No. 25-179

IN THE

Supreme Court of the United States

OFFICER PHILLIP REININK,
IN HIS INDIVIDUAL AND OFFICIAL CAPACITY,

Petitioner,

v.

SEAN HART, ET AL.,

Respondents.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Does this case give reason for the creation of a test to determine whether the force used by an officer qualifies as lethal, where the record before this Court conclusively answers that question?
2. Should this Court, in instances where there are disputed claims of mistake of fact, abandon the well-established principle that officer intent is irrelevant to the reasonableness of a use of force?

PARTIES TO THE PROCEEDING

Petitioner is Defendant Philip Reinink, an officer with the Grand Rapids Police Department. Respondent is Plaintiff Sean Hart, a private individual.

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INTRODUCTION

Petitioner, Philip Reinink, is an officer employed by the Grand Rapids Police Department. He was on duty one evening in 2020 as members of the Grand Rapids community protested the death of George Floyd, as was happening in communities throughout our country.

While the specific use of force will be discussed in detail below, Reinink (and some of his fellow officers) eventually found himself in a verbal exchange with Respondent, Sean Hart. Mr. Hart did not attend the protests on the day in question. He went fishing. But, a series of events during that drive brought him into contact with Reinink.

During the verbal exchange with Hart, Reinink raised a munition launcher (which has a similar appearance to a firearm), pointed it at Mr. Hart from only several feet away, and fired a metal tear gas cannister directly at his torso, striking him in the shoulder. Reinink admits that the force he used rose to the level of deadly force, admits that such force was not permitted under the circumstances and admits that the use of that force violated Mr. Hart's constitutional rights. But, he says he is nonetheless entitled to immunity under the law because his use of deadly force that night was unintentional and nothing more than a reasonable mistake.

Now that his position was rejected by the 6th Circuit, Reinink wants this Court to upend its Fourth Amendment jurisprudence, suggesting that the Court has been getting it wrong all along. Reinink invites this Court to overturn seminal decisions and abandon foundational legal principles all with the hope of avoiding a civil trial. Gone would be the concept of

totality of the circumstances this Court just re-emphasized and clarified last term in *Barnes v Felix,* 605 U.S. 73 (2025). Likewise abandoned would be the well-established notion from *Graham v Connor*, 490 U.S. 386 (1989) that the underlying intent and motivation of an officer is irrelevant to determining the objective reasonableness of his actions.

Respondent respectfully requests that this Honorable Court deny this petition.

STATEMENT OF THE CASE

A. Relevant factual allegations

On Saturday, May 30, 2020, Sean Hart and Tiffany Guzman decided to go fishing in Grand Rapids, Michigan. Armed with nothing besides their fishing gear, they set off from their home in Muir to fish at the Grand River. Sean was driving Tiffany's black Chevy Suburban, and Tiffany was in the front passenger seat. Before they left, they were unaware of the protests in Grand Rapids that were occurring in response to the killing of George Floyd.

Later, when the fish had stopped biting, Sean and Tiffany decided to drive around through Grand Rapids and listen to music before heading home. Admittedly, neither one of them were familiar with downtown Grand Rapids.

As they neared an intersection where protesters were present, Sean and Tiffany's windows were down and they were playing music. While at the intersection, "Fuck the Police" (a song that was released by N.W.A. more than 30 years ago) was blaring from the speakers of their car.

At the intersection, three officers approached Tiffany's passenger window. As the officers approached,

another one of their colleagues can be seen in the video, creating more disturbance by unpinning a cannister of tear gas and throwing it into the street nearby. Sean had no recollection of the three officers saying anything to him or Tiffany. Yet one of the officers- Benjamin Johnson ("Johnson")-suddenly raised and pointed his gun at them.

Tiffany and Sean never heard any officer ask them to disperse nor did they, at any point in the evening, hear requests to disperse come over loudspeakers. Kyle Veldman, another citizen in the area, who happened to be filming the protests at that time, also denied being able to hear any announcements over the loudspeaker.

