

No. 25-1355

IN THE
Supreme Court of the United States

CITY OF NORTH LAS VEGAS, NEVADA; SCOTT SALKOFF;
AND MICHAEL ROSE,

Petitioners,

v.

GENOA JONES AND CORNELL TINSLEY,

Respondents.

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

BRIEF IN OPPOSITION

Margaret Ann
McLetchie
MCLETCHIE LAW
602 South Tenth St.
Las Vegas, NV 89101

William Powell
Counsel of Record
Kelsi Brown Corkran
Elizabeth R. Cruikshank
INSTITUTE FOR
CONSTITUTIONAL ADVOCACY
AND PROTECTION,
GEORGETOWN LAW
600 New Jersey Ave. NW
Washington, DC 20001
(202) 661-6629
whp25@georgetown.edu

Counsel for Respondents

QUESTION PRESENTED

When police officers in North Las Vegas, Nevada, saw a person run from near the scene of a suspected domestic-violence incident, they decided not to chase him. Instead, they called for backup, and then Officer Michael Rose drove a few blocks away in hopes of spotting the fleeing person. At least 18 minutes later, Lieutenant Scott Salkoff arrived with a police K-9. He did not know where the suspect was, nor did he immediately begin searching for him. Instead, Salkoff received a briefing, ran the suspect's records, formed a plan to engage in warrantless searches of various yards in the neighborhood, and announced this plan over a loudspeaker. Sometime during the ensuing neighborhood-wide sweep, which took between one and three hours, Salkoff and his police K-9 entered the walled yard of respondents Genoa Jones and Cornell Tinsley without a warrant and shot and killed respondents' pet dogs, Shadow and Whitewall. The suspect was not in the yard, and the officers never found him.

The questions presented are:

(1) Whether police officers can rely on "hot pursuit" as an exigent circumstance justifying the warrantless search of a home's walled backyard, when the officers fail to make immediate or continuous efforts to chase a possible misdemeanor suspect who flees from a different place in the neighborhood, are never on his trail, and have no good reason to believe he is in the yard.

(2) Whether clearly established law demonstrated that petitioners' warrantless entry into respondents' yard as part of a generalized neighborhood-wide

search violated the Fourth Amendment, such that they are not entitled to qualified immunity.

(3) Whether circuit-level precedent can clearly establish law for purposes of qualified immunity.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT OF THE CASE	3
I. FACTUAL BACKGROUND	3
II. PROCEDURAL BACKGROUND	6
REASONS FOR DENYING THE PETITION	9
I. THE PETITION MISREPRESENTS THE RECORD.	9
II. THE FIRST QUESTION PRESENTED DOES NOT MERIT REVIEW.	14
III. THE SECOND QUESTION PRESENTED DOES NOT MERIT REVIEW.	25
IV. THE THIRD QUESTION PRESENTED DOES NOT MERIT REVIEW.	30
CONCLUSION	36

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Creighton</i> , 483 U.S. 635 (1987)	26, 33
<i>Ashcroft v. al-Kidd</i> , 563 U.S. 731 (2011)	33, 34
<i>Ballentine v. Tucker</i> , 28 F.4th 54 (9th Cir. 2022).....	32
<i>Booker v. S.C. Dep’t of Corr.</i> , 855 F.3d 533 (4th Cir. 2017)	35
<i>Boyd v. McNamara</i> , 74 F.4th 662 (5th Cir. 2023).....	31
<i>Bus. Leaders in Christ v. Univ. of Iowa</i> , 991 F.3d 969 (8th Cir. 2021)	32
<i>Caniglia v. Strom</i> , 593 U.S. 194 (2021)	1
<i>Case v. Montana</i> , 607 U.S. 107 (2026)	17
<i>Clark v. Coupe</i> , 55 F.4th 167 (3d Cir. 2022)	32
<i>Coffey v. Carroll</i> , 933 F.3d 577 (6th Cir. 2019)	1, 11, 20, 29
<i>Collins v. Virginia</i> , 584 U.S. 586 (2018)	15
<i>Cummings v. City of Akron</i> , 418 F.3d 676 (6th Cir. 2005)	19

<i>Elder v. Holloway</i> , 510 U.S. 510 (1994)	33
<i>Estate of Clark v. Walker</i> , 865 F.3d 544 (7th Cir. 2017)	31
<i>Finley v. Huss</i> , 102 F.4th 789 (6th Cir. 2024).....	32
<i>Florida v. Jardines</i> , 569 U.S. 1 (2013)	1, 15
<i>Georgia v. Randolph</i> , 547 U.S. 103 (2006)	15
<i>Halsey v. Pfeiffer</i> , 750 F.3d 273 (3d Cir. 2014).....	35
<i>Hazleton v. Trinidad</i> , 488 F. App'x 349 (11th Cir. 2012).....	18
<i>Hicks v. LeBlanc</i> , 81 F.4th 497 (5th Cir. 2023).....	32
<i>Hope v. Pelzer</i> , 536 U.S. 730 (2002)	26, 32, 33
<i>Irizarry v. Yehia</i> , 38 F.4th 1282 (10th Cir. 2022).....	35
<i>Johnson v. District of Columbia</i> , 528 F.3d 969 (D.C. Cir. 2008)	32
<i>Lange v. California</i> , 594 U.S. 295 (2021)	2, 10, 15, 16, 17, 18, 24
<i>Limone v. Condon</i> , 372 F.3d 39 (1st Cir. 2004).....	35

<i>MLB Players Ass’n v. Garvey</i> , 532 U.S. 504 (2001)	25
<i>Mullenix v. Luna</i> , 577 U.S. 7 (2015)	26
<i>Newman v. Underhill</i> , 134 F.4th 1025 (9th Cir. 2025).....	17, 18, 19, 20, 21
<i>Office of Pers. Mgmt. v. Richmond</i> , 496 U.S. 414 (1990)	25
<i>Packard v. Budaj</i> , 86 F.4th 859 (10th Cir. 2023).....	32
<i>Patel v. City of Madison</i> , 959 F.3d 1330 (11th Cir. 2020)	32
<i>Pavan v. Smith</i> , 582 U.S. 563 (2017)	25
<i>Payton v. New York</i> , 445 U.S. 573 (1980)	13, 17
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009)	33
<i>Plumhoff v. Rickard</i> , 572 U.S. 765 (2014)	26, 33
<i>Ramirez v. Killian</i> , 113 F.4th 415 (5th Cir. 2024).....	35
<i>Ray v. Roane</i> , 948 F.3d 222 (4th Cir. 2020)	32
<i>Reed v. Palmer</i> , 906 F.3d 540 (7th Cir. 2018)	32

<i>Riley v. California</i> , 573 U.S. 373 (2014)	30
<i>Russell v. Scott</i> , 170 F.4th 83 (2d Cir. 2026)	32
<i>Saucier v. Katz</i> , 533 U.S. 194 (2001)	32
<i>Silverman v. United States</i> , 365 U.S. 505 (1961)	15
<i>Smith v. Stoneburner</i> , 716 F.3d 926 (6th Cir. 2013)	19, 20, 21, 29
<i>Tharpe v. Sellers</i> , 583 U.S. 33 (2018)	25
<i>Tolan v. Cotton</i> , 572 U.S. 650 (2014)	2, 21
<i>Ullery v. Bradley</i> , 949 F.3d 1282 (10th Cir. 2020)	31, 32, 34, 35
<i>United States v. Cruz</i> , 977 F.3d 998 (10th Cir. 2020)	18
<i>United States v. Johnson</i> , 256 F.3d 895 (9th Cir. 2001)	7, 26, 27, 28
<i>United States v. Lanier</i> , 520 U.S. 259 (1997)	33
<i>United States v. Lindsay</i> , 506 F.2d 166 (D.C. Cir. 1974)	19, 21, 29
<i>United States v. Martinez-Gonzalez</i> , 686 F.2d 93 (2d Cir. 1982).....	18

