

**In the
Supreme Court of the United States**

CITY OF NORTH LAS VEGAS, NEVADA, ET AL.,

Petitioners,

v.

GENOA JONES, ET AL.,

Respondents.

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

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

I. The Petition Does Not Misrepresent the Record.

In their Brief in Opposition (“BIO”), Respondents contend that the Petition “misrepresents the record.” (BIO.9). For example, they argue that the City officers’ efforts were not immediate and continuous because Officer Rose declined to run after the suspect, and because Lieutenant Salkoff arrived after the suspect was “already gone.” (*Id.*) Respondents further assert that the officers had no reasonable basis to believe that they had recovered the allegedly non-existent suspect’s trail. (*Id.* at 10). These are factual arguments and characterizations, not evidence of misrepresentation of the record.

More fundamentally, this is the type of after-the-fact, second guessing of police tactics that qualified immunity was designed to prevent. *Ryburn v. Huff*, 565 U.S. 469, 477 (2012) (reaffirming the “wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation.”). Officer Rose could have run after the suspect by jumping over backyard wall, but he determined, based on his professional experience and judgment, that using his vehicle to try to cut off the suspect’s flight and establishing a line-of-sight perimeter around the suburban neighborhood was likely the more effective option.¹ A foot chase

¹ The subject neighborhood consists of closely concentrated homes separated by concrete walls. (2-ER-150).

also could have endangered other residents (and pets). Neither Respondents nor the Ninth Circuit panel cite any case law, from this Court or any lower court, suggesting or establishing, that the deployment of a perimeter somehow extinguishes a hot pursuit. While it is true that officers had lost sight of the suspect by the time Lt. Salkoff arrived, courts have repeatedly recognized that losing sight of a suspect does not vitiate a pursuit. (Pet.16-17; Brief of Amici Curiae [“BAC”] 10-13).

Respondent’s further factual argument that the City officers had “no reason” to believe that they had recovered the trail effectively ignores the involvement of K-9 Storm, the police service dog who was trained to detect the scent of apocrine, an odor that humans release when they are scared. (App.4a, 22a). Because no court has declared that the use of police dogs in this manner is unconstitutional, it was reasonable—and certainly not “plainly incompetent”—for the officers to believe that K-9 Storm’s alert could indicate that a nervous, fleeing suspect was in Respondent’s backyard.

Respondents argue that Petitioners reliance on the 18 minutes between Officer Rose’s sighting of the fleeing suspect and Lt. Salkoff’s arrival ignores the additional time before K-9 Storm alerted the officers to the scent in Respondents’ backyard. (BIO.11) Although Officer Rose estimated that the neighborhood search may have taken two to three hours, he later clarified that the shooting of the dogs occurred before 5:07 p.m., approximately an hour or less after Lt. Salkoff arrived with K-9 Storm. (Rose. Dep. Tr. 103:25-104:21 [2-ER-231] and 118:5-23 [2-ER-235]; App.5a n.1).

Respondents next argue that Petitioners are “misrepresenting the effect of their purported ‘perimeter’” (BIO.11) because the officers could not recall its

precise boundaries over three years later and it did not lead to the suspect's capture. (*Id.* at 11-12). Respondents characterize as confusing (*Id.* at 12), but Lt. Salkoff's deposition testimony that the suspect had fled the perimeter was simply an apparent conclusion from the officers' inability to apprehend him, despite promptly establishing it.

Respondents similarly argue that Storm's alert did not recover the suspect's trail because Storm was not trained to track a particular suspect's scent. (BIO.12). But Storm could distinguish human from animal odor and was trained to detect apocrine, which is a human hormone released due to fear. (Salkoff Dep. Tr. at 71:20-22, 75:1-22 [3-ER-299-300]). Although Respondents assert that the record does not "prove" Storm detected apocrine (BIO.13), no clearly established law precluded Lt. Salkoff's reliance on Storm's heightened sense of smell to pursue a fleeing violent suspect.

Respondents inaccurately contend that Petitioners seek approval of "warrant-less neighborhood-wide manhunts" even where officers never gave chase. (BIO.14). Officer Rose instead attempted to intercept the suspect by vehicle and canvassing him within an established perimeter, conduct one lower court has characterized as a "textbook example" of a hot pursuit. *See Orozco v. McDonald*, 2012 U.S. Dist. LEXIS 137727 at *52 (C.D. Cal. Mar. 15, 2012). The Petition seeks to preclude courts from questioning reasonable police tactics, including perimeters and service dogs, based on the facts and circumstances known by officers at the time of the pursuit, rather than Respondents' hindsight characterizations.