Sean completed his left turn before coming back around to the same intersection to park. Once parked, Sean walked across the street toward the police line with both of his hands at his side. The police were fully armed and protected with SWAT gear. Sean was unarmed. Sean approached the officers on the line to ask why they thought it was appropriate to draw and point their weapon at Tiffany. But before Sean could express his question, Officer Bush charged, got no more than a foot from his face, and sprayed him with OC or pepper spray. Sean didn't hear Bush or any other officer give him a warning before he was barraged with pepper spray. Kyle Veldman again didn't hear the officer warn Sean either.

When Bush forced the pepper spray into Sean's face, Sean turned away. In the next instance, Sean turned his head back toward the police line, without aggression, and Petitioner Philip Reinink ("Reinink") shot Sean with a Spede-Heat munition from point

blank range.[1] Reinink also claimed he gave Sean a warning before he fired the munition, while at the same time Reinink acknowledged that he had his mask on and that the surroundings were very noisy. A Spede-Heat munition is meant to be shot from 450 feet away and not at a person. It is *deadly force* if shot at a person.

Grand Rapids' then Chief of Police—Eric Payne—held a press conference with one of his munitions officers to explain what went wrong when Sean was improperly shot with the wrong munition. The Chief characterized Sean being shot with a Spede-Heat munition at close range, as a "mistake we all regret." The Chief also disclosed that their internal investigation concluded that the force Reinink used against Sean was indeed unreasonable. Despite the sustained allegations against Reinink, he was only subjected to a two-day suspension without pay. Reinink was also found to have violated the VARD policy and procedure for his BWC.

In his deposition, Reinink acknowledged that shooting Sean intentionally would constitute "excessive force." When he was investigated by Internal Affairs, Reinink explained that he was aware of the munitions he had on his person before he loaded his weapon and that he had loaded his weapon before Sean had parked and started walking toward the

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[1] In an interview Petitioner references, Sean said to the reporter that after he was sprayed, he was thinking about doing something that "could have ended bad." When asked about this statement in his deposition, Sean explained what he meant by "ended bad" was that he would have gotten into an argument.

police line. Though he knew the difference between the munitions he had on his person as well as the distinct sound made when a Spede-Heat is fired versus a muzzle blast, Reinink did not immediately report this conduct to his supervisor, nor did any of his colleagues. Nonetheless, had Reinink recognized the difference between the two munitions or followed procedure and loaded his weapon in front of someone, he wouldn't have shot Sean with the Spede-Heat munition at close range.

B. Procedural History

a. District Court proceedings

As a result of the events described above, Hart and Guzman commenced this cause of action pursuant to 42 U.S.C. § 1983. Plaintiffs' Second Amended Complaint, filed on March 22, 2021, presented a combination of claims under both state and federal law. Under federal law, Plaintiffs alleged that Defendants Reinink, Bush and Johnson violated their Fourth Amendment rights when they utilized impermissible and excessive force. Plaintiffs likewise alleged that Defendant Grand Rapids was liable as a municipality because its policies, practices, procedures and customs were the moving force behind those constitutional violations. Lastly, Plaintiffs asserted that the individual officers were also liable under state law for assault and battery and gross negligence.

There were ultimately two motions for summary judgment filed on April 22, 2022. The first motion was filed on behalf of Defendants Grand Rapids, Johnson and Bush. The second motion was filed solely on behalf of Reinink. Those motions collectively argued that the individual officers were entitled to qualified immunity relative to Plaintiffs' Fourth

Amendment claims because the uses of force were permissible under the circumstances Defendants faced. Defendants contended that Johnson and Bush used proper force in response to what they deemed a riot situation. They argued that Defendant Reinink was entitled to immunity because he intended to use a permissible level of force and only accidentally fired an improper munition at Mr. Hart. They also argued that immunity was proper because the constitutional rights at issues were not clearly established. Defendants likewise argued that because there was no underlying violation, Defendant Grand Rapids could not be held liable as a municipality, just as it couldn't be held liable where its policies, practices and procedures were all sufficient.

Plaintiffs filed their responses to Defendants' motions for summary judgment on May 20, 2022. Plaintiffs argued that none of the individual officers were entitled to qualified immunity. Plaintiffs contended that neither Johnson nor Bush were entitled to use force under the applicable case law as Plaintiffs had not committed any crimes and were not posing any threat to the officers or the public. Plaintiffs argued that Reinink's use of force was also impermissible and that his assertions that he did not intend the force he used merely raised credibility issues that necessitated a jury's resolution. Plaintiffs argued that each of these constitutional violations were the direct result of the policies, practices and procedures of Grand Rapids, who had traditionally failed to properly investigate and act on complaints of excessive force from the public.