<i>United States v. Saari</i> , 272 F.3d 804 (6th Cir. 2001)	18
<i>United States v. Santana</i> , 427 U.S. 38 (1976)	1, 7, 10, 15, 16, 22
<i>United States v. Schmidt</i> , 403 F.3d 1009 (8th Cir. 2005)	18
<i>Wadsworth v. Nguyen</i> , 129 F.4th 38 (1st Cir. 2025)	32
<i>Welsh v. Wisconsin</i> , 466 U.S. 740 (1984)	1, 2, 10, 16, 23, 27, 29
<i>White v. Hefel</i> , 875 F.3d 350 (7th Cir. 2017)	18
<i>Wilson v. Layne</i> , 526 U.S. 603 (1999)	33
<i>Zadeh v. Robinson</i> , 928 F.3d 457 (5th Cir. 2019)	34
<i>Ziglar v. Abbasi</i> , 582 U.S. 120 (2017)	32
<u>Statutes</u>	
42 U.S.C. § 1983	6
<u>Rules</u>	
S. Ct. Rule 10	25

INTRODUCTION

“The ‘very core’” of the Fourth Amendment is the right to “‘be free from unreasonable governmental intrusion’” into “‘the home and its curtilage.’” *Caniglia v. Strom*, 593 U.S. 194, 198 (2021) (quoting *Florida v. Jardines*, 569 U.S. 1, 6 (2013)). Respondents Genoa Jones and Cornell Tinsley filed this lawsuit against petitioners, North Las Vegas police officers Scott Salkoff and Michael Rose, based on an egregious violation of that right. As part of a neighborhood-wide manhunt for a person suspected of committing a misdemeanor, whom Rose chose not to chase at the time he fled, petitioners came to respondents’ home, Salkoff entered their walled yard without a warrant, and he shot and killed two of their pet dogs. The Ninth Circuit held that this invasion of respondents’ sanctum violated their clearly established rights.

Petitioners contend that they were in hot pursuit of a fleeing suspect, creating an exigent circumstance justifying the warrantless search of respondents’ yard. But, although petitioners were looking for someone when they entered respondents’ yard, petitioners’ search “was neither ‘hot’ nor in ‘pursuit,’ in any fair sense of those words.” *Coffey v. Carroll*, 933 F.3d 577, 586 (6th Cir. 2019). This Court’s precedent has long held that “‘hot pursuit’ means some sort of a chase.” *United States v. Santana*, 427 U.S. 38, 43 (1976). The pursuit must be “‘immediate’” and “‘continuous.’” *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984). It is thus well established that if police are using law-enforcement techniques to locate a person, but have not immediately and continuously chased that person, there is no

hot pursuit, and the police must obtain a warrant before searching a home or its curtilage. *See id.* This Court has repeatedly reaffirmed these principles, providing lower courts substantial guidance on what constitutes a hot pursuit. *See Lange v. California*, 594 U.S. 295, 303-04 (2021); *id.* at 329 (Roberts, C.J., concurring in the judgment). In light of this Court’s clear precedent, there is no circuit split on what constitutes a hot pursuit, and petitioners make no attempt to identify one.

These settled principles decide this case. “In resolving questions of qualified immunity at summary judgment,” courts must ask “whether the facts, taken in the light most favorable to the party asserting the injury, show the officer’s conduct violated” a clearly established constitutional right. *Tolan v. Cotton*, 572 U.S. 650, 655-56 (2014) (per curiam) (alterations, internal quotation marks, and citation omitted). The facts here, viewed in the light most favorable to respondents, bear no resemblance to the story petitioners tell about quickly recovering the trail of a fleeing suspect through continuous efforts. Petitioners never gave chase, never had anyone’s trail to lose, and never recovered that nonexistent trail.

What actually happened is that Rose saw someone flee from near the scene of a possible domestic-violence misdemeanor and chose not to run after him. Instead, Rose returned to his car, called for backup, and drove two blocks away. He hoped to spot the suspect from there but never did. Salkoff arrived 18 minutes later, at which point there was no one to

chase. And even then, Salkoff further delayed searching the neighborhood with his police K-9. He received a briefing, ran the suspect's records, broadcast his intention to search the neighborhood, and sent another officer ahead to seek permission from residents. The officers searched the neighborhood for between one and three hours. Eventually the K-9 led Salkoff to respondents' yard, which he entered without a warrant. He did not find the suspect, but did kill respondents' dogs. The suspect was never located.

Precedent from this Court, the Ninth Circuit, and several other circuits clearly establishes that this after-the-fact search for a person who was never chased and had already gotten away was not a hot pursuit. Defendants are thus not entitled to qualified immunity. To hold otherwise would "turn back the clock to the age of English general warrants." Pet. App. 12a. Police cannot go on a warrantless manhunt through every house in a neighborhood merely because they are trying to find someone.

The Court should deny the petition.

STATEMENT OF THE CASE

I. Factual Background

On February 15, 2019, North Las Vegas Police Officers Michael Rose and Joseph Minelli responded to a call regarding an alleged domestic battery at a home in a residential neighborhood. Pet. App. 3a. A woman answered the door and denied that there had been any domestic violence. *Id.* at 4a. She said that the police were not welcome, that her boyfriend would re-

turn that evening, and that police would need a warrant to apprehend him. *Id.* Minelli observed injuries on her face and remained on site in case the boyfriend returned. *Id.*

Meanwhile, Rose had moved to the side of the house and, at around 3:47 p.m., observed an unidentified person fleeing the backyard by jumping over a wall. *Id.* at 3a-5a & n.1. Rather than give chase, Rose ran to his patrol car to request assistance. *Id.* at 4a. He then drove two streets south but did not regain sight of the fleeing person. *Id.* Several other officers arrived at the scene and helped Rose attempt to set up a perimeter in hopes of spotting the suspect. *Id.*

At around 4:05 p.m., approximately 18 minutes after Rose saw the person fleeing, Lieutenant Scott Salkoff arrived with a police K-9 named Storm. *Id.* Once on scene, Salkoff received a briefing and checked the records of the alleged assailant, which revealed an active misdemeanor domestic-battery warrant, an active traffic warrant, and an extensive prior arrest history. *Id.* at 22a; Salkoff Dep. Tr. 67:12-70:2 (3-ER-298-99). Salkoff next used his patrol car's public address system to notify residents that police would be searching the neighborhood using a K-9. Pet. App. 4a-5a, 22a. He sent another officer, Lee Young, ahead to ask permission from residents to search their yards. *Id.* at 5a.

Salkoff and Storm then began searching the neighborhood for the suspect. *Id.* at 22a. Salkoff later did not recall precisely when or where he started his search and stated that he might have searched "more than a dozen yards," while Rose recalled that the

search lasted more than one hour and possibly as many as two or three hours in total. *Id.* at 5a n.1. Storm had been trained to detect the odor of apocrine, a hormone associated with fear. *Id.* But Storm was not trained to track specific people and did not have the suspect's scent. *See* Salkoff Dep. Tr. 72:2-74:18 (3-ER-299-300). When searching a backyard four houses east and one house south of the yard from which the fleeing person vanished, Storm "alerted" to something coming from the direction of respondents' walled backyard. Pet. App. 5a.

