back near the knife that officers were in the process of retrieving." *Rivas-Villegas v.*

require a case directly on point"; rather, "existing precedent must have placed the … constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, (2011). *Drummond* was directly on point—and certainly sufficient to place the constitutional question beyond debate.

Contrary to Petitioners' assertion, the Ninth Circuit did not extend *Drummond* here, and this case is *not* part of a pattern of a supposedly expansive reading of *Drummond* by the Circuit. In accordance with this Court's pronouncements regarding qualified immunity, the Ninth Circuit has not relied on *Drummond* to say a right is clearly established when the facts at hand are materially different than those presented. *See, e.g.*, *Perez*, 98 F.4th at 926 ("Given the specific context of this case, we cannot conclude that *Drummond* put the officers on fair notice that their actions—pressing on a backboard on top of a prone individual being restrained for medical transport, *at the direction of a paramedic working to provide medical care*—was unlawful.").

Furthermore, although *Drummond* was clearly on-point, the same result could have been reached otherwise. Under the factual assessments of the lower courts, the officers used severe and deadly force (Pet.App.10a, 37a-39a) on a mentally-distressed individual who posed no danger to anyone (Pet.App.13a, 40a, 45a; *see also* Pet.App.3a, 12a, 68a) and was not

---

Cortesluna, 595 U.S. 1, 7 (2021). Here, officers were responding to someone who believed himself to be a crime victim, and the officers' bodyweight pressure—applied to both Mr. Scott's back *and* neck—lasted more than a minute-and-a-half. Pet.12, 21.

suspected of any crime (Pet.App.2a, 12a, 28a, 50a)—which clearly is not a "reasonable" use of force. *Graham*, 490 U.S. at 396. No additional prior case law is required for such an "obvious" proposition as this one. *Rivas-Villegas*, 595 U.S. at 6.

II. There Is No Circuit Split.

Petitioners claim that the decision below "deepen[s]" a circuit split over whether the use of "pre-handcuffing bodyweight pressure" to arrest someone is reasonable under the Fourth Amendment. Pet.27-30. The split Petitioners have invented is illusory. Petitioners attempt to turn cases in which courts find there was excessive force—based on specific facts—into a purported rule that excessive force can be proven *only* where officers applied post-handcuffing bodyweight pressure. Pet.27-30 (citing circuit cases that found post-handcuffing bodyweight force to be excessive).

Petitioners claim that the Ninth Circuit's decision here, along with the Seventh Circuit's *Abdullahi v. City of Madison*, 423 F.3d 763 (7th Cir. 2005), "break[] with the majority rule of the First, Third, Fourth, Sixth and Tenth Circuits." Pet.27. There is no such "majority rule." Indeed, in many of the cases relied upon in the Petition, the other circuits cite *with approval* Ninth Circuit authority and/or the Seventh Circuit's *Abdullahi*.

Also, a closer analysis of the other circuits' cases otherwise show that they are fully consistent with the decision below. That is hardly surprising given this Court's repeated observation that this type of Fourth

Amendment inquiry demands "careful attention to the facts and circumstances" of the specific incident at issue. *Graham*, 490 U.S. at 396. The Petition's cited cases merely highlight the "fact-dependent and context-sensitive" nature of the question presented. *Barnes v. Felix*, 145 S. Ct. 1353, 1359 (2025). Assessing each case Petitioners highlight on its own specific facts undermines any notion of a split among the courts of appeals.

The cited First Circuit case (Pet.28), for instance, did not even address the question presented here. In *McCue v. City of Bangor*, the First Circuit held it *lacked jurisdiction* over the officers' interlocutory appeal because there were genuine issues of material fact as to when the individual stopped resisting and how much force officers continued to use. 838 F.3d 55, 57, 62-63 (1st Cir. 2016). *McCue* does not conflict with the Ninth Circuit's decision here, as it never reached the questions presented. Pet.i. Furthermore, while the Petition (at 27) places the Seventh Circuit and Ninth Circuit together on the other side of a supposed split, *McCue* cited with approval both the Seventh Circuit's *Abdullahi* and the Ninth Circuit's *Drummond*. *McCue*, 838 F.3d at 64-65.

Other cases Petitioners cite involve critical factual distinctions that explain the different results each court reached. These factual differences include factors highly relevant to the Fourth Amendment inquiry, including the "severity of the crime" prompting police involvement, *Graham*, 490 U.S. at 396, the officers' actions during the encounter, *Tennessee v. Garner*, 471 U.S. 1, 11 (1985), and the "stopped person's conduct," which "indicates the nature and level of the

threat he poses, either to the officer or to others," *Barnes*, 145 S. Ct. at 1358 (citing *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015), and *Graham*, 490 U.S. at 396).

For example, Petitioners cite an unpublished Third Circuit case as consistent with the supposed "majority rule" the court below flouts. Pet.27, 29-30 (citing *Bornstad v. Honey Brook Twp.*, 211 F. App'x 118 (3d Cir. 2007)). It is true that the Third Circuit held that the officers' use of bodyweight pressure on an arrestee was objectively reasonable under the totality of the circumstances. *Bornstad*, 211 F. App'x at 123. But even a cursory review of the facts in *Bornstad* reveals that it is not like this case and that the rule the Third Circuit applied is wholly consistent with the Ninth Circuit's decision below.

