

No. __-____

IN THE

Supreme Court of the United States

DAVONTE J. COE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

GEREMY C. KAMENS
Federal Public Defender

Joseph S. Camden
Assistant Federal Public Defender
Counsel of Record
701 East Broad Street, Suite 3600
Richmond, VA 23219
(804) 565-0800
Joseph_Camden@fd.org

March 12, 2026

QUESTIONS PRESENTED

In *Pullman-Standard v. Swint*, 456 U.S. 273, 291-92 (1982), this Court held that when a “district court has failed to make a finding because of an erroneous view of the law,” an appellate court should “remand for further proceedings to permit the trial court to make the missing findings.”

In this case, the Fourth Circuit, in an issue it raised and decided *sua sponte*, refused to either address the asserted legal error or remand for factfinding, by imposing a new requirement. Appellants, the Fourth Circuit held, must argue that a district court’s *non*-finding of fact was itself clearly erroneous. It then determined Mr. Coe’s excessive force claim in the first instance on appeal, on an incomplete set of facts. The questions presented are:

- (1) When a district court declines to make factual findings because an antecedent legal ruling makes those findings unnecessary, and an appellant challenges that legal ruling on appeal, must the appellant also independently allege and establish that the district court’s *failure* to make those findings was clearly erroneous; or does *Pullman-Standard v. Swint*, 456 U.S. 273 (1982), require the court of appeals to resolve the legal question and, if it finds error, remand for the district court to make the missing findings in the first instance?

and

- (2) Did the Fourth Circuit again violate the party presentation principle by raising and deciding a dispositive issue neither argued nor briefed by either party?

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED CASES

- (1) *United States v. Coe*, 159 F.4th 202 (4th Cir. 2025);
- (2) *United States v. Coe*, 3:23CR61-RCY, United States District Court for the Eastern District of Virginia. Judgment entered February 8, 2024.

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceedings.....	i
Related Cases.....	ii
Table of Contents.....	iii
Table of Authorities	v
Petition for Writ of Certiorari	1
Opinion Below.....	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved.....	1
Statement of the Case	2
A. The Encounter and Suppression Hearing.....	2
B. The District Court’s Decision.....	4
C. The Appeal.....	5
D. The Fourth Circuit’s Opinion.....	6
E. The Petition for Rehearing	7
Reasons for Granting the Petition	9
I. The Fourth Circuit’s Opinion Violates the Party Presentation Principle.	9
II. the Fourth Circuit’s Opinion Is Wrong	11
A. The Fourth Circuit’s Extension of Clear Error Review to Non-Findings of Fact Contradicts <i>Pullman-Standard</i> and Decades of Uniform Authority.....	12
B. The Fourth Circuit’s New Rule Sets an Impossible Standard and Upsets the Division of Labor Between District and Appellate Courts.....	14
C. The Fourth Circuit’s New Rule Violates the Totality-of-the- Circumstances Test and <i>Barnes v. Felix</i>	16
III. This Case Is Appropriate for Summary Reversal.....	18
Conclusion.....	20

APPENDIX

Decision of the court of appeals
 United States v. Coe, 159 F.4th 202 (4th Cir. 2025) 1a