Although he had "no idea" what caused Storm to alert, *see* Salkoff Dep. Tr. 182:12-183:15 (3-ER-327), Salkoff decided to search respondents' yard, *see* Pet. App. 5a. Young checked the gate, which was locked and bore a "Beware of Dog" sign. *Id.* Young also knocked on respondents' door, but no one was home. *Id.* Without obtaining a warrant, Salkoff jumped onto the six-foot wall surrounding respondents' yard. *Id.* From that vantage point, he observed trash cans and a fenced-in kennel with an open gate, three dog houses, and dog bowls. *Id.* He did not see any dogs, nor did any appear after he "whistled and made other noises." *Id.* at 5a, 56a-57a.

Salkoff hopped into respondents' backyard, and Rose passed Storm over the wall to him. *Id.* at 5a. Salkoff began searching the yard. *Id.* at 57a. He started by looking inside the trash cans and confirmed no one was hiding there. *Id.* Respondents' three pet dogs then emerged from their doghouses to investigate the intruders. *Id.* at 5a-6a. Salkoff used his legs to push the pet dogs away and placed trash

cans between them and Storm. *Id.* at 6a, 57a. Two of the dogs bit Storm. *Id.* at 57a-58a. Salkoff kicked all three dogs, but only one retreated, while the other two—Shadow and Whitewall—continued to bite at Storm. *Id.* at 6a, 58a. Salkoff then shot and killed Shadow and Whitewall. *Id.* at 6a.

The fleeing person was not in respondents' yard, and the officers never found him. *Id.* Rose later called the officers' attempt to set up a perimeter a "[t]otal failure[]." Rose Dep. Tr. 73:25-74:6 (2-ER-223-24).

II. Procedural Background

Respondents sued Salkoff and Rose under 42 U.S.C. § 1983. Respondents claimed that Salkoff violated the Fourth and Fourteenth Amendments when he entered their yard without a warrant and killed their dogs and that Rose participated in the violation by passing Storm into the yard to Salkoff.¹

After extensive discovery, petitioners moved for summary judgment, which the district court granted. Pet. App. 53a. It concluded that petitioners did not violate "a clearly established right by entering onto [respondents'] property in pursuit of a misdemeanor domestic violence suspect." *Id.* at 64a. Notably, it assumed without analysis that petitioners had "entered [respondents'] property in hot pursuit" of the suspected misdemeanant. *Id.* at 65a. The district court

¹ Respondents also sued the City of North Las Vegas for failure to train and supervise. The district court granted summary judgment to the City, and the court of appeals affirmed.

also rejected respondents' seizure claim, holding that Salkoff did not violate clearly established law by shooting respondents' dogs. *Id.* at 65a-72a.

The Ninth Circuit reversed in part. It concluded that petitioners' search of respondents' yard violated the Fourth Amendment because petitioners were not in hot pursuit of anyone.

The court of appeals noted that the "district court assumed, without explanation," that petitioners were in "hot pursuit" of the fleeing person when they conducted their presumptively unreasonable warrantless search of respondents' yard. *Id.* at 8a. Recognizing that hot pursuit "fundamentally 'means some sort of a chase,'" the court explained that this "exception to the warrant requirement only applies when officers are in 'immediate' and 'continuous' pursuit of a suspect from the scene of a crime." *Id.* at 8a-9a (internal quotation marks omitted) (first quoting *Santana*, 427 U.S. at 43; and then quoting *United States v. Johnson*, 256 F.3d 895, 907 (9th Cir. 2001) (en banc)).

The court invoked circuit precedent establishing that there is no hot pursuit when "the continuity of the chase [has been] terminated." *Id.* at 9a (alteration in original) (quoting *Johnson*, 256 F.3d at 908). The court noted that "whether a pursuit's continuity has been definitively broken is a function of" whether the officer lost track of the suspect's whereabouts and, if so, whether the officer "continued to act with speed in attempting to apprehend the suspect." *Id.* at 9a (citation omitted). Synthesizing those principles, the court explained that "[a]s seconds and minutes tick by, the officer's once-clear knowledge of a suspect's position

fades till they are no longer chasing a suspect but instead searching for him.” *Id.* at 9a-10a.

The Ninth Circuit concluded that there had been no hot pursuit after Rose spotted the unidentified person run from the yard. *Id.* at 10a-11a. Rose never saw the person enter respondents’ property but instead saw him “fleeing toward a different property three houses west of [respondents’] home.” *Id.* at 10a. “Rose neither chased after the person nor peered over the wall to monitor the person’s movements.” *Id.* In the time between Rose spotting the suspect and Salkoff beginning his neighborhood-wide search with Storm, “[o]fficers had seen neither hide nor hair of the suspect,” and “the suspect’s movements through a suburban neighborhood were completely unknown.” *Id.* at 10a-11a.

The court rejected petitioners’ argument that they maintained a continuous hot pursuit because “they reasonably believed the suspect was somewhere within the neighborhood.” *Id.* at 11a. The court explained that this argument “threaten[ed] to swallow the warrant requirement whole”: “Officers may not riffle through private spaces in an entire neighborhood merely because police have lost track of someone who earlier fled from them in the general vicinity.” *Id.* The court also rejected petitioners’ contention that “Storm’s alert salvaged the hot pursuit,” concluding that even if the alert gave rise to probable cause, the continuity of the chase had already been terminated and “there was no hot pursuit to salvage.” *Id.* at 12a.

Turning to qualified immunity, the court of appeals concluded that its decision in *Johnson* clearly

established that officers “may not sweep through an area and search the properties within it simply because they believe a suspect is somewhere therein.” *Id.*

As to respondents’ separate claim that the shooting of Shadow and Whitewall was an unconstitutional seizure under the Fourth Amendment, the Ninth Circuit concluded that no case clearly established that Salkoff acted unreasonably in using force, and the court therefore granted him qualified immunity on that claim. *Id.* at 14a.

Petitioners sought panel rehearing or rehearing en banc. The petition was denied, with the panel issuing an amended opinion. Eight judges dissented from the denial of rehearing en banc. *Id.* at 19a-20a.

REASONS FOR DENYING THE PETITION

I. The Petition Misrepresents the Record.

Petitioners portray this case as concerning “whether the ‘hot pursuit’ exception to the warrant requirement applies when pursuing officers temporarily lose the trail of a fleeing suspect, but then reasonably believe they had recovered the trail as a result of immediate and continuous law enforcement efforts.” Pet. 9. This case is a poor vehicle for addressing that question because nothing like that happened here. Petitioners were not “pursuing officers” because Rose declined to run after the suspect when he fled, and Salkoff arrived after the suspect was already gone. *See* Pet. App. 3a-4a. The officers made no “immediate and continuous law enforcement efforts” to pursue him and were thus never on his trail. *See id.* To the

extent they could be described as losing a trail that they were never on, they did so permanently, not “temporarily.” *See id.* at 6a. And at no time did they have any reasonable basis to believe they had “recovered” the nonexistent trail. *See id.* at 5a-6a.