The District Court did not hold a hearing on the motions for summary judgment. It issued its opinion and order granting those motions on March 31, 2023.

The Court held that the individual officers were each entitled to qualified immunity. The Court concluded that Bush and Johnson were both permitted to use the level of force they each used and that it was not clearly established that their conduct violated Plaintiffs' constitutional rights. The Court held that contrary to Plaintiffs' argument, whether Reinink mistakenly used the improper munition when he fired at Mr. Hart was not a matter of credibility and that he was entitled to immunity where he intended to use a permissible level of force under the circumstances. The Court held that Grand Rapids was entitled to summary judgment because there was insufficient evidence of a persistent pattern of that would demonstrate deliberate indifference by the municipality. Finally, the Court dismissed Plaintiffs' state law claims without prejudice, electing to not maintain jurisdiction over those claims.

b. Circuit Court proceedings

Following the grant of summary judgment, Hart and Guzman timely filed their Notice of Appeal on April 26, 2023. They appealed the grants of summary judgment to each claim against each Defendant.

On appeal, the Sixth Circuit affirmed the district court in part and reversed in part in a 2-1 decision. *Hart v City of Grand Rapids*, 138 F.4th 409 (2025). The court affirmed the grants of summary judgment to Defendants Bush and Johnson, as well as the grant of summary judgment in favor of Grand Rapids relative to the claim of municipal liability. None of those claims are at issue in Reinink's petition.

At issue in this petition is solely Reinink's contention that the majority erred in reversing the 6th Circuit's grant of summary judgment in favor of Reinink

relative to Mr. Hart's claim under the 4th Amendment. When addressing the viability of that claim, the majority acknowledged that Reinink's counsel argued that he did not use lethal force that day. However, the majority then explained that numerous witnesses, *including Reinink himself*, acknowledged the lethality of Spede-Heat when used improperly. And, as the majority explained, it mattered not that Reinink claimed that he intended to use a different, non-lethal munition. That is because this Court's jurisprudence, time and time again, has indicated that the intent of the officer is irrelevant to the excessive force analysis.

Having determined that Reinink used lethal force, the majority then explained that such force is only permissible when an officer reasonably believes that the subject poses an imminent threat of serious harm. Turning to 6th Circuit jurisprudence regarding when such a threat exists, the majority analyzed the factors set forth in *Palma v. Johns*, 27 F.4th 419, 432 (6th Cir. 2022). The majority held that pursuant to those factors, Mr. Hart did not pose an imminent threat of harm and that a reasonable jury could therefore determine that Reinink's use of force was constitutionally excessive.

One member of the panel dissented in part and concluded that Reinink was entitled to qualified immunity relative to Mr. Hart's claim of excessive force. Importantly, the dissent was seemingly not swayed by Reinink's argument that his alleged intentions were relevant to the immunity analysis. Instead, the judge determined that the right at issue in this case was not clearly established through any binding precedent and that immunity was thus required.

REASONS FOR DENYING THE WRIT

Petitioner offers this Court two different grounds on which he contends a grant of certiorari is proper and respondent will address those grounds in turn. As an initial note, however, Petitioner has failed to demonstrate any compelling reason for this Court to invoke its jurisdiction. He has not demonstrated that there is a split among the circuits on any issue in this case. Similarly, he hasn't shown that either of the proposed grounds for granting certiorari are arising, and causing confusion, in our lower courts. Petitioner asks the Court to upend its Fourth Amendment jurisprudence fundamentally, overturning numerous foundational principles that have been honed for decades. He asks that special tests be created and qualified immunity be enlarged, all to accommodate his credibility-dependent defense.

Petitioner is framing this as if the court would merely be creating new tests to fill gaps in its jurisprudence-new rules that fit neatly within those that preexisted them. That's not true though where, like here, those new rules directly contradict this Court's prior rulings. Petitioner is asking this Court to say that intent now matters in excessive force cases and that the totality of the circumstances test that it just reaffirmed in *Barnes v. Felix* actually wasn't right.

