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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY BRIEF

When Officers Huntsman and Smith responded to Roy Anthony Scott's 911 call, they faced a challenging situation. They correctly identified that Scott was experiencing a mental health crisis and needed help, but he had been armed and was refusing to comply with their directions. The officers secured the scene for their own safety and for the safety of medical personnel so that Scott could get the help he needed.

Qualified immunity exists to protect officers in circumstances like these. Officers Huntsman and Smith acted reasonably based on the facts they knew at the time, and no case of this Court nor of the Ninth Circuit had clearly established that using a limited amount of bodyweight pressure to handcuff Scott for a patdown was unconstitutional.

Yet, contrary to the precedents of this Court, the panel engaged in armchair quarterbacking, declaring that Scott posed no threat to the officers and was unarmed. Pet.App.16a–17a. Officers Huntsman and Smith could not have known that based on the facts available to them at the time. And they certainly could not have known that their conduct was a clearly established constitutional violation. To conclude otherwise, the panel relied on a single inapposite precedent in which the police action was extreme: applying bodyweight pressure to a prone, handcuffed, compliant, unarmed individual for twenty minutes despite his pleas for air.

Certiorari is warranted in this case. The panel's decision contravenes this Court's precedent and breaks with the decisions of other courts of appeal. And this is an excellent vehicle, given that the relevant events were captured by the officers' body-

worn cameras. This case is a good candidate for a summary disposition reversing the panel's denial of qualified immunity.

Respondents' only counterarguments are based on illusory factual disputes in this case or artful glosses on this case's similarities and dissimilarities with other precedents. Those efforts do not undermine Petitioners arguments in support of certiorari: the decision below is clearly wrong, it deepens a circuit split, and this case is an excellent vehicle for addressing the reasonability of using limited bodyweight pressure for the purpose of applying handcuffs.

It is important that this Court correct the panel's errors. Because of the decision in this case, at least one major police department—the Sacramento Sheriff's Office—has adopted a policy of not responding to individuals experiencing a mental health crisis. This policy endangers those individuals, their families and communities, and the first responders who must try to help them without police support.

Petitioners urge this Court to grant the petition and reverse.

I. The Decision Below Is Wrong As A Matter Of Law.

Respondents claim that the Petition is founded on factual disagreements with the courts below, BIO at 15–19, but that is not true. The courts below did not engage in fact-finding at all—they rejected qualified immunity at the summary judgment stage. And that holding is egregiously wrong *as a matter of law*, not because of a discrepancy about facts. No precedent of this Court nor of the Ninth Circuit clearly established

that the officers' conduct during their encounter with Scott was unconstitutional.

The officers' body-worn cameras show that the officers observed Scott hallucinating about armed intruders before he then produced two weapons, first a pipe and then a knife—the latter after he had already said he was unarmed. In response, the officers repeatedly asked Scott to submit to a patdown, but Scott refused. Despite the officers' attempts to accommodate Scott's paranoia, Scott continued to ignore their orders and unzipped his jacket when instructed not to do so. When Scott's resistance to their instructions intensified, the officers controlled Scott's descent to the ground,[1] restrained him by his limbs initially, and when that proved insufficient, they applied bodyweight pressure to Scott for no more than 95 seconds, solely for the purpose of applying handcuffs. Once Scott was handcuffed, they immediately rolled Scott to the recovery position, called for medical assistance, and monitored him. Scott was speaking before, during, and after handcuffing. *See* Pet.6–13.

There is no material, factual dispute about these events because they are observable in the body-worn camera footage, and they demonstrate that the officers acted reasonably in their interaction with Scott. But faced with these same facts, the panel below articulated a new legal rule: "that bodyweight force on the back of a prone, unarmed person who is

[1] The parties dispute whether the officers executed a "take down" of Scott or whether Scott fell, but because Respondents are entitled to have factual inferences at summary judgment drawn in their favor, Petitioners will assume that the officers used some degree of force to bring Scott to the ground. *See* Pet. at 10.

not suspected of a crime is constitutionally excessive." Pet.App.16a–17a. *And* the panel held that this rule had been clearly established by a single precedent, *Drummond v. City of Anaheim*, 343 F.3d 1052 (9th Cir. 2003). That holding was wrong as a matter of law.