There can be no hot pursuit without a pursuit. It is well established that, “[w]hile the flight need not be reminiscent of the opening scene of a James Bond film, there must be ‘some sort of a chase.’” *Lange*, 594 U.S. at 329 (Roberts, C.J., concurring in the judgment) (quoting *Santana*, 427 U.S. at 43). In each case in which this Court has recognized a hot pursuit, the chase began immediately when the police officer spotted the suspect. *See, e.g., Santana*, 427 U.S. at 40. By contrast, in *Welsh*, this Court held there was no “hot pursuit” because “there was no immediate or continuous pursuit of the” suspect. 466 U.S. at 753. The same is true here.

Upon seeing a person fleeing from near the alleged victim’s home, Rose did not immediately chase after him. Instead, Rose returned to his car, called for backup, and then drove two blocks south in hopes of spotting the suspect. Pet. App. 4a. When Rose did not find the suspect there, he began trying to set up a perimeter around the neighborhood and waited for backup. *Id.* By the time Salkoff arrived, the whereabouts of the person who fled were completely unknown. *Id.* It was later still before Salkoff began his sweep through the neighborhood that led to respondents’ yard. *Id.* at 4a-5a & n.1. That is nothing like the chases this Court has held qualify as hot pursuits. Petitioners’ approach to finding the suspect “was neither

‘hot’ nor in ‘pursuit,’ in any fair sense of those words.” *Coffey*, 933 F.3d at 586.

To make their general neighborhood-wide search seem more like a pursuit, petitioners misrepresent the timeline. They focus on the 18 minutes that elapsed between Rose’s sighting of the fleeing person and Salkoff’s arrival with K-9 Storm, portraying that as the relevant gap during which they “temporarily” lost the trail. Pet. i, 18-19. But that ignores the further delay between when Salkoff arrived and when he actually started searching. After his arrival, Salkoff received a briefing, checked the alleged assailant’s records, and used his car’s public address system to announce the upcoming K-9 search. Pet. App. 4a-5a, 22a; Salkoff Dep. Tr. 67:12-70:2 (3-ER-298-99). All of this occurred *after* the 18-minute span on which petitioners rely and *before* Salkoff and Storm began going from yard to yard, with Rose testifying that the search through the neighborhood may have taken as many as two or three hours. *See* Pet. App. 5a n.1.

Petitioners also attempt to rehabilitate their lack of immediate and continuous pursuit by misrepresenting the effect of their purported “perimeter.” They argue that although the officers did not chase the suspect, they subsequently contained him within a perimeter and thereby “promptly recovered” the suspect’s “specific trail ... through continuous police activity.” Pet. 27. But that is not what happened. Nothing in the record indicates that the officers successfully enclosed the suspect within a particular area. Rather, the record shows that no “perimeter” was ever established. Rose and Salkoff testified that they could

not recall the boundaries of the perimeter, even when shown a map of the neighborhood. *See id.* at 136:17-25 (3-ER-315); Rose Dep. Tr. 106:14-19 (2-ER-232) (“I cannot remember in the slightest exactly where people were set up.”). Petitioners’ expert described the perimeter as merely “the general location of the area that they[] [we]re going to search,” rather than an area within which the suspect was contained. *See* Katsaris Dep. Tr. 104:7-105:18 (2-ER-113-14). And confusingly, Salkoff testified that the suspect had already “fled [the] perimeter” by the time he conducted his search. Salkoff Dep. Tr. 79:17-25 (3-ER-301). In short, as Rose put it, the attempt to set up a “perimeter” was a “[t]otal failure[].” Rose Dep. Tr. 73:25-74:6 (2-ER-223-24). Consistent with that evidence, petitioners argued in the district court only that the perimeter “spanned an area where the suspect could be hiding,” not that they had successfully enclosed him or even believed they had done so. Defs.’ Reply in Supp. of Mot. for Summ. J. 3 (2-ER-23); *see also id.* at 11 (2-ER-31).

Petitioners are also simply wrong to claim that the suspect’s trail was “promptly”—or, indeed, ever—recovered. *See* Pet. App. 6a. It would be more accurate to say that petitioners incorrectly believed they had “recovered” the trail based on the inaccurate alerting from the K-9. But this belief was patently unreasonable, not only because of the officers’ failure to chase the fleeing suspect and to establish an effective perimeter, but also because of the nature of Storm’s training. Storm was not trained to track particular suspects by scent. Salkoff Dep. Tr. 72:2-74:18 (3-ER-299-

300) (Storm was incapable of “tracking,” which “is, in and of itself, a complete different profession”). Instead, Storm was “trained to detect the odor of apocrine, a hormone some people release when they are afraid.” Pet. App. 4a. Storm’s “alert” thus indicated at most that this hormone was present in the general direction of respondents’ yard, not that the fleeing person was in the yard. And nothing in the record proves that Storm was reacting to apocrine, rather than some other smell or sound. Respondents’ expert stated that “Salkoff had no reason to assume that the change in behavior was due to human presence” and that the alert instead could have signaled “the presence of other dogs.” 3-ER-376-77. At no point did Storm pursue the specific scent of the suspect, so his alert did not turn the search into a hot pursuit.

What petitioners seek is thus not a tailored exception to the Fourth Amendment’s warrant requirement for hot pursuits that cool down before turning hot again. Rather, they want the Court to bless warrantless neighborhood-wide manhunts whenever a suspect evades police officers, even if the officers never give chase in the first place. *See* Pet. App. 4a. That claim has no basis in this Court’s precedent and, as the Ninth Circuit recognized, “would turn back the clock to the age of English general warrants, which our founders firmly rejected with the inclusion of the Fourth Amendment.” Pet. App. 12a (citing *Payton v. New York*, 445 U.S. 573, 583 (1980)).

II. The First Question Presented Does Not Merit Review.

Petitioners ask the Court to review whether the hot-pursuit exception to the Fourth Amendment covers their warrantless search of respondents' yard "when the suspect's trail was temporarily lost within the perimeter for approximately eighteen minutes but recovered through immediate and continuous police efforts." Pet. i. As just explained, that question is not presented because petitioners failed to make immediate and continuous efforts to chase the suspect and thus never had his trail to lose.

But even setting that aside, this question does not merit the Court's review. Petitioners make no effort to identify a circuit split on the scope of what constitutes a hot pursuit. Nor could they. This Court has provided substantial guidance about when the hot pursuit of a fleeing suspect qualifies as an exigent circumstance sufficient to overcome the Fourth Amendment's warrant requirement. In light of that guidance, all circuits apply the same standard when evaluating whether a pursuit is hot enough to permit a warrantless search. And no circuit counts a neighborhood-wide search that involves no chase as a hot pursuit. Any further analysis this Court might provide would thus be unlikely to tell lower courts anything they do not already know.

A. This Court has provided ample direction on when a hot pursuit constitutes an exigent circumstance justifying departure from the Fourth Amendment's warrant requirement. "The place to start is

with [this Court’s] often-stated view of the constitutional interest at stake: the sanctity of a person’s living space.” *Lange*, 594 U.S. at 303. At the Fourth Amendment’s “‘very core’ stands ‘the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.’” *Jardines*, 569 U.S. at 6 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). But “[t]his right would be of little practical value if the State’s agents could stand in a home’s porch or side garden and trawl for evidence with impunity.” *Id.* “To give full practical effect” to the Fourth Amendment’s protection of the home, “the Court considers curtilage—the area immediately surrounding and associated with the home—to be ‘part of the home itself for Fourth Amendment purposes.’” *Collins v. Virginia*, 584 U.S. 586, 592 (2018) (additional internal quotation marks omitted) (quoting *Jardines*, 569 U.S. at 6).