Order of the court of appeals denying rehearing..... 4a

Petition for panel rehearing and rehearing *en banc* (filed Nov. 26, 2025) 5a

TABLE OF AUTHORITIES

Cases

<i>Anderson v. City of Bessemer City, N.C.</i> , 470 U.S. 564 (1985)	16
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	17
<i>Booth v. Maryland</i> , 482 U.S. 496 (1987)	21
<i>Bosse v. Oklahoma</i> , 580 U.S. 1 (2016).....	21
<i>Cage v. Louisiana</i> , 498 U.S. 39 (1990)	20
<i>Clark v. Sweeney</i> , 607 U.S. 7 (2025).....	<i>passim</i>
<i>DeMarco v. United States</i> , 415 U.S. 449 (1974).....	11, 12, 20
<i>Estelle v. McGuire</i> , 502 U.S. 62 (1991).....	21
<i>In re Sealed Case</i> , 552 F.3d 841 (D.C. Cir. 2009)	13
<i>Johnson v. California</i> , 543 U.S. 499 (2005)	21
<i>Maine v. Taylor</i> , 477 U.S. 131 (1983).....	13
<i>Monasky v. Taglieri</i> , 589 U.S. 68 (2020)	13
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991).....	21
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009)	17
<i>Pullman-Standard v. Swint</i> , 456 U.S. 273 (1982).....	<i>passim</i>
<i>Scott v. Harris</i> , 550 U.S. 372 (2007).....	19
<i>Sumner v. Mata</i> , 449 U.S. 539 (1981)	21
<i>Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.</i> , 460 U.S. 533 (1983)	20
<i>United States v. Buchanan</i> , 933 F.3d 501 (6th Cir. 2019)	14
<i>United States v. Coe</i> , 159 F.4th 202 (4th Cir. 2025).....	ii, iv, 1, 6
<i>United States v. Cotto-Flores</i> , 970 F.3d 17 (1st Cir. 2020).....	13
<i>United States v. Delgado-Lopez</i> , 974 F.3d 1188 (10th Cir. 2020)	15

<i>United States v. Elwood</i> , 993 F.2d 1146 (5th Cir. 1993)	14
<i>United States v. Jacobson</i> , 15 F.3d 19 (2d Cir. 1994).....	14
<i>United States v. Outland</i> , 993 F.3d 1017 (7th Cir. 2021).....	14
<i>United States v. Pacheco-Romero</i> , 2023 WL 3736877, *3 (11th Cir. 2023)	15
<i>United States v. Perez</i> , 150 F.4th 237, 253 (4th Cir. 2025)	15
<i>United States v. Sineneng-Smith</i> , 590 U.S. 371 (2020).....	10
<i>United States v. Wright</i> , 493 F. App'x 265 (3d Cir. 2012)	14

Statutes

18 U.S.C. § 3231.....	1
28 U.S.C. § 1254.....	1
28 U.S.C. § 1291.....	1

Constitutional Provisions

U.S. CONST. amend IV	1
----------------------------	---

PETITION FOR WRIT OF CERTIORARI

Mr. Coe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals appears at pages 1a to 3a of the appendix to the petition and is reported at 159 F.4th 202 (4th Cir. 2025).

JURISDICTION

The district court in the Eastern District of Virginia had jurisdiction under 18 U.S.C. § 3231. The Fourth Circuit had jurisdiction under 28 U.S.C. § 1291. That court issued its opinion and judgment on November 12, 2025. Mr. Coe timely filed a petition for rehearing on November 26, 2025, Pet. App'x. 5a-26a which was denied on December 12, 2025. Pet. App'x. 4a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides in relevant part: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]”

STATEMENT OF THE CASE

A. The Encounter and Suppression Hearing

On the evening of March 9, 2023, Officer Dquan Walker of the Richmond Police Department was patrolling alone near a convenience store in Richmond, Virginia. C.A.J.A. 92-93.¹ As he walked past a parked car, he observed Davonte Coe in the driver's seat holding plastic bags containing what appeared to be a white powder, and a passenger in the front seat. C.A.J.A. 94-95. Officer Walker shined his flashlight through the driver's side window, opened the door, and drew his firearm. C.A.J.A. 95.

The government introduced two sets of video exhibits at the suppression hearing: body-worn camera footage from Officer Walker, and surveillance footage from cameras mounted on the exterior of the convenience store. C.A.J.A. 99-102, Gov't Exhibit 1 (body-worn camera footage); 102-104, Gov't Exhibit 2 (surveillance footage). The government's surveillance footage shows Officer Walker grabbing Mr. Coe by the collar, pulling him from the car, and pinning him against the door frame with his left forearm across Mr. Coe's neck, then moving behind Mr. Coe. C.A.J.A., Gov't Exh. 2 at 10:27:04. Government's Exhibit 2 then shows Officer Walker pointing his firearm — a Glock 9-millimeter handgun with no external safety, fully loaded with a round in the chamber, C.A.J.A. 118-19, — at Mr. Coe's back at close range. *Id.* at 10:27:11.