In the panel's own words, in *Drummond*, "officers pressed their weight against an individual's torso and neck, crushing him against the ground" and "[t]hey maintained that pressure for a significant period of time while the suspect was prone, handcuffed, offered no resistance, and repeatedly told the officers that he could not breathe and that they were choking him." Pet.App.17a (cleaned up). But these facts are readily and materially distinguishable from the facts of this case:

- At most, the bodyweight pressure here lasted 95 seconds, not the *twenty minutes* at issue in *Drummond*. 343 F.3d at 1054–55 (officers applied knees and bodyweight pressure, then applied a hobble restraint twenty minutes later).
- Here, the bodyweight pressure lasted only as long as necessary to accomplish handcuffing despite Scott's physical resistance, while in *Drummond*, the target was *prone, handcuffed, and not resisting* while officers applied their weight. *Id.* at 1059.
- Here, Scott never complained that he could not breathe, and he appeared to be breathing before, during, and after the officers applied bodyweight pressure, while in *Drummond*, the target "repeatedly told the officers that he could not breathe and

> that they were choking him." *Id*. at 1054. (quotation marks omitted).

Indeed, the officer conduct at issue in *Drummond* was so extreme that the Ninth Circuit held that it "need[ed] no federal case directly on point to establish that" it was unconstitutional. *Id*. at 1062. It is hard to see how *Drummond* could have clearly established a rule that pre-handcuffing bodyweight pressure is unconstitutional when *Drummond* itself concerned abuse so extreme that it was deemed clearly unconstitutional even without any federal case directly on point.[2]

Thus, the panel erred as a matter of law when it relied on *Drummond* to clearly establish that Officers Huntsman and Smith acted unconstitutionally by using bodyweight pressure as a last resort to handcuff Scott. This Court has instructed that "[a] clearly established right is one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam) (internal quotation marks omitted). "[E]xisting precedent must have placed the statutory or constitutional question

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[2] If it were decided today, *Drummond* almost certainly could not rely on the obviousness principle, as the Ninth Circuit has recently indicated that "the obviousness principle will rarely—if ever—be available" in the Fourth Amendment (as opposed to the Eighth Amendment) context. *Cuevas v. City of Tulare*, 107 F.4th 894, 902 (9th Cir. 2024). That is because "[a] categorical statement that conduct obviously violates the Fourth Amendment is particularly hard to make when officers encounter suspects every day in never-before-seen ways, including countless confrontations … that yield endless permutations of outcomes and responses." *Id*. (internal quotation marks omitted).

beyond debate." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (per curiam) (quotation marks omitted). That "inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition." *Id.* (internal quotation marks omitted). That standard is not met here. *Drummond* did not place "beyond debate" that pre-handcuffing bodyweight pressure is unconstitutional. The panel applied *Drummond* here for a "broad general proposition," and not according to the specific context of that case and this one—all in direct contravention of this Court's precedents. *Id.* (quotation marks omitted).

If there were any doubt that the panel's holding strayed far outside the law established in *Drummond*, it is dispelled by the dramatic consequences of this case for police departments in the Ninth Circuit. *Explicitly based on the decision below*, the Sheriff of Sacramento County, California announced that his department would no longer respond to non-criminal mental health calls. Madisen Keavy, *Sacramento sheriff explains new policy to turn away certain calls for help*, CBS NEWS (Feb. 4, 2025), https://perma.cc/9E94-8X5U. An assistant sheriff in Sacramento communicated the policy change, saying that through the *Scott v. Smith* decision below, "[t]he courts have made it very clear that really any use of force is questionable" during a call that originates as a mental health call, and "[t]his is really impacting our ability to deliver service." James Taylor, *Sacramento Metro Fire District says sheriff office's new policy change creates danger for crews*, CBS NEWS (Jan. 29, 2025), https://perma.cc/GGQ7-WZEQ (quoting Assistant Sheriff Matt Petersen). In response, Sacramento firefighters have explained that