This protection of the home “is of course not inviolable.” *Lange*, 594 U.S. at 303. An officer may enter a home with a warrant, and “exigent circumstances allow even warrantless intrusions.” *Id.* Such exigent circumstances can include “a true hot pursuit.” *Santana*, 427 U.S. at 42-43 (internal quotation marks omitted). “But the contours of that or any other warrant exception permitting home entry are ‘jealously and carefully drawn,’ in keeping with the ‘centuries-old principle’ that the ‘home is entitled to special protection.’” *Lange*, 594 U.S. at 303 (quoting *Georgia v. Randolph*, 547 U.S. 103, 109 (2006)).

Most fundamentally, before applying the hot-pursuit exception, “[c]ourts must ... ascertain whether a

given set of circumstances actually qualifies as hot pursuit.” *Lange*, 594 U.S. at 329 (Roberts, C.J., concurring in the judgment). “[H]ot pursuit’ means some sort of a chase,” *Santana*, 427 U.S. at 43, involving “immediate or continuous pursuit of the [suspect] from the scene of a crime,” *Welsh*, 466 U.S. at 753.

In *Lange*, for instance, this Court considered a pursuit to be hot where an officer tailed a driver engaging in suspicious behavior and signaled for him to pull over, the driver pulled into his garage, and the officer immediately followed the driver in and began questioning him. 594 U.S. at 299. Similarly, in *Santana*, police officers arrived at the home of a person they had probable cause to believe was dealing heroin, got out of their van, and shouted “police”; the officers followed the suspect as she retreated into her vestibule, where they caught her and discovered that she was carrying heroin. 427 U.S. at 40.

By contrast, in *Welsh*, a person driving erratically swerved off the road and stopped in a field. 466 U.S. at 742. Witnesses called the police, but the driver left on foot. *Id.* The police arrived “[a] few minutes later” and learned that the driver had been inebriated or sick and had abandoned his car. *Id.* An officer checked the car’s registration and discovered that the owner lived within walking distance. *Id.* The police went to the house, entered without a warrant, and arrested the car owner for driving under the influence. *Id.* at 743. This Court held there was no “hot pursuit” because “there was no immediate or continuous pursuit of the” suspect, *id.* at 753, even though the officers

had probable cause to believe the suspect would be at his house and in fact caught him there.

The takeaway is that the hot-pursuit exception is “jealously and carefully drawn,” *Lange*, 594 U.S. at 303 (citation omitted), to permit warrantless home searches only during an immediate and continuous chase from a crime scene. Just because police officers use investigative techniques to locate a suspect does not create a hot pursuit. Otherwise, the police would never need a warrant to enter a home to make an arrest, since by definition they do so while looking for the arrestee. That is not the law. *See Payton*, 445 U.S. at 576.

The Court has already made these principles clear, and an opinion in this case would not change the landscape. A hot pursuit involves an immediate and continuous chase, and that standard requires “no further gloss.” *Case v. Montana*, 607 U.S. 107, 109 (2026).

B. Petitioners do not purport to identify a circuit split with respect to what qualifies as a hot pursuit, nor could they. The contours of the doctrine are well defined, and all lower courts, including the Ninth Circuit here, apply the same test to evaluate whether a pursuit is sufficiently hot to constitute an exigent circumstance and trigger an exception to the Fourth Amendment’s warrant requirement.

In light of this Court’s clear guidance, the federal courts of appeals consistently determine whether a pursuit was hot by asking whether it was “immediate” and “continuous.” *See Newman v. Underhill*, 134

F.4th 1025, 1031 (9th Cir. 2025) (“[A] hot pursuit excuses a warrantless intrusion into the home only if the officers were in immediate and continuous pursuit of a suspect from the scene of the crime at the moment they made entry.” (alteration, internal quotation marks, and citation omitted)); *see also United States v. Cruz*, 977 F.3d 998, 1009 (10th Cir. 2020) (similar); *Hazleton v. Trinidad*, 488 F. App’x 349, 352 (11th Cir. 2012) (similar); *United States v. Schmidt*, 403 F.3d 1009, 1013 (8th Cir. 2005) (similar); *United States v. Saari*, 272 F.3d 804, 812 (6th Cir. 2001) (similar). There is no circuit split on the applicable standard.

Nor is there a circuit split about what that standard means in practice. Most applications of the hot-pursuit exception, like this Court’s decision in *Santana*, involve short chases where police see someone commit a crime in public and immediately chase them onto private property. *See, e.g., Cruz*, 977 F.3d at 1009 (immediate chase of suspect from street into his home); *White v. Hefel*, 875 F.3d 350, 352, 357 (7th Cir. 2017) (immediate chase of suspect into third party’s house); *United States v. Martinez-Gonzalez*, 686 F.2d 93, 102 (2d Cir. 1982) (immediate chase of suspect from hallway into apartment). In these prototypical scenarios, the exception ensures that police work does not become “a child’s game of prisoners base, or a contest, with apprehension and conviction depending upon whether the officer or defendant is the fleetest of foot.” *Lange*, 594 U.S. at 324 (Roberts, C.J., concurring in the judgment) (citation omitted).

As petitioners note, the few courts to have considered the issue have held that a pursuit can still be hot

even if the officers briefly lose track of the suspect during the chase. *See* Pet. 16-17. Petitioners identify no circuit split on this question either, and the Court below fully embraced this proposition. *See* Pet. App. 9a-10a. But crucially, the pursuit must still be immediate and continuous. “What makes the pursuit ‘hot’ is ‘the emergency nature of the situation,’ requiring ‘immediate police action.’” *Smith v. Stoneburner*, 716 F.3d 926, 931 (6th Cir. 2013) (Sutton, J.) (quoting *Cummings v. City of Akron*, 418 F.3d 676, 686 (6th Cir. 2005)). “Speed and a continuous knowledge of the alleged perpetrator’s whereabouts are the elements which underpin this exception to the warrant requirement.” *United States v. Lindsay*, 506 F.2d 166, 173 (D.C. Cir. 1974).

The only published court of appeals case on which petitioners rely is the Ninth Circuit’s decision in *Newman*.² There, an officer attempted to pull over a truck based on an expired registration and an unilluminated license plate. *Newman*, 134 F.4th at 1028. The driver fled, thereby committing a felony, and the officer “immediately pursued.” *Id.* Eventually, the driver got out of his truck and ran away on foot. *Id.* The officer saw the suspect running toward a particular house, but then lost sight of him. *Id.* at 1029. The officer believed but did not know for sure that the suspect went into the house. *Id.* Backup arrived, and officers searched the backyard. *Id.* The officers did not

² Petitioners also cite an unpublished Eleventh Circuit decision, two district court opinions, and an unpublished decision from an intermediate state appellate court. *See* Pet. 17, 20.

hear anything, like the rattling of the fence, to suggest the suspect had left the yard, and the steep slopes near the yard made it hard for him to escape. *Id.* About nine minutes after losing sight of the suspect, the officers entered the house without a warrant, where they found him. *Id.* The Ninth Circuit held that the hot-pursuit exception applied because the officer “gave chase ‘immediately’ after seeing [the suspect] fail to yield to a traffic stop,” and “the continuity of the chase remained intact,” given that the officer “had a reasonably good idea where [the suspect] was hiding” during the nine-minute “pause.” *Id.* at 1032-33.