¹ "C.A.J.A." refers to the joint appendix filed in the court of appeals. See Joint Appendix, *United States v. Coe*, No. 24-4111, Doc. 21 (filed July 29, 2024).



C.A.J.A. Gov't. Exh. 2 at 10:27:11

At the suppression hearing, Officer Walker denied that his finger was on the trigger. C.A.J.A. 111. When counsel directed him to examine the body-worn camera footage frame by frame, Officer Walker acknowledged that his right index finger appeared bent and was inserted between the trigger and the trigger guard of the firearm as he pointed it at Mr. Coe. C.A.J.A. 111-113; Gov't Exh. 1 at 21:18:25.



C.A.J.A. Gov't Exh. 1 at 21:18:25

He testified that he kept his finger in that position because “[y]ou never know when you’re going to have to shoot somebody.” C.A.J.A. 114. He further explained, on

re-direct examination by the government, that he draws his firearm at the outset of any encounter, “regardless of what type of crime it is,” because “you never know what that person has.” C.A.J.A. 119-120.

Officer Walker subsequently holstered his firearm and drew his taser. C.A.J.A. 96. He used the taser to threaten bystanders who, despite the threats, picked up the baggies Mr. Coe had thrown, and left the scene. Gov’t Exh. 1 at 21:18:45; Gov’t Exh. 2 at 10:27:35. As Mr. Coe struggled to get away, Officer Walker’s body-worn camera was knocked off, and Mr. Coe’s jacket shifted, exposing the grip of a firearm in Mr. Coe’s rear waistband. C.A.J.A. 97-98, 101. Officer Walker deployed his taser; Mr. Coe fell to the ground paralyzed. Gov’t Exh. 2 (second video) at 10:27:33. Officer Walker arced the taser again while Mr. Coe lay on the ground, then Officer Walker retrieved the firearm from Mr. Coe’s waistband. C.A.J.A. 98, 101; Gov’t Exh. 2 (second video) at 10:27:35.

B. The District Court’s Decision

Mr. Coe moved to suppress the firearm, arguing that Officer Walker’s use of force was excessive in violation of the Fourth Amendment, and led to the discovery of the firearm. C.A.J.A. 28-37. The government opposed suppression on three grounds: that the force used was reasonable, that there was no causal connection between the force and the discovery of the firearm, and that the inevitable discovery doctrine applied. C.A.J.A. 73-87.

The district court denied the motion. C.A.J.A. 136, 139-147. It expressly declined to reach the question of whether Officer Walker’s use of force was excessive.

C.A.J.A. 142 (“The Court need not reach the first or third contention.”). It also made no finding as to whether Officer Walker’s finger was on the trigger, whether he pointed the firearm into Mr. Coe’s back, or what level of force he employed. Instead, the district court resolved the motion on the ground that there was no causal connection between the alleged use of excessive force and the discovery of the firearm, reasoning that Officer Walker “would have discovered the firearm, whether during the course of a *Terry* frisk or a standard search incident to arrest.” C.A.J.A. 144-45. It concluded that “even if one accepts that the seizure in question was unreasonable, the evidence obtained was merely the product of the *Terry* stop, not the *manner* in which it was carried out.” C.A.J.A. 146 (emphasis in original).

C. The Appeal

Mr. Coe entered a conditional guilty plea, preserving the right to appeal the denial of the motion to suppress. C.A.J.A. 159-199. On appeal, he argued that the district court had erred as a matter of law by conflating the causal nexus requirement with the inevitable discovery doctrine. Appellant’s Br. 15-16. This mistake relieved the government of its burden to prove inevitable discovery, and improperly placed the burden of *disproving* inevitable discovery on Mr. Coe. Appellant’s Br. 17-18.

The government’s brief defended the district court’s causal nexus ruling, argued in the alternative that the force used was reasonable, argued in the further alternative that inevitable discovery applied, and argued that the exclusionary rule does not extend to excessive force claims. Gov’t Br. 10-29. At no point did the government argue that Mr. Coe was required to challenge the district court’s

reservation of the factual issues as clearly erroneous. *See generally* Gov't Br. Nor did it dispute that its own exhibits showed Officer Walker's finger on the trigger as he held Mr. Coe and pointed the gun into his back. *Id.* Neither party addressed whether the failure to make factual findings could itself be reviewed for clear error, or whether such a standard of review was even coherent in that context.