II. There Is No Clearly Established Law Regarding Police Use of a Perimeter and Trained Service Dog to Pursue a Fleeing Violent Crime Suspect.

Neither this Court nor any lower court has squarely confronted the unique factual circumstances presented here, which include a fleeing violent crime suspect with outstanding arrest warrants for other violent crimes, the attempted establishment of a line-of-sight perimeter to pursue and trap the fleeing suspect, and the deployment of a trained service dog to attempt to pinpoint the suspect's location. The Court's review is accordingly warranted.

In contrast, this Court *has* “clearly established” what “clearly established law” means for qualified immunity purposes:

- It means that the constitutional question must be “beyond debate,” such that *every reasonable official* would understand that what he is doing is unlawful.” *District of Columbia v. Wesby*, 583 U.S. 48, 62 (2018) (emphasis added).
- “The relevant, *dispositive* inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful *in the situation he confronted*.” *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004) (emphasis added); *see also Sharp v. City of Orange*, 871 F.3d 901, 911 (9th Cir. 2017) (party seeking to impose liability “must point to prior case law that articulates a constitutional rule specific enough to alert *these* deputies *in this case*”).

that *their particular conduct* was unlawful.”) (Emphasis in original).

- In the absence of “fair and clear warning” as to what the Constitution requires, qualified immunity must apply. *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 617 (2015).
- Qualified immunity protects police officers from civil suit unless they “*knowingly violate the law*” or are “*plainly incompetent.*” *Stanton v. Sims*, 571 U.S. 3, 6 (2013) (emphasis added).

Respondents ignore these standards. They also do not address how the salient constitutional issue can possibly be “beyond debate” when eight Ninth Circuit judges dissented from the (three judge) panel’s denial of Petitioners’ request for rehearing en banc. (App.18a).

Respondents argue that this Court has provided “ample direction” on when a hot pursuit constitutes an exigent circumstance justifying departure from the warrant requirement. (BIO.15). Yet, Respondents identify no such direction. Instead, they rely on the Court’s opinions regarding the general sanctity of the home and curtilage. (*Id.*) Respondents cite to the Court’s opinions in *Lange* and *Santana* (*Id.* 16), but these cases did not present meaningfully similar facts.

Respondents rely heavily on *Welsh v. Wisconsin*, 466 U.S. 740 (1984). (BIO.16, BIO.29). In *Welsh*, the suspect abandoned his vehicle before police arrived and walked to his residence. 466 U.S. at 742. The police, after investigating the suspect’s identity and address, entered the home without a warrant. *Id.* There was no “pursuit” of a fleeing suspect. Additionally, the

suspect in *Welsh* was not accused of committing a violent crime; rather, he was suspected of committing “a non-jailable traffic offense.” *Id.* The fact that the suspect had committed a “relatively minor” crime was critical to the Court’s reasoning. *Id.* at 750-752.

Here, in stark contrast, the City officers were actively pursuing an at-large domestic violence suspect. *Welsh* did not confront, let alone resolve, the questions presented in the Petition. The same holds true for other home protection cases cited by Respondents. (BIO.17 [citing *Payton v. New York*, 445 U.S. 573 (1980) (prohibiting police from making a warrantless and nonconsensual entry into a suspect’s home in order to make a routine arrest)]).

Respondents further argue that *Case v. Montana*, 607 U.S. 107 (2026) resolves the questions presented. (BIO.17). *Case* did not involve a pursuit, much less one aided by a line-of-sight perimeter and trained service animal, and Respondent’s suggestion that the “no further gloss” reasoning in *Case* somehow applies in the hot pursuit context has no support in the opinion, or in any of the Court’s hot pursuit jurisprudence. To the contrary, the Petition is necessary because “further gloss” is required in the hot pursuit context.

