No. 25-267

IN THE

Supreme Court of the United States

MILTON GREEN,

Petitioner,

v.

CHRISTOPHER TANNER, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The questions presented by Petitioner are misleading and each is based on a false premise.

With respect to the first question, it erroneously presumes that Detective Tanner's use of force turned on a "mistake of fact"—which is not the case when Detective Tanner's use of force is appropriately viewed "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" on these undisputed facts. *Kisela v. Hughes*, 584 U.S. 100, 103 (2018) (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)). The answer to Petitioner's first question is otherwise well settled and there is no cause for this Court to answer it again.

With respect to Petitioner's second question, it egregiously mischaracterizes the Eighth Circuit's opinion by erroneously presuming that the Eighth Circuit held that deadly force is *per se* constitutional regardless of the circumstances, so long as the subject is holding a gun. Of course, the Eighth Circuit did no such thing.

The only question presented here is intensely fact-bound and does not warrant certiorari. It is:

1. Whether a police officer who is repeatedly shot at by three violent felony suspects in a stolen vehicle during a vehicular pursuit violates the Fourth Amendment or is otherwise entitled to qualified immunity where, very shortly after the stolen vehicle crashed and two of the armed suspects engaged in an ongoing gunbattle with the first police officers to arrive at the scene of the crash, the officer arrives and is confronted by a subject in street

clothes exactly where he expected the third violent felony suspect to be and takes objectively reasonable action to defend himself and other officers after the subject picked up a gun and raised and pointed a metallic nickel-plated object directly at the officer?

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INTRODUCTION

The Petition for a Writ of Certiorari should be denied because it raises an issue that is intensely fact-bound and primarily concerns a correct application of established Fourth Amendment and qualified immunity principles to a fact-intensive record. It presents no genuine, mature conflict among the circuits on a question of national importance, nor does it warrant this Court's review to re-affirm established Fourth Amendment summary judgment standards in a decision that would have very limited or no applicability to other fact patterns.

Even if this Court were to undertake a plenary review of this record to issue a fact-specific decision with limited or no applicability, it would apply settled law to inevitably reach the status quo: the application of qualified immunity and summary judgment in favor of Respondents.

The Petition for a Writ of Certiorari should be denied.

STATEMENT OF THE CASE

Over the course of a little less than three minutes on the evening of June 21, 2017, the entire series of events out of which this action arises—from a spike-stripped fleeing vehicle to rolling gunfire at police officers in pursuit and, finally, to a tragic officer-involved shooting near the scene of the crashed suspect vehicle—occurred in the City of St. Louis. In the end, Detective Christopher Tanner was confronted by an armed black male subject in similar street clothes exactly where he expected to confront the murderous black male felons that had tried to kill him and other officers during the pursuit. Indeed,

the black male subject was laying prone with a gun next to him exactly where the actual suspect had been laying prone with his gun next to him just seconds prior. When the subject stood, picked up the gun, and pointed his arm directly at Tanner with a nickel-plated object in it, Tanner had probable cause to believe the subject posed an imminent threat of serious harm, announced "police, drop the gun," and fired one shot—striking the subject in the arm. Tragically, and unbeknownst to Detective Tanner at the time, the subject turned out to be an off-duty police officer named Milton Green. At the time Detective Tanner reasonably but mistakenly believed Green was one of the three felony suspects, he had no reason to believe an off-duty officer was in the area at all—much less picking up a gun late at night in a city side yard exactly where the actual suspect had been seconds before during a nearby gunbattle between two other felony suspects and police.

The tense and dangerous events which led to this shooting began shortly before 10:00 p.m. when Detective Tanner and other St. Louis Metropolitan Police Department (SLMPD) officers surveilled a stolen vehicle in downtown St. Louis. (JA2066). The stolen vehicle fled from police when its occupants detected they were being surveilled, and Lt. Paul Piatchek deployed spike strips to puncture the stolen vehicle's tires. (JA2067). Almost immediately after the vehicle's tires were spiked, multiple black male suspects in the stolen vehicle unleashed a terrifying hail of gunfire at Detective Tanner and other officers in pursuit. (JA2067). Multiple police vehicles veered off the road when they were struck by gunfire from the murderous felony suspects. (JA2067). It is undisputed that Tanner believed police officers in those vehicles had been shot or killed. (JA2067). Still, Detective Tanner and other officers did their duty by continuing the pursuit.