D. The Fourth Circuit's Opinion

The Fourth Circuit affirmed. *United States v. Coe*, 159 F.4th 202 (4th Cir. 2025); Pet. App. 1a-3a. It did not address the legal question Mr. Coe raised — whether the district court had applied the correct standard to determine the existence of a causal nexus. Instead, the panel raised and decided a different question that neither party had briefed: whether Mr. Coe had forfeited his excessive force argument by failing to challenge the district court's *non*-findings of fact as clearly erroneous.

The panel acknowledged that “[t]he centerpiece of Coe’s argument before us is that Walker violated the Fourth Amendment by ‘pointing his firearm, with no safety, with his finger on the trigger, into Coe’s side and back as [Walker] held [Coe] against the car with his left elbow.’” 159 F.4th at 204; Pet. App. 2a (quoting oral argument (brackets in original)). It then noted that “the district court did not find that Walker pointed his firearm into Coe’s side or back or that Walker had his finger on the trigger,” and characterized the trigger question as “hotly contested at the suppression hearing.” *Id.* On that basis, the panel held that, because Mr. Coe’s briefs did not “assert — much less establish — that the district court committed clear error by *not* finding Walker had his finger on the trigger or pointed his firearm into Coe’s side or

back,” the panel “cannot make such factual findings in the first instance.” *Id.* at 204-05; Pet. App. 2a (emphasis in original).

Having restricted its review to “the findings the district court did make,” the panel then proceeded to decide in the first instance that Officer Walker’s conduct — characterized only as “briefly draw[ing] his firearm” for “less than 30 seconds” — did not violate the Fourth Amendment. *Id.* at 205; Pet. App. 2a-3a. The panel did not address the district court’s causal nexus ruling, the inevitable discovery question, or the exclusionary rule argument. It affirmed on a ground neither party had raised or briefed.

The panel’s opinion is published and precedential. It is now the law of the Fourth Circuit that an appellant who challenges a district court’s legal ruling — one that caused the district court to decline to reach disputed factual issues — must also independently allege and establish that the district court’s failure to make those findings was clearly erroneous, or forfeit both the legal and factual arguments on appeal.

E. The Petition for Rehearing

Twelve days after the panel issued its opinion, this Court decided *Clark v. Sweeney*, 607 U.S. 7 (2025) (per curiam), which summarily reversed the Fourth Circuit for resolving an appeal on a ground neither party had raised. Mr. Coe filed a timely petition for panel rehearing and rehearing *en banc* on November 26, 2025 — two days after *Clark* issued. The petition brought to the court’s attention *Pullman-Standard v. Swint*, 456 U.S. 273 (1982) (requiring remand where a district court

failed to make factual findings based on antecedent error of law), *Clark*, and uniform authority from every other circuit. Pet. App. 13a-14a, 20a. The Fourth Circuit denied rehearing on December 12, 2025, without requesting a response and without comment. Pet. App. 4a. No judge requested a poll for en banc consideration.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit’s published opinion is appropriate for summary reversal on two independent grounds. First, it decided this appeal on a basis neither party raised or briefed, in direct violation of the party presentation principle this Court enforced against this same circuit once this Term, and held to it after the issue was brought to the panel’s attention. Second, without the benefit of adversarial briefing, the panel departed sharply from *Pullman-Standard v. Swint*, 456 U.S. 273 (1982), and the uniform authority of every other circuit, by affirming rather than remanding when a district court’s legal error prevented it from reaching disputed factual issues. The connection between these two errors is not coincidental: the party presentation principle exists in part because courts that decide issues neither party briefed are most likely to miss the controlling authority, as happened here. The panel did not address *Pullman-Standard* in its opinion. It did not address *Pullman-Standard* after the rehearing petition put it directly before the panel. The result is a published rule that contradicts settled law and imposes an impossible burden on future appellants throughout the Fourth Circuit. Summary reversal is warranted.