Respondents argue that the questions presented do not warrant the Court’s review because Petitioners do not identify a “circuit split on the scope of what constitutes a hot pursuit.” (BIO.14). This framing assumes that multiple circuits have squarely opined on the issue of whether a “hot pursuit” can be temporarily lost and then recovered based on the police techniques used here. No such guidance has been provided by any circuit. To the extent such guidance exists within the Ninth Circuit, it is arguably in conflict. *Compare*

United States v. Johnson, 256 F.3d 895, 905-908 (9th Cir. 2001) (hot pursuit lost) with *Newman v. Underhill*, 134 F.4th 1025, 1030-33 (9th Cir. 2025) (hot pursuit not lost).

The reality is that “hot pursuit” case law consists of a patchwork of fact-specific lower court decisions. There is certainly no “robust consensus of cases” establishing when or how a hot pursuit turns cold, or what police techniques can be employed to preserve the pursuit. *See Plumhoff*, 572 U.S. at 780.

Some lower courts, federal and state, have recognized the “hot pursuit” exception can apply, even when officers lose track of a suspect, but, through quick and continuous efforts, promptly regain the trail. (Pet.16-17; BAC.10-13). Other lower courts, however, have rejected application of the hot pursuit exception based on particular facts. (BAC.6, BAC.10, BAC.13).

Indeed, even the circuit courts of appeal cases cited by Respondents reach vastly divergent results on the question of whether a pursuit was immediate or continuous. (BIO.18 [citing *United States v. Cruz*, 977 F.3d 998, 1009 (10th Cir. 2020) (hot pursuit recognized); *Hazleton v. Trinidad*, 488 Fed. App’x 349, 352 (11th Cir. 2012) (hot pursuit not recognized); *United States v. Schmidt*, 403 F.3d 1009, 1013 (8th Cir. 2005) (hot pursuit recognized); *United States v. Saari*, 272 F.3d 804, 812 (6th Cir. 2001) (hot pursuit not recognized)]).

Respondents maintain that “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.” (BIO.26). As detailed in the Petition, *Johnson* is readily distinguishable. (Pet.12-13). In *Johnson*, the officer

lost the suspect in the woods, left the area, and then entered the plaintiff's yard based on a "gut feeling." Here, the officers established a perimeter around a suburban neighborhood, which they reasonably believed confined the suspect, and Lt. Salkoff entered Respondents' yard based on the alert by a trained service dog.

Implicitly recognizing (just as the Ninth Circuit did in its Amended Opinion) that *Johnson* may not be sufficiently "clear" so as to deprive Respondents of qualified immunity, Respondents argue that "*Welsh* clearly established the violation." (BIO.26). As detailed above, *Welsh* is readily distinguishable and did not somehow put the City's officers on notice that use of a line-of-sight perimeter and a K-9 to pursue a fleeing suspect was unquestionably unconstitutional.

Respondents argue still that the denial of qualified immunity here is 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. (BIO.29). There is nothing "similar" about the cases cited by Respondents.

In *Smith v. Stoneburner*, 716 F.3d 926, 931-33 (6th Cir. 2013), there was no "pursuit," hot or otherwise. Instead, officers forcefully entered the home of the shoplifting minor without any exigency justification. *Id.* at 928-30. The court nevertheless applied a hot pursuit analysis and concluded that the officer's "entry into the house was neither—neither a 'pursuit' nor 'hot'." *Id.* at 931.

In *Coffey v. Carroll*, 933 F.3d 577, 582, 586-87 (6th Cir. 2019), the police located a non-violent suspect at his home by following footsteps in the snow. *Id.* at 582. Just as in *Smith*, the court concluded that the

officers' entry into the suspect's home was "neither 'hot' nor in 'pursuit,' in any fair sense of those words[.]" primarily because "[t]he sequence of events lacked an emergency." *Id.* The court explained that "[p]ursuit is defined as an effort to catch and detain an individual following an attempted arrest and subsequent escape." *Id.*

In *United States v. Lindsay*, 506 F.2d 166 (D.C. Cir. 1974), officers entered a motel room to obtain evidence of a robbery. The occupant in the room was arrested. *Id.* at 169. "[H]owever, the police did not enter in hot pursuit of anyone." *Id.* at 173. The registered occupant of the room was already in custody, and another accomplice had fled the motel. There was no evidence that the police approached the room "to attempt the speedy apprehension of any suspect." *Id.*

Here, in stark contrast, there was an emergency. A violent suspect with outstanding arrest warrants fled the residence when he saw and/or heard the officers at the front door. The ensuing pursuit consisted of the establishment of the perimeter and the use of the K-9 to attempt to locate the fleeing suspect. The emergent circumstances did not cease, in the minds of the City's officers, until the pursuit for the suspect ended.