Of course, Petitioner will say that he only asks this court for disregard those principles under the very specific circumstances of this case, in which an (alleged) mistake of fact resulted in an (allegedly) unintentional use of lethal force. But there's no reason why the disregard of those principles would stay limited to cases involving defenses of mistake. If intent suddenly matters in this officer's invocation of qualified immunity in this case, there's no logical reason it wouldn't

apply to future invocations by officers with factually distinguishable defenses.

I. There is no need for Petitioner's poorly formulated test to determine whether he used lethal force where the record establishes that fact

Petitioner first contends that this Court should grant this petition in order to formulate a test to address whether the force he used toward Mr. Hart was lethal in nature. Yet, as the Sixth Circuit recognized, the record already establishes that the force used here was lethal. And in addition, the test that Petitioner proposes this Court adopt is glaringly inadequate on its face. Its adoption would undermine this Court's excessive force jurisprudence and would weaken the Fourth Amendment in some of the gravest of scenarios.

A. Petitioner admits, and the record demonstrates, that lethal force was used

First turning to Petitioner's argument that the majority erred in concluding that the force used was lethal, the record demonstrates otherwise. Again, as explained in the Statement of the Case, Petitioner had two different munitions available to him that evening. The first, Muzzle Blast, is a non-lethal munition that fires a powder-based irritant and the subject. It is designed to be used at close range. The second munition available to Petitioner, Spede-Heat, is *not* designed to be used at close range.

Below, Reinink argued that Mr. Hart was incorrect in arguing that his use of Spede-Heat in these circumstances should be analyzed under the lethal force framework. The majority properly rejected the argument:

> Officer Reinink argues that the district court appropriately analyzed his mistaken discharge of Spede-Heat as the use of "the wrong non-lethal munition" in tumultuous circumstances. At his deposition, however, Officer Reinink admitted that he was trained that some uses of Spede-Heat could result in serious injury and even death, and thus, Spede-Heat could "be considered a deadly weapon." Deposition testimony by others corroborates this understanding. For instance, as GRPD Lieutenant Matthew Ungrey—the SRT unit commander—explained, Spede-Heat cannisters' "muzzle velocity" requires the munition be shot into the air at an angle of 45 to 60 degrees and not directly at a person "unless it would be a life or death situation" because it would "absolutely" constitute lethal force. Likewise, GRPD Chief Eric Payne acknowledged that firing Spede-Heat at a person "at . . . that distance is considered potential deadly force." [*Hart*, 138 F.4th at 420.]

So, Petitioner, his Chief of Police and his SRT unit commander all believe that the use of Spede-Heat at close range- as undisputedly occurred here- amounts to lethal force.

Petitioner is silent about the fact that he admitted he used excessive force. Likewise, he fails to acknowledge that not a single member of this panel- including the dissenting judge- expressed any difficulty over whether this amounted to lethal force. Indeed, Petitioner has not provided this Court with any

body of decisions from our district or circuit courts in which any court expressed a need for guidance from this Court on this point.

That the weapon in this case is not a knife or a firearm is not cause for confusion regarding its lethality as used on Mr. Hart. The 6th Circuit long ago observed that "as any faithful reader of mystery novels can attest, an instrument of death need not be something as obviously lethal as a gun or knife. The ubiquitous 'blunt object' kills just as effectively." *Robinette v. Barnes*, 854 F.2d 909, 912 (6th Cir. 1988). Here, where every notable witness and the petitioner himself agreed that Mr. Hart was subjected to lethal force, there is no need to further consider the question.

B. In addition to being unnecessary, Petitioner's proposed test fails on multiple levels

Not only is there no need to consider the nature of the force used in this case, but Petitioner's attempt to formulate a test for this Court leaves much to be desired. That proposed test, as quoted from the petition, is as follows:

> "(1) whether the item, animal, weapon, or tool is typically used to inflict deadly force (an objective inquiry); (2) whether the officer who used that item, animal, weapon, or tool intended to cause the plaintiff death or serious bodily harm close to death (a subjective inquiry); and (3) whether the use of-force caused the plaintiff death or serious bodily harm close to death. If each of these factors weighs in favor of a deadly force finding, then an officer's use-of force should be

> analyzed under the deadly force standard. If not, the case should be analyzed under the general three-factor totality of the circumstances analysis.