Newman shows only that briefly losing sight of a suspect does not always turn a hot pursuit into a cold one, when officers are continuously chasing the suspect and have a good idea where he is. But that is not what happened here, and petitioners ignore important limiting principles on which lower courts also agree. If a search for a suspect begins well after the crime occurs, or if it starts out hot but then goes cold, the exception to the warrant requirement does not apply. There is thus no hot pursuit when a shoplifter runs to a house within eyeshot of a store, employees tell the police where to find the suspect, and the police later encounter the suspect outside the house and follow him inside without a warrant. *See Smith*, 716 F.3d at 928-29, 931-32. Nor is it a hot pursuit when police respond to the scene of a crime after the suspect has already left, then follow his tracks in the snow to his house, where they enter without a warrant. *Coffey*, 933 F.3d at 582, 586. Nor is it a hot pursuit when the police apprehend a robber at a motel while

his accomplice appears to get away, then more than thirty minutes later officers happen upon the accomplice in the robber's motel room. *Lindsay*, 506 F.2d at 168-69, 173.

In short, the circuit courts, like this Court, consistently distinguish between pursuits that stay hot despite short delays, and pursuits that either go cold or are never hot in the first place.

C. The decision below is correct under this Court's precedent and the uniform precedent of the courts of appeals, including the Ninth Circuit.

Viewing the evidence in the light most favorable to respondents, *see Tolan*, 572 U.S. at 655-56, petitioners' "entry into the [yard] was neither ... a 'pursuit' nor 'hot,'" *Smith*, 716 F.3d at 931. As the court of appeals explained, when an unknown person ran from near the scene of a suspected domestic-violence incident, Officer Rose "neither chased after the person nor peered over the wall to monitor the person's movements." Pet. App. 10a. As petitioners concede, Officer Rose instead returned to his patrol car and drove two streets away. Pet. 18. By doing so, Rose may have been hoping "to locate the fleeing suspect," *id.*, but that is not the same thing as "giv[ing] chase as soon as the suspect flees from the scene of the crime," *Newman*, 134 F.4th at 1032.

Lieutenant Salkoff arrived 18 minutes later, and by that time, the officers no longer "had a reasonably good idea where [the suspect] was hiding." *Id.* at 1033. "Officers had seen neither hide nor hair of the suspect for at least eighteen minutes preceding their search,

in which time the suspect's movements through a suburban neighborhood were completely unknown." Pet. App. 10a. By then, the suspect could have been long gone given the ineffectiveness of the attempted perimeter.

Nor did Salkoff and K-9 Storm begin looking for the fleeing person immediately upon arrival. Instead, Salkoff first received a briefing from Rose and checked the suspected assailant's records. *Id.* at 22a; Salkoff Dep. Tr. 67:12-70:2 (3-ER-298-99). Salkoff then used his patrol car's public address system to notify residents that the police would be searching the neighborhood using a K-9. Pet. App. 4a-5a, 22a.

By the time Salkoff and Storm actually started looking for the person who ran, the search could not remotely be described as "some sort of a chase." *Santana*, 427 U.S. at 43. It did not start immediately upon the suspect's flight, nor was it continuous in any sense.

Storm's alert in the direction of respondents' yard did not transform the search into a hot pursuit. Storm was not trained for tracking and was never following or chasing the suspect. Indeed, Lieutenant Salkoff described tracking as "a complete different profession." Salkoff Dep. Tr. 72:2-74:18 (3-ER-299-300). Rather, Storm was trained to smell apocrine, a hormone associated with fear. Pet. App. 4a. At most, Storm's alert merely indicated that the odor of apocrine might have been coming from the direction of respondents' yard. It did not put Salkoff on the suspect's trail.

To the extent that probable cause is relevant to the hot-pursuit analysis, and contrary to petitioners' contention, *see* Pet. 26, respondents have consistently argued that "there was no probable cause to believe that [the suspect] would be located in [respondents'] backyard." *See* Appellants' CA9 Br. 18. All that the officers knew was that "*someone* had fled *somewhere* from a house down the street and that their police dog (which was incapable of tracking specific persons) had alerted to *something*." *Id.* At the very least, there was a genuine dispute of material fact as to whether Salkoff had probable cause to believe that the suspect was in respondents' yard based only on Storm's "alert."

Moreover, this Court's cases distinguish between hot pursuit of a fleeing suspect and other forms of police work intended to locate someone. Only the former constitutes an exigent circumstance for purposes of the Fourth Amendment, and Storm's alert at most constituted the latter. In *Welsh*, for instance, the police ran the registration of the abandoned car and ascertained the address of the driver, who had fled on foot. 466 U.S. at 742. But this Court held that the police's delayed efforts to locate the suspect—which, unlike in this case, resulted in his arrest—did not convert their search into a hot pursuit. *See id.* at 753. So too here. If Salkoff had found the suspect, it might have been good police work. But it would not have been a chase.

D. The decision below is correct for another reason: No other exigent circumstances supported the

search of respondents' yard, as required for the pursuit of a fleeing misdemeanor to justify warrantless entry into a home or its curtilage.

In *Lange*, this Court assumed that hot pursuit of a fleeing felon “always present[s] exigent circumstances allowing warrantless entry,” but held that “the need to pursue a misdemeanor does not trigger a categorical rule allowing home entry.” 594 U.S. at 304-05, 308-09. Instead, police officers and courts must “assess[] case by case the exigencies arising from misdemeanants’ flight.” *Id.* at 308. “When the totality of circumstances shows an emergency—such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home—the police may act without waiting.” *Id.*

Petitioners inexplicably contend that *Lange* “effectively rejected” a “misdemeanor-felony distinction.” Pet. 22 (capitalization altered). But *Lange* did no such thing. The majority opinion rested entirely on exactly that distinction, holding that “no evidence suggests that every case of misdemeanor flight poses” dangers. *Lange*, 594 U.S. at 307.

Here, the court of appeals held that “the gravity of the alleged offense and the lack of risk of imminent harm to others weigh against applying the exigent circumstances exception.” Pet. App. 11a n.2. The court correctly acknowledged that “domestic violence is a serious misdemeanor,” but explained that “the danger involved is generally to co-habitants.” *Id.* “Here, one officer remained at the victim’s address in case the suspect returned, thereby ensuring that neither she

nor any other member of the household was at risk of imminent harm.” *Id.*

The determination by the court below that there were no exigent circumstances beyond flight justifying a warrantless search provides an independent basis for the judgment, one that petitioners never suggest is worthy of this Court’s review.

III. The Second Question Presented Does Not Merit Review.

Petitioners next ask the Court to review the denial of qualified immunity. They make no effort to frame a question concerning the denial of qualified immunity that would merit this Court’s review. Indeed, by petitioners’ own account, this Court has already made the “exacting standards” governing qualified immunity abundantly clear. *See* Pet. 23-26. Instead, petitioners request summary reversal. *Id.* at 30. But summary reversal is “strong medicine.” *Tharpe v. Sellers*, 583 U.S. 33, 43 (2018) (Thomas, J., dissenting); *Pavan v. Smith*, 582 U.S. 563, 569 (2017) (Gorsuch, J., dissenting). And this case does not remotely warrant that “extraordinary remedy.” *MLB Players Ass’n v. Garvey*, 532 U.S. 504, 512-13 (2001) (Stevens, J., dissenting); *see also Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 422 (1990) (“Summary reversals of courts of appeals are unusual under any circumstances.”). This Court rarely uses its scarce resources merely to correct a case-specific error in the application of settled law, *see* S. Ct. Rule 10, and here there is no error to correct.