I. THE FOURTH CIRCUIT’S OPINION VIOLATES THE PARTY PRESENTATION PRINCIPLE.

Courts in our adversarial system rely on the parties to “frame the issues for decision, while the court serves as neutral arbiter of matters the parties present.” *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (per curiam) (quotations, citations omitted). The ground on which the Fourth Circuit decided this appeal — that Mr. Coe was required to challenge the district court’s *non*-findings as clearly erroneous — was not

raised by either party, was not addressed in either party's brief, and was not the subject of supplemental briefing ordered by the panel. *See generally United States v. Coe*, No. 24-4111, Doc. 20 (filed July 29, 2024) ("Appellant's Br."); *id.*, Doc. 39 (filed Nov. 19, 2024) ("Gov't Br."). The panel raised it, decided it, and made it dispositive, entirely *sua sponte*.

This Court addressed the same conduct from the same circuit in *Clark v. Sweeney*. In *Clark*, decided two weeks after the opinion below, the Court summarily reversed the Fourth Circuit for granting habeas relief on a ground the petitioner had never raised. "The Fourth Circuit transgressed the party-presentation principle by granting relief on a claim that Sweeney never asserted and that the State never had the chance to address." *Clark*, 607 U.S. at 9. The same transgression occurred here: the Fourth Circuit decided against Mr. Coe on a ground announced in the opinion, and which he never had reason to address. *Cf. United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020).

Mr. Coe raised this in a timely petition for rehearing filed on November 26, 2025 — two days after *Clark* issued. Pet. for Reh'g 2. The panel denied rehearing without requesting a response and without comment. Pet. App. 4a. No judge requested a poll. *Clark v. Sweeney* had no effect on the panel's or circuit's disposition of this case.

The practical link between the party presentation violation and the *Pullman-Standard* error that followed it is not incidental. Had the panel ordered briefing on the standard-of-review question it raised *sua sponte*, the parties would have

submitted *Pullman-Standard, DeMarco v. United States*, 415 U.S. 449 (1974), and the uniform contrary authority from every circuit that has considered the issue. The panel would have had to confront and engage with that authority rather than ignore it. The party presentation principle is a procedural safeguard against exactly this kind of error, and its violation here produced exactly the result it is designed to prevent.

Had these errors infected one case, the impact would be limited. But the panel chose to publish its opinion, effecting a drastic and widespread change in established appellate rules, and introducing a new and unjustified forfeiture rule that upsets the division of labor between district and appellate courts, and sets an impossible burden for appellants. Summary reversal is appropriate in such circumstances.

II. THE FOURTH CIRCUIT'S OPINION IS WRONG

The risk of disregarding the party presentation rule is that the Court will miss binding precedent or meritorious arguments, which it is the parties' job to advance in an adversarial system. That risk was realized here. The panel's opinion flouts *Pullman-Standard* and the law of every other circuit. That alone might not justify summary reversal, but the standard it announced imposes an impossible and incoherent burden on appellants and district courts who prudently restrain themselves from unnecessary factfinding. And the blast radius of the Fourth Circuit's opinion is increased because the opinion below is published, and as illustrated in this case, extends beyond mere procedure, and distorts application of the totality-of-the-circumstances test that this Court very recently re-affirmed.

A. The Fourth Circuit’s Extension of Clear Error Review to Non-Findings of Fact Contradicts *Pullman-Standard* and Decades of Uniform Authority.

The clear error standard of review applies to *findings* of fact, not to *non*-findings of fact. The *Pullman-Standard* rule is straightforward: “When an appellate court discerns that a district court has failed to make a finding because of an erroneous view of the law, the usual rule is that there should be a remand for further proceedings to permit the trial court to make the missing findings.” *Pullman-Standard v. Swint*, 456 U.S. 273, 291-92 (1982) (quoting *DeMarco v. United States*, 415 U.S. 449, 450 n.* (1974)). The rule was not new when *Pullman-Standard* restated it; the Court described it as “elementary” and characterized a circuit court’s departure from it as “incredible.” *Id.* at 292-93. “[W]hen a district court’s finding on [an issue of fact] is set aside for an error of law, the court of appeals is not relieved of the usual requirement of remanding for further proceedings to the tribunal charged with the task of factfinding in the first instance.” *Id.* at 293.