The stolen vehicle then crashed near the intersection of Park Lane and Astra Avenue—adjacent to off-duty officer Milton Green's house at 5991 Astra. (JA2068; JA1343). Two armed suspects exited the stolen vehicle and fled toward a gangway. Detectives Frye and Ellis, who were the first officers to arrive on scene, pursued these two suspects and, after announcing police and ordering them drop their guns, were again shot at and returned fire. (JA2070–71; JA1343). Meanwhile, a third armed suspect exited the crashed stolen vehicle and ran into Green's yard near where Green—who was off-duty and wearing street clothes—was working on a car in his driveway with his friend. (JA1343). Plaintiff and his friend attempted to conceal themselves behind one of the cars in the driveway. (JA1344). The third armed suspect then dropped face down on the ground in Green's yard as gunshots from the nearby gunbattle between the other two armed suspects and police rang out. (JA1344). The third suspect got up, checked whether he was shot, picked up his gun, and proceeded to go through Green's yard. (JA1344). The third suspect then pointed a gun at Green's friend's car, behind which Green and his friend were hiding. In response, Green pointed his gun at the suspect and said, "[p]olice, put the gun down." The third suspect ran towards the alley with his gun still pointed at Green. (JA1344). Green then heard a voice from behind him say "[p]ut the gun down." (JA1344). Surmising that the command came from a police officer and that it was directed toward him, he dropped the gun and lay prone on the ground. (JA1345). The command had come from Detective Carlson who, after identifying Green, yelled out: "[t]here's a[n] off-duty police officer here, don't shoot. His name [sic] Milton Green. He lives here. Don't shoot." (JA1345). Detective Carlson told Green to come to him,

but did not direct Green to pick up his gun. (JA1345). As Petitioner concedes, Detective Tanner did not hear or see any of this because he was just arriving at the scene. (Pet'r. Br. 22).

Meanwhile, Detective Tanner and his partner had approached the scene while gunshots from the gunbattle with the first two suspects echoed through the dark city streets. From a distance, Detective Tanner had seen suspects bail out of the crashed stolen vehicle and expected to confront them when he arrived. (JA2072). After Detective Tanner and his partner exited their police vehicle, Detective Tanner saw a black male wearing street clothes like those of the suspects laying face down on the ground with a gun next to him and reasonably believed the black male was one of the felony suspects. (JA2075). From approximately fifty feet away, Detective Tanner saw the subject pick up the gun, raise his arm, and point a nickel-plated object directly at him. (JA1345–46; JA2077). As Detective Tanner explained in his post-shooting interview, he hit the metallic nickel-plated object with his flashlight from approximately fifty feet away and, having just watched the subject pick up a gun, reasonably perceived that the subject was pointing a "nickel-plated gun" directly at him. (JA109–110). Green explicitly testified that the metallic object in one of his hands was pointed directly at Detective Tanner when he was shot and that he was holding a gun in his other hand when he was shot. (JA443–45). Detective Tanner yelled "police, drop the gun" and, when the subject did not drop the gun, Detective Tanner fired one shot at the subject, who was later identified to Tanner as Green. (JA2076–77). Green fell to the ground. (JA1349). Green then voluntarily went with several officers to the hospital. (JA1349).

Procedural History

Plaintiff Milton Green commenced this action on June 17, 2019. After discovery concluded, Defendants Christopher Tanner and City of St. Louis moved for summary judgment on December 12, 2022. Tanner moved for summary judgment on the grounds that he is entitled to qualified immunity because his use of force was objectively reasonable where he had probable cause to believe Green posed an imminent threat of serious physical harm, or at least because he did not violate clearly established law under these unique, rapidly evolving circumstances. The City moved for summary judgment on the federal *Monell* claim on the grounds that there was no constitutional violation and no evidence that any policy, practice or custom was the moving force behind any such violation.

On March 6, 2023, the District Court granted summary judgment in favor of defendant Tanner on Count I, II, and IV and in favor of the City on Count III. On March 21, 2023, Green filed a Rule 59(e) Motion to Alter or Amend and Submit Newly Discovered Evidence. On April 28, 2023, the District Court denied Plaintiff's Motion to Alter or Amend and to Submit Newly Discovered Evidence. On April 8, 2025, the Eighth Circuit affirmed in its unanimous decision and held, as had the District Court, that Tanner's use of force was objectively reasonable on the undisputed material facts taken in the light most favorable to Plaintiff. The instant Petition for Writ of Certiorari followed.

ARGUMENT

I. This Court has repeatedly answered Petitioner's first question presented and this case is a poor vehicle to answer it again.

Petitioner's first question erroneously presumes that Detective Tanner's use of force turned on a "mistake of fact" and then asks whether "the reasonableness of [Detective Tanner's] mistake [of fact] [is] a legal question for the court at summary judgment or a factual question for a jury"? But this Court has repeatedly answered this question and explicitly held that, once the predicate undisputed material facts are established as they were in this case, "the reasonableness of [an officer's] actions . . . is a pure question of law." *Scott v. Harris*, 550 U.S. 372, 381 n.8 (2007).