the sheriff's policy change "put[s] our folks in harm's way," because firefighters "rely on sheriff's deputies to make sure a scene is safe before making contact with a patient." *Id.* (quoting Metro Fire spokesperson Parker Wilbourn). Yet under the sheriff's new policy, officers will not respond to individuals who are experiencing a psychotic episode or are suicidal, even when they are armed. According to the sheriff, the change is necessary because the Ninth Circuit's ruling in this case has "tied our hands." Lee Anne Denyer, *Sacramento County deputies no longer responding to mental health emergencies without crime component*, KCRA-TV (Feb. 4, 2025), https://perma.cc/Q3TV-MAC2 (quoting Sacramento County Sheriff Jim Cooper).

Consequences like that are not consistent with a "garden-variety challenge … to a specific factual context," as Respondents claim the petition to be, BIO at 24, nor are they consistent with Respondents' view that "the Ninth Circuit did not extend *Drummond* here," BIO at 27. In fact, the panel here announced a new legal rule that swept so far beyond *Drummond*, it has caused police departments to abandon critical public services for fear of liability. This is not a petition seeking fact-bound error correction: it is a case that presents *exactly* the kind of qualified immunity error that this Court has granted certiorari to correct many times before. In just the last ten years, this Court has reversed denials of qualified immunity at least eight times, and six of those were summary dispositions. *Rivas-Villegas*, 595 U.S. 1 (2021) (per curiam) (summarily reversing); *City of Tahlequah v. Bond*, 595 U.S. 9 (2021) (per curiam) (summarily reversing); *City of Escondido v. Emmons*, 586 U.S. 38 (2019) (per curiam) (summarily reversing); *Kisela v.*

Hughes, 584 U.S. 100 (2018) (per curiam) (summarily reversing); *District of Columbia v. Wesby*, 583 U.S. 48 (2018); *White v. Pauly*, 580 U.S. 73 (2017) (per curiam) (summarily reversing); *Mullenix*, 577 U.S. 7 (2015) (per curiam) (summarily reversing); *City & County of San Francisco v. Sheehan*, 575 U.S. 600 (2015).

This case warrants the same treatment as those cases and is appropriate for a summary disposition. The officers' actions are clear from their body-worn camera footage, and even while drawing all inferences about disputed material facts in Respondents' favor, it is impossible to say that the officers' actions were clearly established constitutional violations after *Drummond*. In concluding otherwise, the panel ignored this Court's longstanding admonition to determine what is "clearly established" "in light of the specific context of the case," and "not as a broad general proposition." *Rivas-Villegas*, 595 U.S. at 5 (quotation marks omitted).

Petitioners urge the Court to call for the record to review the body-worn camera footage and to grant certiorari and reverse, with or without full briefing and argument.

II. The Ninth Circuit's Decision Represents A Minority View That Splits With Other Circuits.

After arguing that this case is not cert-worthy because it is merely the application of law to specific, disputed facts, Respondents amplify factual distinctions between cases decided among the circuits to claim that "[t]here [i]s [n]o [c]ircuit [s]plit." BIO at 28. While qualified immunity cases of course arise in specific factual circumstances, Petitioners have nonetheless demonstrated that the Ninth Circuit's

holding here conflicts with the analysis that the majority of circuits have undertaken in similar circumstances. Indeed, Respondents' arguments only confirm that decision below is an outlier that divides the Ninth Circuit from the majority of its sister circuits.

First, Respondents claim that some circuits other than the Ninth and Seventh have denied qualified immunity based on pre-handcuffing bodyweight pressure, but a review of the cited cases refutes the argument. In *Rivas v. City of Passaic*, 365 F.3d 181 (3d Cir. 2004), the Third Circuit did not find "that there was a valid excessive force claim where … an officer allegedly sat on the victim's back … to place handcuffs on him," as Respondents claim, BIO at 31 (cleaned up). The Third Circuit actually denied qualified immunity because of a disputed factual issue—whether the arrestee was not resisting arrest but having a seizure —and also because an officer was alleged to have "jammed a flashlight into [the arrestee's] mouth … and later struck him in the head with the same flashlight." *Rivas*, 365 F.3d at 199. In *Moser v. Etowah Police Dep't*, the Sixth Circuit denied qualified immunity where a police officer was alleged to have forcibly taken down and broken the hip of a female bystander who was merely protesting that the officer had the wrong suspect—again, nothing like the holding at issue here. 27 F.4th 1148, 1151, 1153 (6th Cir. 2022); *see* BIO at 33. And in *Teetz ex rel. Lofton v. Stepien*, the Tenth Circuit denied qualified immunity where officers used a prone restraint for long periods of time, including one twelve-minute stretch, on an individual who was not resisting and did not require such restraint. 142 F.4th 705, 727 (10th Cir. 2025); *see*