Most critically, *Bornstad* did not involve an individual experiencing a mental-health episode, like Mr. Scott. Instead, the individual was "suspected of domestic violence that involved biting a child." *Id.* That offense, the Third Circuit said, was a "serious" one that prompted police involvement. *Id.* And unlike Mr. Scott, the individual in *Bornstad* escalated the encounter once officers arrived on scene. He "sw[ung] at the officers and wrestl[ed] them to the ground," thus posing "an immediate threat to the safety of the officers and himself." *Id.* In short, the "undisputed circumstances" were that the individual was an "uncooperative, intoxicated, and physically imposing individual suspected of domestic violence." *Id.* at 124. The Third Circuit confirmed that there was "no dispute that [the individual] himself quickly turned the encounter into a physical altercation." *Id.* at 123. And

because his conduct "was the cause of the escalation," the officers' use of bodyweight pressure was deemed reasonable. *Id.* at 125.

Indeed, in *Bornstad*, the Third Circuit specifically distinguished *Drummond*, the Ninth Circuit case on which the court below relied, on its particular facts. The Third Circuit said it was "impossible to compare" the circumstances of the plaintiff's arrest in *Bornstad* "with those in *Drummond* or [an analogous Sixth Circuit case], in which the plaintiffs became compliant after they had been handcuffed and shackled." 211 F. App'x at 125. Rather than show a circuit split, *Bornstad* is an example of a court applying well-established law to a specific set of facts before it. That those facts were distinguishable from this case here and thus the outcome was different does not mean that the circuits are divided on the question presented at all.

Furthermore, a published Third Circuit case found that there was a valid excessive force claim where, *inter alia*, an officer "allegedly sat on [the victim's] back while the other two officers restrained his legs and attempted to place handcuffs on [him]." *Rivas v. City of Passaic*, 365 F.3d 181, 199 (3d Cir. 2004). Hence, the Petition is mistaken in averring that the Third Circuit has a rule that permits officers to use bodyweight force while applying handcuffs.

In the Petition's cited Fourth Circuit case (Pet.28), *Armstrong v. Village of Pinehurst*, the court found the officers' application of bodyweight pressure constitutionally permissible because the subject gave officers "reason to believe [he] was dangerous" and

"threatened the safety of others." 810 F.3d 892, 900-01 (4th Cir. 2016). He escaped from the hospital and began "wandering into traffic with little regard for avoiding the passing cars," and officers ultimately seized him "only a few feet from an active roadway." *Id.* at 901. Because the officers were reasonably concerned about the subject fleeing into the street—thereby actively endangering "individuals in passing cars"—some degree of force like the use of bodyweight pressure was "justified." *Id.* Moreover, again, contrary to any supposed circuit split, *Armstrong* cited with approval the Ninth Circuit's decision in *Drummond*, recognizing that when an individual poses a danger only to himself, "using force likely to harm the [individual] is manifestly *contrary* to the government's interest in initiating that seizure." 810 F.3d at 901.

The Sixth Circuit, for its part, denied qualified immunity to officers who used force on a nonverbal, nonresponsive subject with severe autism. *See Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 896 (6th Cir. 2004). Petitioners claim that the Sixth Circuit's decision is in conflict with the decision below because the bodyweight pressure the officers applied occurred "*after* the arrestee was handcuffed and incapacitated." Pet.29. But the Sixth Circuit's holding that it was "clearly established that putting substantial or significant pressure on a suspect's back while that suspect is in a face-down prone position after being subdued and/or incapacitated constitutes excessive force," *Champion*, 380 F.3d at 903, is wholly consistent with the Ninth Circuit's holding in this case. That is especially true given the lower courts' finding that "officers used their bodyweight on Scott while he

was restrained with his hands behind his back, which is the functional equivalent of being handcuffed." Pet.App.18a. And yet again, *Champion* cited with approval the Ninth Circuit's *Drummond*. *See Champion*, 380 F.3d at 904.

In a subsequent case involving an individual who had committed a crime (interfering with the arrest of another), the Sixth Circuit held that an officer had violated clearly-established law via the forceful takedown and application of bodyweight on the back of the prone individual, who was *not* handcuffed. *Moser v. Etowah Police Dep't*, 27 F.4th 1148, 1151, 1153 (6th Cir. 2022). This further debunks the Petition's characterization of Sixth Circuit law as contrary to the ruling in the present case.

Nor do Petitioners gain traction from Tenth Circuit law. In one of the Petition's cited cases (at 27), *Weigel v. Broad*, the Tenth Circuit denied qualified immunity where officers put bodyweight pressure on an arrestee for some time "after it was clear that the pressure was unnecessary to restrain him." 544 F.3d 1143, 1152 (10th Cir. 2008). In the Petition's other cited Tenth Circuit case (at 27-28), *Estate of Booker v. Gomez*, the court denied qualified immunity, reaffirming *Weigel*'s pronouncement that putting significant bodyweight pressure on a "suspect … [who] is in a face-down prone position after being subdued and/or incapacitated constitutes excessive force." 745 F.3d 405, 424 (10th Cir. 2014) (quoting *Weigel*, 544 F.3d at 1155). Both cases cited with approval the Ninth Circuit's *Drummond*. *See Booker*, 745 F.3d at 424; *Weigel*, 544 F.3d at 1155.