The test fails on numerous levels. Beginning with the first prong, the manner in which the object or instrumentality is typically used should be of no concern where a great number of items could be used lethally despite being traditionally used for other purposes.

The formulation of the second prong effectively ignores the most seminal cases in this Court's Fourth Amendment jurisprudence. Baked right into that element is an invitation to consider the intent of the officer. Yet, this Court has conclusively established that "[a]n officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." *Graham v Connor*, 490 US 386, 397; 109 S Ct 1865; 104 L Ed 2d 443, 456 (1989).

The third prong of Petitioner's test fares no better. It invites this Court to consider the result of the force when deciding whether that force was indeed lethal. And importantly, Petitioner stresses that each of the three prongs of this test must be satisfied in order for force to be considered lethal. That proposed requirement would lead to disastrous results.

Consider the following scenario. An officer sees a fleeing individual who is unarmed, non-violent and suspected of a misdemeanor property crime. The officer pulls his firearm and points it at the individual. With full intentions of killing the offender, the officer provides no warning before firing five bullets at him.

Four miss and one grazes the subject's arm, causing minor injury. The subject surrenders.

Under this Court's jurisprudence, the officer in the above scenario doubtlessly used lethal force in violation of the Fourth Amendment, and the measure of damages would be for a jury to decide. Not so under Petitioner's proposed test. The weapon used was traditionally lethal, thus satisfying the first proposed prong. The officer intended to kill, satisfying the second proposed prong. But, because that officer had poor aim and merely grazed the subject, there was no death or great bodily harm that resulted. Because not all three prongs are satisfied, the officer did not use lethal force in Petitioner's view.

Petitioner has not shown a need for his proposed test. There is no need for the test in the present case in light of the record evidence. There is no need in general in the legal community for the proposed test where Petitioner has not shown any cases in which courts or litigants express confusion on the subject. And finally, not only has Petitioner shown no need for his proposed test, but he has devised a test that would both require the overturning of numerous foundational principles in Fourth Amendment jurisprudence and that would erode the protections afforded by our Constitution.

II. Petitioner's proposed test regarding his alleged mistake of fact is contrary to the factual record. More importantly, it is contrary to this Court's Fourth Amendment jurisprudence.

Next, Petitioner contends that this Court should grant this petition to give consideration to the relevance of what he calls an officer's "mistake of fact"

when determining the availability of qualified immunity. Essentially, Petitioner proposes that 1.) if an officer mistakenly uses a different type or level of force than he intended and 2.) that use of force was consequently excessive, then 3.) the officer is entitled to immunity so long as his mistake was reasonable. According to Petitioner, the present case is the perfect vehicle for effectuating that rule. The record demonstrates differently.

A. Petitioner's argument is premised on the disputed claim that he made a mistake of fact

While Respondent does not believe that there is *any* case that could serve as the perfect vehicle for what is ultimately a flawed test proposed by Reinink, the present case certainly is not the one. On numerous occasions in his petition, Reinink asserts or implies that it is undisputed that he did not intend to use the Spede-Heat munition on Mr. Hart. He states that all agree that Reinink's actions were the product of the mistaken belief that he was using Muzzle Blast. That is not true.

Respondent has never conceded that Reinink intended to use non-lethal force on the night in question. The circumstances do not allow for such a concession. As Petitioner has emphasized at every level, the night in question was tense and officers were under great stress. According to Petitioner, officers perceived that Mr. Hart was intentionally antagonizing the protesters by playing music that was critical of the police. Then, after he seemed to leave the scene he returned and again caused more commotion.

Reinink insists that he only intended to use Muzzle Blast on Mr. Hart. Perhaps. But it is more than

plausible that Reinink was angry, that he had enough, that his patience wore thin and that he elected to gratuitously and needlessly use lethal force. He would not be the first officer who has done so. Petitioner essentially asks this Court to conclude that he surely did not intend lethality because such an intention would have been unjustified. Mr. Hart agrees with the latter point, but not the former. While lethal force was not justified, that in no way means it was unintended.