This axiomatic principle follows from decades of controlling law from this Court which the lower courts uniformly apply. *See e.g.*, *Hunter v. Bryant*, 502 U.S. 224, 227–28 (1991) (holding that law enforcement officials who "reasonably but mistakenly conclude that probable cause is present" are entitled to immunity, reversing the Ninth Circuit's determination that the reasonableness of an officer's probable cause determination is a question for the trier of fact, and reiterating that ***the court*** should determine whether the officer acted reasonably under the circumstances) (quoting *Anderson v. Creighton*, 483 U.S. 635, 641 (1987)). It makes no difference whether a mistake of fact or law is involved because, as this Court recently reiterated, the Fourth Amendment tolerates objectively reasonable mistakes. *Heien v. North Carolina*, 574 U.S. 54, 66–67 (2014); *see also Saucier v. Katz*, 533 U.S. 194, 205

(2001) ("If an officer reasonably, but mistakenly, believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed").

The Eighth Circuit's decision in this case faithfully adhered to this well-established precedent and correctly recognized that "[o]nce the predicate facts are established, the reasonableness of [Detective Tanner's] conduct under the circumstances is a question of law." *Green v. City of St. Louis*, 134 F.4th 516, 523 (8th Cir. 2025) (quoting *Tlamka v. Serrell*, 244 F.3d 628, 632 (8th Cir. 2001)). The Eighth Circuit then proceeded with a straightforward application of established Fourth Amendment and qualified immunity principles to a set of undisputed material facts and correctly determined, as had the district court before it, that Detective Tanner's use of force was objectively reasonable.

Petitioner ties himself in knots to pretend that the Eighth Circuit's decision is an outlier exacerbating an imagined circuit split, but even minimal scrutiny reveals that Petitioner's bid for certiorari is nothing more than a thinly veiled attempt to upend foundational Fourth Amendment and qualified immunity jurisprudence in favor of new law that would permit juries to second-guess the objectively reasonable actions of police officers forced to make split-second decisions under tense and rapidly evolving circumstances in every case.

In putative support of this attempt, which would endanger public safety and chill legitimate law enforcement action if successful, Petitioner insists that this case should have gone to a jury but wholly fails to identify any dispute

of material fact for a jury to resolve. Petitioner fails to do so because the material predicate facts upon which the Eighth Circuit relied in its correct decision were all undisputed. It is undisputed that Detective Tanner and other officers had been shot at by three felony suspects during a vehicular pursuit of a stolen vehicle. It is undisputed that Detective Tanner arrived at the scene of the crashed stolen vehicle expecting to encounter armed felony suspects who had demonstrated their intention to murder police officers. It is undisputed that Detective Tanner encountered Green wearing similar street clothes exactly where one of the armed suspects had been seconds prior and exactly where Detective Tanner expected the armed felony suspect to be. Critically, ***it is also undisputed that Green was holding a gun at the moment he was shot*** and was readily capable of pointing and firing that gun at Detective Tanner or other officers in a split-second. All of these facts supported Detective Tanner's objectively reasonable conclusion that Green was a felony suspect who meant to kill police officers rather than be taken into custody.[1] These undisputed material

1. The undisputed facts were also such that an objectively reasonable officer in Tanner's position could not have known that Green was actually an off-duty police officer instead of the felony suspect he appeared to be. Indeed, Petitioner conceded as much by agreeing that Detective Tanner was not present for the earlier verbal announcement that Green was a police officer and by never asserting or arguing that Detective Tanner recognized the metallic nickel-plated object in Green's hand as a police badge but fired anyway. Petitioner presumably made this strategic choice both because there was no evidence to support an argument that Detective Tanner recognized the police badge and because any argument that Detective Tanner knowingly shot a police officer displaying a police badge would be implausible. Petitioner still does not make that argument and it is waived.

facts impelled the conclusion that Detective Tanner's use of force under these tense and rapidly evolving circumstances was objectively reasonable, or at least that he is entitled to qualified immunity.

None of the undisputed facts underlying the Eighth Circuit's decision are what Petitioner artfully calls "factual mistakes"—at least not when the reasonableness of Detective Tanner's use of force is judged, as it must be, "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Kisela*, 584 U.S. at 103 (citing *Graham*, 490 U.S. at 396. That is why, despite premising his bid for certiorari on the unfounded assertion that the reasonableness of so-called "factual mistakes" should have gone to a jury in this case, Petitioner utterly fails to identify any genuine dispute of material fact underlying the Eighth Circuit's decision. Instead, Petitioner offers only the tellingly vague assertion that Detective Tanner "made a whole lot of factual mistakes" and glosses through a series of examples he envisions this Court reviewing on appeal. (Pet'r. Br. 1). These include that Green "was not a dangerous criminal" and that a different police officer had recently announced "there's an off-duty police officer here, don't shoot." (Pet'r. Br. 1). But these post-hoc observations do not suffice to create a genuine issue of material fact under the applicable standard because Detective Tanner knew none of this at the scene or in the split-second he believed his life or the life of others depended on his fateful judgment. To the contrary, from Tanner's perspective at the scene and on the undisputed facts viewed in the light most favorable to Green, Tanner had every reason to believe that the man he later learned was Green ***was*** a fleeing felon, that this man had just shot at and attempted to kill Tanner and

other police officers, and that Green posed an imminent threat of serious harm when he was shot.