In a more recent ruling denying qualified immunity, the Tenth Circuit cited *with approval* the Ninth Circuit's ruling *in this case* and the Seventh Circuit's *Abdullahi* ruling—i.e., the two cases that the Petition claims fall on the other side of the purported split. *Teetz ex rel. Lofton v. Stepien*, 142 F.4th 705, 726 n.5 (10th Cir. 2025) (citing, *inter alia*, *Scott v. Smith*, 109 F.4th 1215, 1223 (9th Cir. 2024); *Abdullahi*, 423 F.3d at 770-71). There is no circuit split.

As noted above, the Seventh Circuit—through its *Abdullahi* decision—is the only court that Petitioners allege aligns with the Ninth Circuit. Pet.5, 30. Yet *Abdullahi* is consistent not only with the decision below, but also with all the decisions just discussed. *Abdullahi* involved a severe use of bodyweight force, on a prone civilian, which led several different doctors to conclude that the victim died of "chest and neck trauma, including a collapsed left lung" and that "a tremendous amount of air had been forced into the tissue surrounding [his] lungs, as if his chest had been crushed or squashed." 423 F.3d at 766. Indeed, the plaintiff contended that the officer knelt on the victim's "back or neck with enough force to crush his chest cavity, collapse his left lung and inflict severe trauma on [his] neck." *Id.* at 771. Thus, the court concluded, the "cumulative weight of the medical evidence … supports an inference of unreasonable conduct." *Id.* at 773. In those specific circumstances and given the sheer amount of force used on the victim, the case is not inconsistent with the law of other circuits—instead, as noted above, *Abdullahi* has been cited with approval by the First Circuit and the Tenth Circuit. *Teetz*, 142 F.4th at 726 n.5, *McCue*, 838 F.3d at 64.

The Court's recent affirmation of the "totality of the circumstances" test in Fourth Amendment cases underscores the highly fact-bound nature of the reasonableness inquiry. *Barnes*, 145 S. Ct. at 1357-58. Under a totality-of-the-circumstances test, courts must look at not just the moment of force but events *prior to* the moment of force, as those events can inform whether a reasonable officer would have perceived an individual's conduct as "threatening" or "innocuous." *Id.* at 1358. The reasonableness inquiry therefore cannot be divorced from the particular circumstances of each case. Yet, Petitioners rely on a handful of cases that vary in key respects, including in the events leading up to the use of force and the conduct of the individual and officers—while frequently citing with approval Ninth Circuit authority and/or the Seventh Circuit's *Abdullahi*. Petitioners' attempt to reduce these cases to a bright-line rule goes against the inherently context-sensitive nature of the Fourth Amendment analysis.

III. This Case Is Not A Vehicle For Resolving The Questions Presented.

The Petition should be denied for the additional reason that this case is a wholly inappropriate vehicle to resolve the questions it claims to present. As explained above, at 14-19, the Petition takes issue with the facts as recited by the lower courts and disregards the summary judgment standard, asking this Court to go far beyond what is appropriate or permissible in an interlocutory appeal of a denial of qualified immunity. For that reason alone, the Petition does not provide an appropriate vehicle for addressing the

questions presented. Moreover, those questions are not genuinely implicated by the facts here.

The "questions presented" focus on the supposed distinction between force applied "until handcuffing" is accomplished (i.e., "pre-handcuffing") and force applied after handcuffing. Pet.i; *see also* Pet.5. However, the distinction is illusory under the facts of this particular case. As the court of appeals explained, construing the facts in Plaintiffs' favor, "officers used their bodyweight on Scott while he was restrained with his hands behind his back, which is the functional equivalent of being handcuffed." Pet.App.18a. Accordingly, this case is not a suitable vehicle for reviewing issues specific to "pre-handcuffing" force.

Additionally, the Petition's distinction between pre-handcuffing and post-handcuffing force is irrelevant based on the case's facts. Under the lower courts' assessment of the record, Mr. Scott posed no threat (Pet.App.13a, 40a, 45a) and was not suspected of a crime (Pet.App.2a, 12a, 28a, 50a)—which removes any justification for the officers' application of the type of force that was necessary to apply handcuffs (Pet.App.10a, 43a-44a). Hence, again, this case does not provide a suitable vehicle for reviewing the question presented.

CONCLUSION

The Petition for a writ of certiorari should be denied.

Respectfully submitted,

Peter Goldstein
Counsel of Record
Jeremy Friedman
PETER GOLDSTEIN LAW CORPORATION
10161 Park Run Drive
Suite 150
Las Vegas, NV 89145
(702) 474-6400
peter@petergoldsteinlaw.com

August 12, 2025