DeMarco itself illustrates the rule’s operation in a criminal case. There, this Court vacated a court of appeals judgment and remanded with instructions to further remand to the district court, because the court of appeals had resolved a factual issue in the first instance rather than returning it to the district court. *See DeMarco*, 415 U.S. at 450.

The Fourth Circuit’s opinion does not mention *Pullman-Standard*. Rather than remanding upon identifying the district court’s antecedent legal ruling as potentially erroneous, the panel restricted its review to the facts the district court

had found, made its own assessment on an incomplete record, and affirmed on a ground neither party had raised. That is the conduct *Pullman-Standard* forbids.²

Every circuit to have considered the question follows this remand rule strictly, including in criminal cases, frequently in the context of motions to suppress. *See In re Sealed Case*, 552 F.3d 841, 845 (D.C. Cir. 2009) (“[W]hen a district judge altogether fails to make findings or fails to make findings with respect to a material issue, appellate courts normally vacate the judgment and remand for the judge to make those findings.”); *United States v. Cotto-Flores*, 970 F.3d 17, 48 (1st Cir. 2020) (citing *Pullman-Standard*, remanding for new trial); *United States v. Jacobson*, 15 F.3d 19, 21-22 (2d Cir. 1994) (limited remand without issuing mandate for district court to explain reasons for sentence); *United States v. Wright*, 493 F. App’x 265, 272 (3d Cir. 2012) (remand to reconsider suppression where district court made “decision to not undertake a factual analysis” due to misunderstanding of applicable law); *United States v. Elwood*, 993 F.2d 1146, 1151 (5th Cir. 1993) (remanding to analyze factors underlying determination of admissibility of evidence and enter findings); *United States v. Buchanan*, 933 F.3d 501, 518 (6th Cir. 2019) (“[I]f the district court failed to make a factual finding on a required element, we have no facts to review, and remand is the appropriate course of action[.]”) (citing *Pullman-Standard*, 456 U.S. at 291-93); *United States v. Outland*, 993 F.3d 1017, 1023 (7th Cir. 2021) (remanding for

² Although Fed. R. Civ. P. 52 does not directly govern criminal cases, the “clearly erroneous” standard it sets out is common to review of factual matters in civil and criminal cases and has been extended generally to appellate review of factual determinations through “a long history of appellate practice.” *Monasky v. Taglieri*, 589 U.S. 68, 84 (2020); *Maine v. Taylor*, 477 U.S. 131, 145 (1983).

determination of validity of *Miranda* waivers, where district court conflated voluntariness of statements and validity of waiver); *United States v. Delgado-Lopez*, 974 F.3d 1188, 1195 (10th Cir. 2020) (remand to make credibility findings, compare culpability of defendant relative to others); *United States v. Pacheco-Romero*, 2023 WL 3736877, *3 (11th Cir. 2023) (rejecting government’s argument that record was clear as to lack of attorney conflict, remanding for factual findings).

The Fourth Circuit’s own recent precedent highlights this opinion’s overreach. In *United States v. Perez*, 150 F.4th 237, 253 (4th Cir. 2025) (petition for certiorari on unrelated question pending, No. 25-6897), decided months before the opinion below, a different panel of the Fourth Circuit remanded for further findings precisely because the district court had failed to reach a material issue due to a legal error, citing *Pullman-Standard* and this Court’s precedent. The panel here did not cite *Perez*. It did not cite *Pullman-Standard*. It went the other direction entirely, affirming on a selective factual record while holding that the appellant had forfeited the right to a complete factual record by failing to challenge a *non*-finding as clearly erroneous.

B. The Fourth Circuit’s New Rule Sets an Impossible Standard and Upsets the Division of Labor Between District and Appellate Courts.

