No. 25-71

In The
Supreme Court of the United States

MATTHEW FARNEY, in his individual capacity, et al.,
Petitioners,

v.

MICHAEL ROSE, as personal representative for the estate of Bradley Roses and as personal representative on behalf of all statutory beneficiaries of Bradley Rose, deceased estate of Bradley Rose,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. This Court has applied the obvious case exception to the second prong of the qualified immunity analysis in the excessive force context. *Hope v. Pelzer*, 536 U.S. 730, 741, 745 (2002). The Court has also recently denied a petition for writ of certiorari where the obvious case exception was applied by the Ninth Circuit in the Fourth Amendment excessive force context. *Cnty. of Riverside, California v. Est. of Clemente Najera-Aguirre*, 143 S. Ct. 426 (2022); *Est. of Aguirre v. Cnty. of Riverside*, 29 F.4th 624, 629 (9th Cir. 2022).

The question presented is: Was the Ninth Circuit correct in holding that this was an "obvious case" in which general excessive force standards provided Deputy Farney with fair notice that it was unlawful to use deadly force, without warning, against an unarmed individual who posed no immediate threat of death or serious physical injury to Farney or others?

2. Did the Ninth Circuit apply the proper standard on summary judgment when it reversed the district court's grant of summary judgment as to Farney and Sheriff Schuster based on genuine disputes of material fact?[1]

[1] Petitioners' questions 2a. and 2b. are encompassed by Respondent's question 2.

RELATED PROCEEDINGS

Rose v. Farney et al., No. 23-2846, United States Court of Appeals for the Ninth Circuit. Judgment entered March 12, 2025.

Rose v. Farney et al., No. 3:22-cv-08055-JAT, United States District Court for the District of Arizona. Judgment entered September 14, 2023.

Rose v. Farney et al., No. S-8015-CV-202301502, Superior Court for the State of Arizona, Mohave County.

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INTRODUCTION

There is no conflict among the circuits warranting review. Nor, as Petitioners contend, is clarification needed on the "obvious case" exception. Petitioners claim that this Court has never applied the obvious case exception in the Fourth Amendment excessive force qualified immunity context. Pet. 10. However, the Court has applied the obvious case exception in the Eighth Amendment excessive force context. *See Hope*, 536 U.S. at 740–41, 745. The Court also recently declined to review application of the obvious case exception to a Fourth Amendment excessive force claim in the Ninth Circuit. *Est. of Clemente Najera-Aguirre*, 143 S. Ct. 426; *Est. of Aguirre*, 29 F.4th 624.

The lower courts are already capable of applying the obvious case exception based on the particular facts of each case. Like in *Est. of Aguirre*, 29 F.4th 624, the Ninth Circuit in the instant action properly applied the obvious case exception and could alternatively have held that a body of relevant case law gave Farney sufficient notice that shooting Bradley Rose ("Bradley") dead was unlawful.

Petitioners also claim that review is needed because lower courts have been applying a heightened summary judgment standard in police deadly force cases. There is no heightened standard. Petitioners wrongly claim that the Ninth Circuit adopted this illusory standard in *Scott v. Henrich*, 39 F.3d 912 (9th Cir. 1994). The only thing the Ninth Circuit did in *Henrich*, where the officer was *granted* qualified immunity, was to remind courts that the non-moving party on summary judgment may meet its burden of production with circumstantial evidence. The court simply pointed out why direct evidence may not be available to contradict an officer's self-serving

statements. No authority supports Petitioners' argument that courts may rely on evidence not in the record or immaterial contradictions to find that genuine disputes of material fact preclude a grant of summary judgment. The Petition does nothing more than ask this Court to resolve disputed factual issues and reject facts found by the Ninth Circuit. Petitioners' unhappiness with the Ninth Circuit's decision does not warrant review.

STATEMENT OF THE CASE

I. Factual Background

On April 17, 2021, Bradley Rose visited with his sister and her family. 2-ER-86.[2] At around 9:00 p.m., Bradley informed his sister's husband that he was about to leave for his girlfriend's residence. 2-ER-87–88. Minutes later, Deputy Godfrey observed Bradley drive past him in the left-hand lane in a no-passing zone. Bradley was driving in a bizarre fashion and "super slow," which Godfrey found to be weird. 2-ER-94, 101. Bradley continued traveling on the wrong side of the road for about 300 feet until he reached an intersection where he turned from the wrong lane without stopping at a stop sign. Godfrey began pursuing Bradley, who was not traveling at a high rate of speed. 2-ER-94, 102. Deputies Farney, Cardenas and Shrader also joined the pursuit. 2-ER-154–156, 217.

Godfrey activated his lights and siren, called in Bradley's license plate number, and informed dispatch that he was going to initiate a stop for failing to yield. 2-ER-102–103. Bradley continued to drive erratically by pumping his brakes and fluctuating his speed between 30 and 35 miles per hour. 2-ER-94. Dispatch

[2] ER citations are to the Ninth Circuit's record in this case.

informed the deputies that there were no wants and warrants on the vehicle. 2-ER-104, 216.