So, utterly unable to point to a genuine dispute of material fact, Petitioner strains to artificially inject the issue of Detective Tanner's objectively reasonable perception of Green's nickel-plated badge as a nickel-plated pistol to conjure some ethereal basis for certiorari. But, notwithstanding that Detective Tanner's split-second perception was objectively reasonable on the undisputed facts, ***the Eighth Circuit did not address or analyze that reasonable perception because it did not need to.*** Instead, as Petitioner acknowledges (Pet'r. Br. 22), the Eighth Circuit affirmed in favor of Respondents on alternative grounds which irrefutably give no cause for certiorari review. Specifically, the Eighth Circuit correctly held that, because the undisputed facts supported Detective Tanner's objectively reasonable belief that Green had just shot at police to evade arrest and then picked up a gun to do so again, it was constitutionally reasonable for Detective Tanner to use deadly force pursuant to *Graham* and its progeny. *Green*, 134 F.4th at 525 (holding that, under these specific circumstances, and even if Green's gun was pointed to the ground, there was still a serious risk that he could raise the gun and fire at officers in a split second such that Detective Tanner's use of force was objectively reasonable) (citing *Liggins v. Cohen*, 971 F.3d 798, 801 (8th Cir. 2020)).

Even if this Court were inclined to upend established law by granting certiorari to decide that the "reasonableness" of an officer's split-second perception should be decided by juries even where, as here, the perception was objectively reasonable *on* ***the undisputed facts***, this case is an

exceedingly poor vehicle in which to do so. Like the Eighth Circuit, this Court would not need to reach the issue of Detective Tanner's objectively reasonable perception of a nickel-plated gun because, even setting that issue aside, it remains undisputed that Green was holding a real gun that he could have raised and fired in a split second. If this Court were ever inclined to grant plenary review in a fact-intensive case regarding an officer's mistaken perception of an object as a gun, it should ***not*** do so in a case like this one where everyone agrees the subject was wielding a gun readily capable of lethal use.

Compelling reasons to deny certiorari premised upon Detective Tanner's reasonable perception of the nickel-plated badge as a nickel-plated gun do not end with the fact that the issue is not squarely presented. Even if this Court were to reach it, Petitioner's bid for certiorari on that point is little more than an invitation to create new law permitting juries to probe the subjective beliefs of police officers even where the predicate material facts upon which those beliefs are based are undisputed. Petitioner's argument shows why.

Petitioner argues that "[i]t is the jury that is tasked with assessing whether Tanner is telling the truth—that is, whether he in fact perceived Green to be pointing his gun at him . . . " (Pet'r. Br. 18). Not so. Instead, this Court has repeatedly and forcefully held that the applicable objective standard, as opposed to the subjective one erroneously advanced by Petitioner, requires courts to analyze the reasonableness of a use of force from the perspective of a hypothetical reasonable officer at the scene without regard to the actual officer's subjective state of mind. *Nieves v. Bartlett*, 587 U.S. 391, 403 (2019)

(quoting *Kentucky v. King*, 563 U.S. 452, 464 (2011) ("Legal tests based on reasonableness are generally objective, and this Court has long taken the view that evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer."); *see also Heien*, 574 U.S. at 66–67 (2014) (holding that the Fourth Amendment tolerates reasonable mistakes of fact and once again holding that "[w]e do not examine the subjective understanding of the particular officer involved").

At bottom, Petitioner's bid for plenary review turns this Court's well-established Fourth Amendment and qualified immunity jurisprudence on its head, and likely does so because Petitioner could not marshall the one thing that might have precluded a finding of objective reasonableness in this fact-intensive case: a genuine dispute of material fact. There is no cause for this Court to interpose its judgment on the Eighth Circuit in this matter, and it certainly should not do so to again give an established answer to a question that, unlike the entire federal judiciary, Petitioner apparently refuses to accept.

II. There is no circuit split because all circuits uniformly agree that courts should grant qualified immunity on summary judgment where the undisputed material facts demonstrate that the force used was objectively reasonable.

Petitioner claims this case raises the question of a circuit split amongst the Second, Third, Ninth, and Tenth circuits versus the Eighth and Eleventh circuits. Not so. All circuits agree that courts should grant qualified

immunity when, whether or not mistaken perception is at issue, the undisputed material facts demonstrate that force was objectively reasonable. Because of the fact-intensive nature of the applicable objective reasonableness test, courts sometimes deny summary judgment where the reasonableness of an officer's mistake cannot be determined without resolving an underlying dispute of material fact.[2] But this does not substantiate Petitioner's illusory claim of a circuit split and instead demonstrates that the circuits are uniform in their application of established Fourth Amendment and qualified immunity principles.

This Court has repeatedly held that qualified immunity applies to objectively reasonable mistakes of fact. *See e.g.*, *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) ("The 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."); *Heien*, 574 U.S. at 60–61 ("To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair leeway for enforcing the law in the community's protection.").