The rule the Fourth Circuit announced is impossible to satisfy and contradicts established practice on two levels. First, clear error review is semantically inapplicable to reservations or abstentions from factfinding. The standard “applies when reviewing questions of fact.” *Anderson v. City of Bessemer City, N.C.*, 470 U.S.

564, 573 (1985). All of the standard’s formulations presuppose an actual finding to evaluate. It requires deference to “the factfinder’s *choice* between” “two permissible views of the evidence” — not abstention from that choice. *Id.* (emphasis added). It asks whether “the district court’s *account of the evidence* is plausible” — not whether the district court was correct to decline to account for the evidence at all. *Id.* at 574 (emphasis added). There is no formulation of clear error review that can be applied to a decision not to decide.

Second, even if such a standard were administrable, its predicate — that district courts commit error by declining to reach factual issues their legal rulings render unnecessary — is wrong. This Court has *encouraged* the practice of resolving cases on the narrowest available ground and declining to reach unnecessary factual issues. Forcing district courts to resolve “factbound” issues when a legal ruling suffices “sometimes results in a substantial expenditure of scarce judicial resources on difficult questions that have no effect on the outcome of the case.” *Pearson v. Callahan*, 555 U.S. 223, 237 (2009); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). There is no recognized requirement that district courts reach factual issues after concluding they are not material to the legal ruling before them.³ If the

³ This Court briefly imposed an analogous requirement in *Saucier v. Katz*, 533 U.S. 194 (2001), requiring lower courts confronted with a qualified immunity claim to first determine whether a constitutional violation had occurred. It retreated from that requirement less than eight years later, after it became clear that the costs to parties and judicial resources were not justified by the marginal benefits of elaborating the law. *See Pearson*, 555 U.S. at 236-38.

legal ruling was wrong, *Pullman-Standard* provides the correction: remand for the factfinding the legal error prevented.

The practical consequences of the Fourth Circuit's rule are significant. Appellants who challenge a district court's legal ruling will now be required, in every case in the Fourth Circuit, to also challenge as clearly erroneous each factual issue the district court prudently reserved. That means litigants must argue, in the alternative, that a non-finding — a decision the district court made no error in making — was itself clearly erroneous. Here, Mr. Coe would have had to argue that the district court was required to determine whether Officer Walker's finger was on the trigger and that he pointed the firearm into Mr. Coe's back, even though the district court believed those facts to be irrelevant to its disposition of the motion to suppress.

They must do so without knowing whether the court of appeals will find legal error, and therefore without knowing whether the non-findings will ever become material. And they must preserve this phantom argument in district court by requesting that the district court make factual findings it has already determined are unnecessary. *See* Fed. R. Crim. P. 51(b). The resulting inefficiency and confusion would fall most heavily on the courts that exercise the most judicial restraint.

C. The Fourth Circuit's New Rule Violates the Totality-of-the-Circumstances Test and *Barnes v. Felix*

Although downstream of the questions presented, the effect of the Fourth Circuit's surprise procedural sleight-of-hand was to violate the totality-of-the-circumstances test on Mr. Coe's excessive force claim. Bypassing the district court's

decision on the causal nexus issue, the Fourth Circuit decided in the first instance whether Officer Walker had used excessive force in seizing Mr. Coe. That alone violated *Pullman-Standard*. But the Fourth Circuit compounded that error by deciding the excessive force claim while deliberately disregarding facts left undecided by the district court and clearly shown in the government’s own video exhibits and testimony it elicited. The opinion below therefore violated the well-established and often-repeated obligation to consider the totality of the circumstances – a necessary part of the Fourth Amendment excessive force determination.

Just last term, this Court rejected another attempt to place artificial limits on the totality-of-the-circumstances test for excessive force. In *Barnes v. Felix*, 605 U.S. 73 (2025), this Court rejected the “moment-of-threat” doctrine as inconsistent with the totality-of-the-circumstances test, which, it reaffirmed, applies to excessive force claim.

That 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 “factbound morass.” Or said more prosaically, deciding whether a use of force was objectively reasonable demands “careful attention to the facts and circumstances” relating to the incident, as then known to the officer.