Ultimately, as is explained below, Reinink's intent toward Hart is irrelevant under all controlling authority. However, to the extent he believes a new test should be created in cases where the types of force was unintentionally employed, this Court would need a case in which that fact had been established. This record, in contrast, allows for different conclusions depending on the credibility determinations made by the jury at trial. Thus, this is an imperfect case for what is demonstrably an imperfect test proposed by Petitioner.

B. There is no need for Petitioner's proposed test, which upends this Court's jurisprudence

Moving from the fact that this could never be the proper case to address the concept of mistaken use of force, Petitioner strolls right into an even bigger problem. Petitioner's Issue II suffers from the same fatal problem as his Issue I- that is, Petitioner once again fails to demonstrate that there is a spit among our circuits that needs harmonizing, nor that any court has expressed any need for guidance on this legal issue. In each instance, Petitioner is doing nothing more than proposing a solution to a "problem" that only

impacts him. That is not a proper use of this Court's limited resources.

Petitioner's proposed test is premised on an analysis of officer intent. He directly asks this Court to consider whether the type of force he used was different than the type of force he *intended* to use. As is explained above, there is no agreement that the force used here was mistaken. But, even if it was, this Court has made clear that the intent of an officer is irrelevant to the reasonableness of force consideration.

In *Graham*, this Court explained that "[a]s in other Fourth Amendment contexts, however, the 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, *without regard to their underlying intent or motivation*." *Graham*, 490 US at 397. Continuing, this Court observed that "[a]n officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." *Id*.

The *Graham* Court necessarily had to address the relevance of officer intent because of a proposed test that sought to incorporate intent into the applicable framework. Rejecting that attempt, this Court stated "[t]hat test, which requires consideration of whether the individual officers acted in 'good faith' or 'maliciously and sadistically for the very purpose of causing harm,' is incompatible with a proper Fourth Amendment analysis." *Graham*, 490 US 386 at 397.

In an effort to avoid the solidified notion that intent does not matter to the analysis of reasonableness

of force, Petitioner directs this Court to its previous statement that "[t]he protection of qualified immunity applies regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson v Callahan*, 555 US 223, 231; 129 S Ct 808; 172 L Ed 2d 565, 573 (2009) (internal quotation omitted). Yet, *Pearson* was not an excessive force case but was instead an illegal search and seizure case decided twenty years after *Graham*. Its general explanation of the contours of qualified immunity did not modify *Graham's* holding.

The principles from *Graham* that Petitioner so readily seeks to disregard have been relied on by the courts and litigants of this country for decades. Moreover, they have been reaffirmed by this Court within this calendar year. In *Barnes*, this Court never referred to the intent of the defendant officer when conducting its analysis, but explained that the "inquiry into the reasonableness of police force requires analyzing the totality of the circumstances. There is no easy-to-apply legal test or on/off switch in this context. Rather, the Fourth Amendment requires, as we once put it, that a court slosh its way through a fact bound morass." *Barnes*, 605 US at 80 (internal citations and quotations omitted).

And when this Court addressed the notion in *Barnes* that it should only consider certain moments in time when conducting its use of force analysis, it noted that "no rule that precludes consideration of prior events in assessing a police shooting is reconcilable with the fact-dependent and context-sensitive approach we have prescribed. A court deciding a use-of-force case cannot review the totality of the circumstances if it has put on chronological blinders." *Id*. at

82. Now, this Petitioner is asking this Court to mandate the use of blinders in each case in which an officer alleges mistake of fact. Ignore the force that was actually used and whether it was legally justified and instead faithfully accept the officer's claims of mistake in the face of contrary evidence.

Petitioner is inviting this Court to overturn elements of a host of cases, including *Graham* and *Barnes*. He asks for that sea change in the law while failing to identify any difficulties faced by either lower courts or litigants in applying or understanding the currently applicable test. Likewise, Petitioner does not cite to any meaningful number of cases that have included circumstances like these. In other words, Petitioner is asking for an overhaul of our Fourth Amendment jurisprudence that would essentially only serve his very specific interest. This is an invitation to this Court to take the extraordinary step of invoking its jurisdiction to create a solution to a non-existent problem. And that "solution" would only create more jury issues in cases where these tests were invoked, and more complications for our trial and appellate courts.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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