Whether an officer's action is "objectively reasonable"—whether mistake of fact is at play or not—is for the courts when the material facts are undisputed. *See Scott*, 550 U.S. at n. 8 (debunking Justice Stevens' comment that objective

2. Even then, a jury will resolve any dispute of material fact using special interrogatories and it will *still* be left to the court to determine whether the use of force was objectively reasonable or violated clearly established law in a qualified immunity case like this one.

reasonableness is "a question of fact best reserved for a jury," and emphasizing that once courts "have determined the relevant set of facts and drawn all inferences in favor of the nonmoving party *to the extent supportable by the record* . . . the reasonableness of [an officer's] actions—or, in Justice Stevens' parlance, '[w]hether [respondent's] actions have risen to a level warranting deadly force,'—is a pure question of law."); *cf. Tolan v. Cotton*, 572 U.S. 650, 660 (2014) ("genuine disputes are generally resolved by juries in our adversarial system").

This Court has recognized that an officer's Fourth Amendment actions based on mistakes of fact can be reasonable. *See Heien*, 574 U.S. at 60–61. For example, in *Illinois v. Rodriguez*, 497 U.S. 177, 183–186 (1990), the Court found the warrantless search of a home reasonable if undertaken with the consent of a resident, and found the search lawful when officers obtained the consent of someone who reasonably appeared to be but was not in fact a resident. And in *Hill v. California*, it was not unlawful for officers to mistakenly arrest an individual matching the suspect's description. 401 U.S. 797, 802–805. The limit is that "mistakes must be those of reasonable men." *Heien*, 574 U.S. at 54.

Contrary to Petitioner's cries of a conjured "circuit split," the circuits are in accord that courts, not juries, assess the objective reasonableness of mistakes on undisputed facts. Take the Third Circuit, for example. In *Lamont v. New Jersey*, law enforcement officers shot and killed a suspected car thief during a standoff when he suddenly pulled his right hand out of his waistband—not as if he were surrendering—but as though he were drawing a gun. 637 F.3d 177, 179 (3d Cir. 2011). The sudden movement

prompted the officers to open fire, leading to the suspect's death. *Id.* It turned out the officers were mistaken; the suspect was not clutching a weapon, he was holding a crack pipe. *Id.* The Third Circuit affirmed qualified immunity for the officers, reasoning "the undisputed evidence shows that [the suspect] pulled his hand out of his waistband, not as if he were surrendering, but abruptly and as though he were drawing a pistol. Given the state of the record, we are compelled to hold that the troopers reasonably believed that [the suspect] was drawing a gun, not complying with their command that he show his hands." *Id.* at 184. *Cf. Curley v. Klem*, 298 F.3d 271, 274 (3d Cir. 2002) (denying qualified immunity on summary judgment to defendant who mistook officer for criminal suspect "[i]n light of the disputed historical facts pertinent to determining the objective reasonableness of [the officer's] conduct").

Similarly, the Second Circuit has found that where "there is no material question of fact, the court decides the qualified immunity issue as a matter of law." *Jones v. Treubig*, 963 F.3d 214, 231 (2d Cir. 2020). And the Second Circuit does not hesitate to evaluate the reasonableness of an officer's mistake on summary judgment where, as here, the material facts are undisputed. For example, in *Moore v. Vega*, 371 F.3d 110 (2d Cir. 2004), the Second Circuit reversed the lower court's denial of summary judgment and granted qualified immunity to parole officers who, on an undisputed record, searched the plaintiff's residence based upon mistaken information. After analyzing the information available to the parole officers at the time of the search, which was undisputed, the Second Circuit determined the parole officers reasonably relied on that information to execute the search warrant, even when the information provided to them was wrong. *Id.* at 117

("a mistake while engaging in the performance of an official duty . . . does not deprive a governmental officer of immunity."). *Cf. Jones*, 963 F.3d 214 (denying qualified immunity on summary judgment to officer where the plaintiff and the defendant-officers "vigorously disputed" the underlying facts leading to the alleged Fourth Amendment violation.)

The Ninth Circuit "presumes the officer correctly perceived all the relevant facts of which she could have reasonably been aware (we do not presume clairvoyance) and ask[s] if any reasonable officer in those circumstances would understand that what she was doing (or not doing) was unlawful." *D'Braunstein v. California Highway Patrol*, 131 F.4th 764, 772–73 (9th Cir. 2025). Where the undisputed facts demonstrate that use of force, even deadly force, is objectively reasonable, the Ninth Circuit grants qualified immunity on summary judgment. *See Williams v. City of Sparks*, 112 F.4th 635 (9th Cir. 2024) (granting qualified immunity to officers on summary judgment where undisputable video evidence demonstrated that the officer's use of deadly force was objectively reasonable).