Id. at 80 (citations omitted). The Fourth Circuit below flouted this requirement, by deciding in the first instance whether the force used was reasonable, after the district court expressly disclaimed any such determination. C.A.J.A. 142. Instead, it deliberately blinded itself to facts the district court would have no choice but to find

(such as that Officer Walker’s finger was on the trigger, and he pointed the gun point blank into Mr. Coe’s back), based on the government’s own undisputed video exhibits. *See Scott v. Harris*, 550 U.S. 372, 380-81 (2007) (where uncontradicted video establishes facts, court should “view[] the facts in the light depicted by the videotape”).

This illustrates the wide-ranging and destructive effect of the Fourth Circuit’s new rule subjecting *non*-findings of fact to clear error review. It not only flouts precedent, but distorts application of the law that require a thorough examination of the facts. The Fourth Circuit’s new rule will, in every case where a district court reserved on factual issues (including those proven through undisputed video evidence and introduced by the party against whom it operates) require appellants to anticipate and challenge those reservations as clearly erroneous — or lose not only the legal error they raised but the factual predicate for it. That burden falls most heavily in cases that, like this one, involve factual disputes a district court has reason to avoid.

III. THIS CASE IS APPROPRIATE FOR SUMMARY REVERSAL.

The case for summary reversal rests on compounding and significant errors: the violation of the party presentation principle; the resulting clear departure from *Pullman-Standard*, and the published status of the opinion below, extending these errors into binding circuit law.

This Court has summarily granted, vacated, and remanded lower court opinions both for violations of the party presentation rule, and for sharp and

unjustified departures from well-established precedents. Both justifications are present here in strong form. *See Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (per curiam) (party presentation); *DeMarco v. United States*, 415 U.S. 449 (1974) (per curiam) (violation, as here, of remand rule for supplemental factual findings); *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535 (1983) (per curiam) (granting, vacating, remanding after single panel’s “wholly unconvincing” mischaracterization of this court’s precedent decided 65 years prior); *Cage v. Louisiana*, 498 U.S. 39, 41 (1990) (per curiam) (granting, vacating, remanding Louisiana’s approval of jury instruction that equated reasonable doubt with “grave uncertainty”), *disapproved of on other grounds by Estelle v. McGuire*, 502 U.S. 62, 72 n.4 (1991); *Bosse v. Oklahoma*, 580 U.S. 1, 2 (2016) (per curiam) (reversing Oklahoma Court of Criminal Appeals’ opinion holding that *Payne v. Tennessee*, 501 U.S. 808 (1991) had “implicitly overruled” *Booth v. Maryland*, 482 U.S. 496 (1987) as to admissibility of victims’ opinions about defendant and appropriate sentence, despite this Court having reserved that aspect of *Booth* in its opinion).

And it has granted certiorari and issued merits opinions for similarly isolated but egregious disregard of established standards. *See Johnson v. California*, 543 U.S. 499 (2005) (reversing Court of Appeals’ refusal to apply strict scrutiny to express racial classifications by prison); *Sumner v. Mata*, 449 U.S. 539, 548-49 (1981) (remand to apply presumption of correctness to state court’s factual determinations in habeas, absent split); *id.* at 552 (Blackmun, J., concurring) (advocating mere vacatur and remand to reconsider in light of statute without elaboration).

The repeated transgression, so soon after *Clark*, of the party-presentation rule, compounded by the disregard of the uncontroversial and well-established remand rule, and doing both these things in a published case, doubly justifies summary treatment of the opinion below.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the court of appeals vacated, and the case remanded for further proceedings consistent with *Clark v. Sweeney*, 607 U.S. 7 (2025) and *Pullman-Standard v. Swint*, 456 U.S. 273 (1982).

Respectfully submitted,

GEREMY C. KAMENS
Federal Public Defender
for the Eastern District of Virginia



Joseph S. Camden
Counsel of Record
Assistant Federal Public Defender
Office of the Federal Public Defender
for the Eastern District of Virginia
701 East Broad Street, Suite 3600
Richmond, VA 23219
(804) 565-0830
Joseph_Camden@fd.org

March 12, 2026