Qualified immunity shields officials from civil liability when “their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (internal quotation marks and citation omitted). A court must consider “whether the officers’ conduct violated the Fourth Amendment” and whether the right at issue “was clearly established at the time of the challenged conduct.” *Plumhoff v. Rickard*, 572 U.S. 765, 774, 778 (2014) (internal quotation marks and citation omitted). “For a constitutional right to be clearly established, its contours ‘must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.’” *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

The court of appeals here correctly found a constitutional violation at step one, as explained above. See *supra*, at 21-25. At step two, the court of appeals correctly held that its prior en banc decision in *Johnson* clearly established that the warrantless search of respondents’ yard violated the Fourth Amendment. Pet. App. 12a. And even setting circuit precedent aside, this Court’s decision in *Welsh* clearly established the violation.

In *Johnson*, Officer Chris Kading was dispatched to the rural residence of Steven Dustin Smith to check on the welfare of children living there. 256 F.3d at 898. Officer Kading ran a check on Smith and discovered he had five outstanding misdemeanor warrants. *Id.* at 898-99. Kading’s attempts to arrest Smith

failed, and Smith ran into the woods between a neighboring driveway and the driveway of Michael Johnson, which was blocked with a locked gate. *Id.* at 899. Kading radioed for backup and, when it arrived, Kading and other officers entered Johnson's property to search for Smith. *Id.* at 899-900. Although they did not find Smith, they did find marijuana, and Johnson was charged with federal drug offenses. *Id.* at 900.

The en banc Ninth Circuit held that the hot-pursuit exception did not apply to the warrantless search of Johnson's yard. *Id.* at 907-08. Quoting this Court's decision in *Welsh*, the Ninth Circuit explained that "[t]he hot pursuit exception to the warrant requirement only applies when officers are in 'immediate' and 'continuous' pursuit of a suspect from the scene of the crime." *Id.* at 907 (quoting *Welsh*, 466 U.S. at 753). The court concluded that "the officers' pursuit of Smith was not 'continuous.'" *Id.* "After Officer Kading lost sight of Smith in the woods, he waited for a half hour for backup to arrive," such that "[w]hen the officers entered Johnson's property, no one had seen Smith for over a half hour." *Id.* at 907-08. By the time the search resumed, "the officers no longer had any idea where Smith was," and "the continuity of the chase was terminated permanently." *Id.*

As the panel below correctly concluded, that reasoning directly governs here. Just as Kading declined to chase Smith into the woods, here Rose decided not to chase the suspect into a maze of suburban streets in a neighborhood where nearly all the yards are walled. *See* 2-ER-150. Just as Smith "was free to run for over a half hour," *Johnson*, 256 F.3d at 908, the

suspect here was free to run for a similar period, given that it took Salkoff 18 minutes to arrive and he did not begin searching for the suspect until after receiving a briefing, running a records check, and making announcements. Rose recalled that the search lasted at least one hour and possibly as many as two or three hours in total. Pet. App. 5a n.1. As in *Johnson*, by the time Salkoff reached the neighborhood, much less respondents' yard, the officers "no longer had any idea where" the suspect was and the trail had gone from "lukewarm to ice cold." 256 F.3d at 908. As the panel explained, *Johnson* "made it clear to officers in 2019 that they may not sweep through an area and search the properties within it simply because they believe a suspect is somewhere therein." Pet. App. 12a.

Petitioners make much of *Johnson*'s reference to the "continuity of the chase" being "terminated permanently." Pet. 27-28; Pet. App. 30a-32a. They say that here the pursuit was not terminated permanently because "it is undisputed that K-9 Storm provided probable cause for the continuing pursuit" of the suspect in respondents' yard. Pet. 26. But that is wrong on multiple levels.

To start, the presence of probable cause is highly disputed. *See supra*, at 22-23. Viewing the evidence in the light most favorable to respondents, Storm's alert told the officers nothing about the suspect's whereabouts because Storm was incapable of tracking. Moreover, under this Court's hot-pursuit cases, it is irrelevant whether the police later locate the suspect—which here they did not—unless they do so as the result of an immediate and continuous chase.

Quite apart from *Johnson*, the violation in this case was clearly established by this Court's decision in *Welsh*. See *Smith*, 716 F.3d at 931, 933 (denying qualified immunity based on *Welsh* where officers claimed hot pursuit justified warrantless search). In *Welsh*, the suspect abandoned his car and fled on foot toward his home, which was "a short distance from the scene." 466 U.S. at 742. Officers arrived, ran the car's registration to ascertain the suspect's address, and then actually found him at his home. *Id.* Although the officers followed the suspect's trail directly from his abandoned car, this Court held that their actions did not amount to a hot pursuit because "there was no immediate or continuous pursuit of the" suspect. *Id.* at 753. *Welsh* put Lieutenant Salkoff on notice that his neighborhood-wide K-9 search was not a hot pursuit because it was not part of a chase, regardless of whether his police work might lead him to locate the suspect—which it did not.

The denial of qualified immunity is also supported by a robust consensus of decisions from other courts of appeals holding that similar warrantless searches are not justified by the hot-pursuit exception. See *Smith*, 716 F.3d at 928-29, 931-33 (no hot pursuit—and no qualified immunity—where police found suspect by following witness tip to his house); *Coffey*, 933 F.3d at 582, 586-87 (no hot pursuit—and no qualified immunity—where police followed footprints in snow to house of suspect); *Lindsay*, 506 F.2d at 173 (no hot pursuit where police did not chase suspect they thought had gotten away, but later found him at the motel where they started). Unlike here, in each of

those cases the police ultimately located the suspect. Yet the courts nevertheless held that there was no hot pursuit because the apprehensions did not result from an immediate and continuous chase. That proposition was well established when Lieutenant Salkoff jumped into respondents' yard, hoping to find a suspect he had never been chasing, and shot their dogs.

If the Fourth Amendment means anything, it is that police cannot search every home in a neighborhood for evidence of a crime or a suspected criminal. The Amendment “was the founding generation’s response to the reviled ‘general warrants’ and ‘writs of assistance’ of the colonial era” that allowed government officials “to rummage through homes in an unrestrained search for evidence of criminal activity.” *Riley v. California*, 573 U.S. 373, 403 (2014). Petitioners’ argument—that they were entitled to make a warrantless search of respondents’ walled backyard simply because an officer had watched an unknown person run away from a different yard in the neighborhood some time earlier—runs directly contrary to this history, as well as this Court’s and the en banc Ninth Circuit’s precedent clearly establishing the narrow bounds of the hot-pursuit exception. Granting qualified immunity here would undermine 250 years of recognition that the home cannot so easily be invaded.

IV. The Third Question Presented Does Not Merit Review.

Petitioners’ third question presented asks whether only this Court’s precedent can clearly establish law.

That question does not merit review in the context of this case—or at all—for several reasons.

Resolution of the question would make no difference to the outcome of the case because this Court’s precedent clearly establishes the violation here. *Welsh* gave petitioners clear notice that their efforts to locate the suspect did not justify a warrantless search of respondents’ yard.

The question is also forfeited. Petitioners did not argue at any prior stage in the proceedings that Ninth Circuit precedent was incapable of clearly establishing law for qualified-immunity purposes. They simply disputed whether the Ninth Circuit precedent on which the panel and respondents relied was sufficiently factually analogous to establish the law. *See, e.g.*, Pet. for Reh’g or Reh’g En Banc 6-8; Defs.’ Mot. for Summ. J. 20-24 (2-ER-181-85). And neither court below addressed the question. *See* Pet. App. 7a-15a, 60a-72a.