In cases of mistake of fact, the Ninth Circuit has gone so far as to say that it "***sometimes*** proves necessary for a jury to determine first whether a mistake was, in fact, reasonable," *Johnson v. Bay Area Rapid Transit Dist.*, 724 F.3d 1159, 1168 (9th Cir. 2013) (emphasis added), but submits the issue to a jury ***only where that determination depends on disputed material facts***. *See e.g.*, *Wilkins v. City of Oakland*, 350 F.3d 949, 952 (9th Cir. 2003) ("The parties recount different versions of the events"); *S.R. Nehad v. Browder*, 929 F.3d 1125, 1130 (9th Cir. 2019) ("The subsequent series of events, which is in dispute,

culminated in [the defendant] exiting his vehicle and, less than five seconds later, fatally shooting [the plaintiff]."); *Peck v. Montoya*, 51 F.4th 877, 887 (9th Cir. 2022) ("there are genuine disputes of fact and that a jury could find that [the defendant] did not pick up the gun—and was not moving toward the gun—before he was shot."). This approach is consistent with that of all circuits.

The Tenth Circuit too grants qualified immunity to officers on summary judgment where the officer's mistake of fact is objectively reasonable based on the undisputed facts. For example, in *Estate of Valverde by & through Padilla v. Dodge*, the Tenth Circuit granted qualified immunity to an officer who, on an undisputed record, mistakenly believed the suspect was lifting a gun to shoot when the suspect was actually lifting the gun to surrender. 967 F.3d 1049 (10th Cir. 2020). In reversing the lower court's denial of qualified immunity, the Tenth Circuit found the lower court erred in two key ways: first, the lower court failed to consider that allowance needs to be made for the fact that the officer must make a split-second decision, emphasizing that "the Constitution permits officers to make reasonable mistakes" and noting that "[o]fficers cannot be mind readers and must resolve ambiguities immediately;" and second, the district court "failed to appreciate that the facts must be viewed from the perspective of the officer." *Id.* at 1062. Where, on an undisputed record, the officer reasonably (even if mistakenly) believed the suspect was a deadly threat, the Tenth Circuit held that "the law permitted [the officer] to fire as soon as he saw a gun in [the suspect's] hand." *Id.* at 1063.

But where the reasonableness of a mistake turns on an underlying dispute of material fact, the Tenth Circuit rightly taps the jury for factual determinations. *See Estate of Harmon v. Salt Lake City*, 134 F.4th 1119, 1121 (10th Cir. 2025) ("Though [the suspect] unquestionably possessed the knife, a genuine dispute of material fact exists over whether he made hostile movements with it."); *Clerkley v. Holcomb*, 121 F.4th 1359, 1361 (10th Cir. 2024) (defendant-officer asserted his use of force was reasonable because he saw the suspect pointing a gun at him, when the plaintiff maintained that his hands were empty when the officer fired); *Love v. Grashorn*, 134 F.4th 1109, 1112 (10th Cir. 2025) (denying qualified immunity to officer on summary judgment where his version of the facts were materially disputed by the universe of facts as determined by the circuit court).

Other circuits concur that a court may determine on undisputed facts whether an officer's actions—mistaken or not—are objectively reasonable. *See e.g.*, *Valderas v. City of Lubbock*, 937 F.3d 384 (5th Cir. 2019) (holding on an undisputed record that the officer reasonably used deadly force against the suspect, even though the suspect had (unobserved by officers) thrown the gun into a car in the brief moments before being shot); *Pam v. City of Evansville*, 154 F.4th 523 (7th Cir. 2025) (granting qualified immunity to officers on summary judgment where the court determined the officers' beliefs that the suspect held a gun were reasonable (even if mistaken) when the undisputed evidence demonstrated noncompliance, a poorly lit yard at night, a 911 call stating the suspect had a weapon, and hand movement into pockets); *Loch v. City of Litchfield*, 689 F.3d 961 (8th Cir. 2012) (granting qualified immunity to officer on summary judgment where, in the

light most favorable to the plaintiff, the officer mistakenly but reasonably believed the object on decedent's person was a gun).

Thus, contrary to Petitioner's manufactured "circuit split," all circuits can and do analyze the material facts on summary judgment, taken in the light most favorable to plaintiff and without the benefit of hindsight, to determine whether an officer's mistake of fact is objectively reasonable under the circumstances. That determination ***sometimes*** cannot be made on summary judgment without resolving an underlying dispute of material fact, and in such cases summary judgment may be appropriately denied.