The facts here bear no resemblance to the circumstances presented in the cases that Respondents maintain establish a "robust consensus." The only principle that emerges from the circuit court cases cited by Respondents is that police cannot enter the home of a non-fleeing, non-violent suspect without a warrant. Respondents seek to pigeonhole this case into this framework. The outcome of qualified immunity disputes, however, should not be determined by the most artful characterization of the facts.

Finally, Respondents revealingly argue that the facts presented here are “nothing like the chases this Court has held qualify as hot pursuits.” (BIO.10). This effectively concedes that there is no clearly established law with respect to police use of a trained K-9 to pursue a violent suspect that police officers reasonably believe has been confined by a perimeter of other officers.

III. Respondents Perpetuate the Ninth Circuit’s Misplaced Misdemeanor Classification.

Throughout the opposition brief, Respondents, like the Ninth Circuit panel, go out of their way to refer to the suspected crime here as a “misdemeanor.” (BIO.i, 2, 6). The use of this language disregards the Court’s recognition that “a felon is not always more dangerous than a misdemeanant,” that “misdemeanors run the gamut of seriousness,” and, accordingly, that the Fourth Amendment analysis in misdemeanants’ flight cases turns on “case by case exigencies.” *Lange*, 594 U.S. at 308.

The “misdemeanor” classification is particularly unhelpful in the domestic violence context. “[M]any perpetrators of domestic violence are charged with misdemeanors, despite the harmfulness of their conduct.” *Lange*, 594 U.S. at 305. As detailed in the Amicus Brief, domestic violence is one of the deadliest and most prevalent forms of violence in the United States. (BAC.15-19). Nevada in particular treats domestic violence as a serious offense, regardless of classification. Arrests are required in cases of suspected domestic battery. NRS 171.137. A conviction for battery which constitutes domestic violence requires imprisonment. NRS 200.485. Domestic violence offenders

are also precluded from possessing firearms under federal and Nevada law. (BAC.17-18).

To the extent any distinction exists in Fourth Amendment law based on the nature of the underlying crime, this case falls on the “violent” and “serious” side of the ledger.

IV. Clearly Established Law Should Be Determined by This Court.

Given the exacting standards for overcoming qualified immunity articulated by the Court, depriving police officers of this immunity is the rare exception, not the rule. Accordingly, what constitutes “clearly established law” for immunity purposes should be decided by this Court, not lower federal courts. (Pet.29-30).

Respondents argue that resolution of this question would make no difference here based on *Welsh*. (BIO.31). As detailed above, *Welsh* is readily distinguishable, and does not constitute “clearly established law” for purposes the circumstances confronted by Petitioners. Respondents also argue that the issue is forfeited. (*Id.*) This Court has discretion to hear and decide issues that were not argued or decided below. See *Hormel v. Helvering*, 312 U.S. 552, 557 (1941).

Respondents argue that lower courts agree that their precedent can establish the law. (BIO.31). The fact remains, however, that *this Court* has never expressly made this determination. See *Wesby*, 583 U.S. at 66 n.8.

This case demonstrates why the Court is best suited to determine clearly established law. In addressing the alterations to *Johnson* by the panel here, the dissent explains: “[Q]ualified immunity turns on what the relevant precedents actually say and not how they might

be misquoted by future panels.” (App.32a). The massive volume of lower court qualified immunity case law does not facilitate clarity or provide guidance. It creates confusion, reduces predictability and encourages the types of civil lawsuits that qualified immunity is designed to prevent.

V. Summary Reversal Is Alternatively Warranted.

Petitioners alternatively seek summary reversal. (Pet.30). Respondents argue that this remedy is unusual, and that there is no error to correct. (BIO.25).

The panel erred because no clearly established law precluded the officers’ conduct. The panel never concluded that the issues surrounding the police techniques used here are “beyond debate,” or that “every reasonable official would understand” that the conduct here was unlawful. *Wesby*, 583 U.S. at 62. The panel never concluded that the City’s officers “knowingly violate[d] the law,” or that they were “plainly incompetent.” *Stanton*, 571 U.S. at 6. The panel’s conclusion that *Johnson* constitutes clearly established law governing the facts of this case was clearly erroneous.



CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Alternatively, Petitioners request that the Court grant review and reverse.

Respectfully submitted,

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