Nor are lower courts divided on this issue. Circuit courts have emphatically rejected the argument that their precedent cannot establish the law. *See, e.g.*, *Boyd v. McNamara*, 74 F.4th 662, 669-70 (5th Cir. 2023) (“A proverbial mountain of binding authority” contradicts the notion that “it is not clear whether [circuit] precedent, as opposed to the Supreme Court’s, can clearly establish the law for purposes of qualified immunity.” (internal quotation mark omitted)); *Estate of Clark v. Walker*, 865 F.3d 544, 552 (7th Cir. 2017) (“see[ing] no reason to depart from” prior cases relying on circuit precedent to clearly establish law); *Ullery v. Bradley*, 949 F.3d 1282, 1292 (10th Cir.

2020) (“Defendant’s position” that “only the Supreme Court can clearly establish law in the particular circumstances of a case” is “untenable.”).

Every circuit court recognizes that on-point, binding circuit precedent can clearly establish law, and they uniformly have denied qualified immunity on that basis. *Wadsworth v. Nguyen*, 129 F.4th 38, 59-61 (1st Cir. 2025); *Russell v. Scott*, 170 F.4th 83, 98-100 (2d Cir. 2026); *Clark v. Coupe*, 55 F.4th 167, 181-85 (3d Cir. 2022); *Ray v. Roane*, 948 F.3d 222, 229-30 (4th Cir. 2020); *Hicks v. LeBlanc*, 81 F.4th 497, 503-04 (5th Cir. 2023); *Finley v. Huss*, 102 F.4th 789, 808-12 (6th Cir. 2024); *Reed v. Palmer*, 906 F.3d 540, 547-51 (7th Cir. 2018); *Bus. Leaders in Christ v. Univ. of Iowa*, 991 F.3d 969, 980, 983-86 (8th Cir. 2021); *Ballentine v. Tucker*, 28 F.4th 54, 64-67 (9th Cir. 2022); *Packard v. Budaj*, 86 F.4th 859, 867-70 (10th Cir. 2023); *Patel v. City of Madison*, 959 F.3d 1330, 1338, 1342-43 (11th Cir. 2020); *Johnson v. District of Columbia*, 528 F.3d 969, 976 (D.C. Cir. 2008). Given the overwhelming unanimity among the circuits, this Court’s intervention is unwarranted.

In any event, petitioners are wrong to suggest that only this Court can clearly establish law. As this Court has explained, “qualified immunity operates ‘to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful.’” *Hope*, 536 U.S. at 739 (quoting *Saucier v. Katz*, 533 U.S. 194, 206 (2001)). “[I]n the light of pre-existing law,’ the unlawfulness of the officer’s conduct ‘must be apparent.’” *Ziglar v. Abbasi*, 582 U.S. 120, 151 (2017) (quoting

Anderson, 483 U.S. at 640). Decisions from federal courts of appeals can provide the requisite notice.

That is why, “in applying the rule of qualified immunity,” this Court has “referred to decisions of the Courts of Appeals when enquiring whether a right was ‘clearly established.’” *United States v. Lanier*, 520 U.S. 259, 269 (1997). The Court has recognized that “controlling authority in [the applicable] jurisdiction” or “a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful” is enough to provide the fair warning that qualified immunity demands. *Wilson v. Layne*, 526 U.S. 603, 617 (1999); *see also Plumhoff*, 572 U.S. at 779-80; *Ashcroft v. al-Kidd*, 563 U.S. 731, 741-42 (2011).

An appellate court should thus look to “its own and other relevant precedents” to determine whether the law is clearly established. *Elder v. Holloway*, 510 U.S. 510, 516 (1994) (alteration and citation omitted). And this Court has done just that, concluding that “binding Eleventh Circuit precedent” and relevant regulations had clearly established the unconstitutionality of challenged conduct “[r]egardless” of this Court’s own precedent. *Hope*, 536 U.S. at 741-42.

There are also immense practical problems with petitioners’ argument. Because courts may grant qualified immunity without addressing the underlying merits of a constitutional claim, *see Pearson v. Callahan*, 555 U.S. 223, 236 (2009), courts of appeals routinely “leapfrog the underlying constitutional merits” in cases where there is no clearly established law, depriving the public of “matter-of-fact guidance about

what the Constitution requires,” *Zadeh v. Robinson*, 928 F.3d 457, 480 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part). If only this Court could clearly establish law, lower courts would have significantly less reason to reach the merits of constitutional damages claims, since this Court will rarely have rendered a decision sufficiently on point to defeat qualified immunity. This would greatly reduce the percolation and development of constitutional law implicating individual rights and would make it more difficult for important merits questions to reach this Court. Petitioners’ rule would “transform qualified immunity into an absolute bar to constitutional claims in most cases—thereby skewing the intended balance of holding public officials accountable while allowing them to perform their duties reasonably without fear of personal liability and harassing litigation.” *Ullery*, 949 F.3d at 1292.

Meanwhile, this Court’s resources would be strained by the responsibility for clearly establishing constitutional law across every domain. And because this Court has “repeatedly told courts ... not to define clearly established law at a high level of generality,” *al-Kidd*, 563 U.S. at 742, the Court would need to decide similar legal issues in various factual permutations, which would be at odds with the Court’s usual role of deciding rules of law for lower courts to apply to disparate factual scenarios.

This use of resources would be especially wasteful as to issues on which the courts of appeals agree, but on which this Court has never opined, such as the due process right of innocent people not to be framed for

crimes they did not commit, *see, e.g., Limone v. Condon*, 372 F.3d 39, 45 (1st Cir. 2004); *Halsey v. Pfeiffer*, 750 F.3d 273, 292-93 (3d Cir. 2014); the First Amendment right to record the police in public, *see Irizarry v. Yehia*, 38 F.4th 1282, 1290-92 (10th Cir. 2022) (collecting cases); the First Amendment right to file a prison grievance without retaliation, *see Booker v. S.C. Dep't of Corr.*, 855 F.3d 533, 544-45 (4th Cir. 2017) (collecting cases); the Fourth Amendment right against the killing of a nonthreatening pet dog, *see Ramirez v. Killian*, 113 F.4th 415, 427-28 (5th Cir. 2024) (collecting cases); and the right of a prisoner not to be sexually assaulted by a guard, *see, e.g., Ullery*, 949 F.3d at 1297-98 (collecting cases).

Factually analogous circuit precedent is sufficient to give an officer fair warning of the unconstitutionality of their conduct in a particular situation. The courts of appeals, which each decide many more cases per year than this Court by virtue of their mandatory jurisdiction, are better suited to ensure the continued percolation and resolution of constitutional questions. There is no reason for this Court to grant the petition as to the third question presented.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Margaret Ann
McLetchie
MCLETCHIE LAW
602 South Tenth St.
Las Vegas, NV 89101

William Powell
Counsel of Record
Kelsi Brown Corkran
Elizabeth R. Cruikshank
INSTITUTE FOR
CONSTITUTIONAL ADVOCACY AND PROTECTION,
GEORGETOWN LAW
600 New Jersey Ave. NW
Washington, DC 20001
(202) 661-6629
whp25@georgetown.edu

OCTOBER 5, 2026