The Eighth Circuit is no outlier in this regard. Indeed, Petitioner's own summary judgment briefing acknowledges that the Eighth Circuit, like all others, will deny summary judgment (notwithstanding the separate question of qualified immunity) if the objective reasonableness of a mistake cannot be determined as a matter of law without first resolving an underlying dispute of material fact. (JA1248) (Petitioner's summary judgment surreply pointing to Eighth Circuit cases denying summary judgment where the objective reasonableness of a mistake depended on an underlying dispute of material fact).[3]

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3. Petitioner argued: "[T]he Eighth Circuit has repeatedly held that whether an officer made a mistake and whether that mistake is reasonable are fact questions for a jury. *Capps v. Olson*, 780 F.3d 879, 885 (8th Cir. 2015); *Williams v. City of Burlington, Iowa*, 515 F.Supp.3d 851 (S.D. Iowa 2021) *aff'd Williams v. City of Burlington, Iowa*, 27 F.4th 1346 (8th Cir. 2022) (jury must decide material fact issues of whether police officer saw fleeing suspect drop gun he was carrying and whether officer was unreasonable in believing suspect was taking a firing position rather than surrendering) . . . "

Here, the Eighth Circuit correctly held that Detective Tanner's action was objectively reasonable on undisputed material facts. But this result no more exacerbates Petitioner's imagined circuit split than a finding of objective reasonableness on one set of facts and unreasonableness on another. Because Petitioner's claimed circuit split is illusory, the petition for certiorari should be denied.

III. Petitioner's second question egregiously mischaracterizes the Eighth Circuit's opinion and hinges on factual assertions with no basis in the record.

This case is a poor vehicle to decide Petitioner's second question for two reasons. Either reason warrants denial of certiorari. The first is that Petitioner's second question is premised on an egregious mischaracterization of the Eighth Circuit's holding. The second is that it hinges on factual assertions with no basis in the record which contravene the lower courts' careful recitation of facts in the light most favorable to Petitioner.

With respect to Petitioner's blatant mischaracterization of the Eighth Circuit's opinion, Petitioner pretends that the Eighth Circuit paid no attention to the unique facts and circumstances confronting Detective Tanner and instead gave carte blanche to all police officers to shoot anyone holding a gun under any circumstances. Whether at a shooting range or a gun show, Petitioner asserts that the Eighth Circuit directed all police officers that they "may fire away." (Pet'r. Br. 25). Even a cursory glance at the Eighth Circuit's decision reveals it did no such thing.

Instead, the Eighth Circuit painstakingly analyzed the record in the light most favorable to Petitioner and paid "careful attention to the facts and circumstances" before correctly deciding that Detective Tanner used objectively reasonable force under the specific and unique circumstances at issue ***in this case***. *See e.g.*, *Graham*, 490 U.S. at 396. Those circumstances included that Detective Tanner and other police officers had just been shot at and that Detective Tanner had every reason to believe Green was a felony suspect that had just tried to kill him and appeared ready to do so again.

Petitioner's willful ignorance of these circumstances and bald assertion that the Eighth Circuit adopted a "categorical rule" turning on only one fact is disingenuous at best. At worst, it is targeted fear-mongering that pays no heed to the actual decision at issue and has no place in our nation's highest court. Regardless, it gives no cause to grant certiorari.

Neither does this Court's recent decision in *Barnes v. Felix*, 605 U.S. 73 (2025) warrant summary vacatur as Petitioner erroneously asserts. Instead, the Eighth Circuit's decision in this case is manifestly consistent with *Barnes*, which rejected the Fifth Circuit's "moment of threat" rule (which played no role here) and correctly held that the "totality of the circumstances" test governing use of force requires consideration of "all the relevant circumstances [known to the officer], including facts and events leading up to the climactic moment." *Id.* at 76. If anything, *Barnes* bolsters rather than undermines the Eighth Circuit's appropriate consideration of the facts leading up to the "climatic moment" in this case, which included undisputed facts supporting Detective

Tanner's reasonable perception that Green was a felony suspect who had just tried to kill him and was going to do so again. Indeed, this case is a textbook example of why "earlier facts and circumstances may bear on how a reasonable officer would have understood and responded to later ones." *Id.* at 80. That Petitioner could read *Barnes* to do anything other than re-affirm the wisdom of the Eighth Circuit's analysis undermines the credibility of Petitioner's arguments and, in any event, *Barnes* fatally undermines rather than promotes Petitioner's bid for summary vacatur.

Petitioner's argument that the Eighth Circuit's decision was "based on facts that were concededly unknown to [Detective Tanner]" runs afoul of uncontroverted facts drawn from the voluminous record in this case and does not warrant certiorari.

As an initial matter, Supreme Court Rule 10 explains that a "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." U.S. Sup. Ct. R. 10. Petitioner requests that this Court grant certiorari to do just that—comb through a voluminous record in order to second-guess facts carefully drawn in the light most favorable to Petitioner from Petitioner's own testimony and Petitioner's own statement of uncontroverted material facts. Even if this Court were to do so, it would find upon review of the voluminous record that Petitioner's assertions find no support.