BIO at 34. Again, this holding is not similar to the Ninth Circuit's holding here.

Second, Respondents' arguments highlight that even when compared to the Seventh Circuit's decision in *Abdullahi*, where that court denied qualified immunity based on the application of prearrest bodyweight pressure, the Ninth Circuit's decision here remains an outlier. In *Abdullahi v. City of Madison*, the victim suffered a crushing injury indicating that the officer had not merely applied bodyweight pressure but had *crushed* the suspect "with enough force to crush his chest cavity, collapse his left lung, and inflict severe trauma on [his] neck." 423 F.3d 763, 771 (7th Cir. 2005); *see* BIO at 34. Here, no medical evidence suggests severe trauma of this kind.

Petitioners have identified a split in authority in which the Ninth Circuit takes a minority position as against the First, Third, Fourth, Sixth, and Tenth Circuits, which have held that bodyweight pressure becomes unreasonable only when applied *after* arrest, to an incapacitated individual. Pet. at 27–30. Certiorari is warranted to resolve this split.

III. This Case Is An Excellent Vehicle To Decide The Question Presented.

This case presents an excellent vehicle for deciding the question presented.

This case features body-worn camera footage of the police encounter, almost entirely from not one but *two* angles. This offers exceptional clarity about the officers' actions in this case.

Respondents claim that this case is a poor vehicle because Petitioners "take[] issue with the facts as

recited by the lower courts," BIO at 35; *see* BIO at 16, but it is *Respondents* who refuse to engage with the evidence in this case: the body-worn camera footage. Respondents never substantively address that footage because it is inconsistent with the characterizations of the record on which Respondents rely. The footage shows that Scott did not "immediately" comply with police directions. BIO at 5. And while Respondents claim that "Mr. Scott posed no threat," BIO at 36, "Fourth Amendment reasonableness is predominantly an objective inquiry," in which a court asks "whether the circumstances, viewed objectively, justify the challenged action." *Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011) (cleaned up). The officers objectively could not have known that "Mr. Scott posed no threat," given that he was actively hallucinating attackers, had been armed with two weapons, and had falsely indicated he was unarmed before producing a knife from his belt in contravention of police instructions. These circumstances are apparent from the body-worn camera footage. Respondents' characterization of the evidence, even if borrowed from a judicial opinion, is not "fact-finding" that is due deference from this Court. The body-worn camera footage makes this case an excellent vehicle for review.

Respondents also suggest that Petitioners have taken inconsistent positions in this litigation, but that is false. BIO at 11–12, 16. The cited passages of Petitioners' appellate briefing are entirely consistent with the arguments in the Petition: that "Scott was clearly resisting the Officers' attempts to pat him down and handcuff him," and that although the resistance was not a serious threat that would justify deadly force, it nonetheless "justified the restraining

of Scott's limbs with empty-hand techniques." Opening Brief at 32 (9th Cir. Aug. 7, 2023), Doc. 9; *see also id*. at 38 ("[T]he Officers have conceded that Scott did not present a *serious* threat of death or bodily injury. Therefore, the Officers only used the minimal force necessary to place Scott in handcuffs." (emphasis added)). Respondents cite these passages out of context to suggest that the Petitioners previously argued that no force could have been justified when in fact, Petitioners argued that force *was* justified, even if *deadly* force was not—and that is why the officers used only the minimum force necessary to secure Scott by handcuffing him for a patdown.

CONCLUSION

The petition should be granted and the decision below reversed, with or without full briefing and argument.

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