For example, Petitioner's suggestion that Green posed no threat because he was not "approaching officers" is belied by the record. An armed suspect need not have

his torso directly facing a police officer to pose a threat, and Green was approaching Tanner's general direction at a bladed angle even as he was walking toward Officer Carlson. Green and Tanner's testimony was materially consistent in this regard. Indeed, Green explicitly testified that he saw Detective Tanner approaching in his field of vision. (JA319). Green also explicitly testified that he was looking directly at Tanner with a gun in hand and was pointing his arm directly at Tanner in the moment he was shot. (JA1069). So the record irrefutably supports that Green could pose a threat to officers in this regard. And, with respect to other officers at the scene, Green himself asserted as a material fact that he was walking towards Carlson, and while Detective Tanner did testify that he did not see Carlson it does not follow that an objective officer in Tanner's position would not have. Regardless, as Petitioner's counsel conceded at oral argument, "Tanner arrived on the scene with his partner . . . they saw that there were some officers present and they saw there were police on the scene . . . " and so Detective Tanner knew that an armed felony suspect posed a threat in any event.[4] In the end, Petitioner's evidentiary arguments are wholly without merit. Both the district court and Eighth Circuit carefully assessed the record in the light most favorable to Petitioner and correctly held on undisputed facts that Detective Tanner's use of force was objectively reasonable.

For these reasons, Petitioner's second question presented does not warrant certiorari.

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4. https://media-oa.ca8.uscourts.gov/OAaudio/2024/9/232087.MP3 at 6:29- 6:46.

IV. The Decision Below is Correct.

It is constitutionally reasonable for a police officer to use deadly force where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others. *Tennessee v. Garner*, 471 U.S. 11 (1985). Detective Tanner had such probable cause here, and the lower courts correctly rejected Petitioner's impermissible post-hoc view of the shooting to suggest otherwise.

Even if this Court were to grant plenary review, it would reach the same inescapable conclusion as the Eighth Circuit: that under these tense and rapidly evolving circumstances, Detective Tanner was forced to make an objectively reasonable decision when faced with an armed subject that he reasonably believed had just tried to kill him and other officers. The Eighth Circuit correctly recognized that the parties agreed on all the material facts—including that Green picked up the gun, that Green turned in Tanner's general direction to walk towards Carlson, that Detective Tanner yelled "police, drop the gun," and that Tanner then shot Green.

The Eighth Circuit also correctly recognized that any dispute over whether Green raised the gun above his waist and pointed the gun directly at Tanner is ***not material*** given the other undisputed material facts on this record. Neither does it change the applicable constitutional analysis regarding Detective Tanner's use of force—which remains constitutionally reasonable on this record. *See e.g.*, *Malone v. Hinman*, 847 F.3d 949, 953 (8th Cir. 2017) (question of fact regarding whether suspect had turned his gun toward the officer held not ***material*** and did not

change the constitutional analysis because the "crucial common fact in both accounts is [the suspect's] eventual possession of the weapon at the time that [the officer] fired."). This is so because, even assuming Green turned towards Detective Tanner with the gun in his hand but did not raise it before firing, it remains that "[i]n dangerous situations where an officer has reasonable grounds to believe that there is an imminent threat of serious harm, the officer may be justified in using a firearm ***before a subject actually points a weapon at the officer or others***." *Liggins*, 971 F.3d at 800. (citing *Malone*, 847 F.3d at 954–55 (8th Cir. 2017); *Thompson v. Hubbard*, 257 F.3d 896, 899 (8th Cir. 2001) (emphasis added).

This result is consistent with foundational Fourth Amendment law from this Court. *See e.g.*, *Garner*, 471 U.S. at 11–12 (holding that if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape).

Finally, even if the Eighth Circuit's finding of objective reasonableness was somehow in error, which is plainly not the case, the result would remain the same because qualified immunity would still apply on this record where Detective Tanner did not violate clearly established law under these unique circumstances. *See e.g.*, *Anderson*, 483 U.S. 635 (holding qualified immunity analysis is separate and distinct from Fourth amendment analysis). Well-established precedent ensures this result on this unique fact pattern. *See e.g. White v. Pauly*, 137 S. Ct. 548, 552 (2017) (reiterating the long-standing principle that "'clearly established law' should not be defined 'at a

high level of generality'") (quoting *Ashcroft v. al–Kidd*, 563 U.S. 731, 742 (2011)); *see also Mullenix v. Luna*, 577 U.S. 7, 12 (2015); *Kisela*, 584 U.S. 100, 103 (2018) (holding that an officer was entitled to qualified immunity where the officer, without giving any warning that he would fire, shot and killed a woman holding a knife who "appeared calm" but nevertheless came out of a house and stood no more than six feet away from another individual).

Because the Eighth Circuit's decision is manifestly correct, this Court need not disturb it.

CONCLUSION

Detective Tanner acted reasonably to protect himself and other officers in a tense, dangerous, and rapidly evolving situation. Anyone who presumes they would have acted differently in his shoes has never been shot at in the line of duty. Petitioner's efforts to condemn a St. Louis police officer who strove only to protect the public from dangerous felons should end now with the denial of certiorari.

Respectfully submitted,

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December 9, 2025 *Counsel for Respondents*