Because Bradley had only committed traffic violations, the deputies were ordered to disengage and to terminate or discontinue the pursuit. 2-ER-157, 232, 235, 237. Instead, the deputies continued the pursuit and initiated a stop of Bradley, who pulled over on the right-hand shoulder. 2-ER-105–106, 159, 217–218, 243. The deputies continued the pursuit despite having never been given a command to re-engage. 2-ER-234. After stopping briefly, Bradley made a U-turn and continued driving. He swerved to avoid hitting Godfrey's vehicle, navigated his car between the deputies' patrol units, and lightly brushed Cardenas' bumper. 2-ER-95, 244, 255. Cardenas reported to dispatch that he was "pretty sure" Bradley had "brushed his bumper." 3-ER-576–577 (4-17-2021, 9-08-11 PM.1757598.wav, at 0:18–0:22).[3]

As Bradley continued driving, his vehicle crossed the centerline. He was able to correct his vehicle back into the proper lane to avoid hitting a parked tow truck. 2-ER-164–165. Godfrey informed dispatch that Bradley was driving erratically and was possibly suffering from a mental issue. 2-ER-113. Cardenas, Farney, and Shrader all heard Godfrey's report concerning Bradley's mental health. 2-ER-166–167, 215, 247, 257 at 0:13–0:20. The deputies were again ordered by their Sergeant to "back off." 2-ER-166–167, 236. Despite this, the deputies continued their pursuit. 2-ER-115–116, 167, 217–218, 245.

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[3] Citations with timeframes are to physical exhibits that were transmitted to the Ninth Circuit. *See* ECF Nos. 11.1, 17.1 and 23.

Cardenas initiated another stop of Bradley. 2-ER-245–246. Bradley brought his vehicle to a stop but then performed a U-turn, continued driving, and swerved to avoid hitting Cardenas. 2-ER-246, 248.

Moments later, Farney saw Bradley driving at a low rate of speed. 2-ER-117, 172–173. Farney followed Bradley to Bradley's girlfriend's home on E. McVicar Ave. in Kingman. 2-ER-117, 173–174, 262. Throughout the pursuit, Bradley was driving at a low rate of speed. 2-ER-117. Bradley's low speed throughout the pursuit was inconsistent with the behavior of an individual attempting to evade the police. 2-ER-117–118.

Shrader began following Farney and Bradley just before the turn onto E. McVicar. Shrader trailed Farney by only two car lengths. 2-ER-219. Near the turn onto E. McVicar, Bradley, Farney and Shrader passed Godfrey, who performed a U-turn and followed them. 2-ER-117. At about 9:13 p.m., Bradley arrived at his girlfriend's home. Farney pulled in immediately behind Bradley, who had parked in the driveway. 2-ER-174, 265 at 0:04–0:20, 267 at 0:05–0:30. Within five seconds, Shrader and Godfrey arrived with their red and blue lights flashing. 2-ER-265 at 0:04–0:24, 267 at 0:05–0:30, 272, 274. Shrader and Godfrey were so close behind Farney that Godfrey, who was behind Shrader, was able to see Bradley pull into the driveway. 2-ER-119.

After Bradley parked, Farney immediately exited his patrol unit and watched Bradley exit his vehicle. 2-ER-179. Farney was not wearing his body-worn camera ("BWC"), which was left in his patrol unit where it remained until after the shooting. 2-ER-147. However, Farney's BWC did make an audio recording of the events, including a chiming noise when Farney

opened his car door and Farney's shooting of Bradley about 9 seconds later. 2-ER-180, 189–190, 276 at 2:43–2:53.

Bradley did not attempt to run or assume a fighting stance. 2-ER-180, 185. He stood by his vehicle and looked at Farney with a "thousand-yard stare." 2-ER-179, 181. He looked confused to Farney. 2-ER-198–199. Farney believed that there was an issue with Bradley's mental health, that he was "not all there," and that he was unaware of what was happening. 2-ER-181, 184–185, 200–201. Although Petitioners state that Farney did not know whether Bradley was armed, Pet. 5, Respondent's evidence shows that Farney could see Bradley's hands and that Farney believed Bradley was unarmed. 2-ER-184–185, 281.

Petitioners also state that Farney gave Bradley multiple commands. Pet. 6. However, Respondent's evidence shows that Farney did not give any commands when Farney exited his vehicle and approached Bradley, 2-ER-121, 194, 276 at 2:43–253, as the Ninth Circuit found in reversing summary judgment as to Farney and Sheriff Schuster. Pet. App. 3a. Farney asked no questions and made no attempt to engage Bradley in conversation. 2-ER-185–186, 276 at 2:43–2:53. He did not take a cover-position, utilize back-up, or attempt de-escalation techniques. 2-ER-196–197. Instead, he drew his firearm, pointed it at Bradley, and ran toward him about two seconds after Bradley pulled into the driveway. 2-ER-185, 202–205, 267 at 0:14–0:20, 281.

Farney approached Bradley without utilizing backup and went hands-on. 2-ER-205. At no time did Farney tell Bradley to turn around and put his hands behind his back. 2-ER-206. Farney attempted to grab Bradley, and Bradley flailed his arms at Farney

striking him *once*. 2-ER-222, 282. Farney was able to disengage and yell something at Bradley. 2-ER-207, 220; 3-ER-572–573 (Shrader's BWC at 2:50–2:55). Less than a second after Farney finally said something to Bradley, Farney shot him four times. 2-ER-220, 285–287; 3-ER-572–573 (Shrader's BWC at 2:50–2:55). Farney did so without a single warning or attempt to utilize his Taser or baton. 2-ER-208, 210. The shooting occurred approximately 7–10 seconds after Farney exited his vehicle. 2-ER-190–192, 276 at 2:43–2:53.

At no time did Bradley grab Farney's firearm. 2-ER-96, 221, 273; 3-ER-301. Godfrey and Shrader, who were at the scene during the shooting, did not see Bradley grab Farney's firearm. 2-ER-96, 273. Bradley's fingerprints were not found on the gun. 3-ER-301. When Farney disengaged from Bradley before shooting him, Farney was far enough away that the shooting produced an intermediate range wound as opposed to a close contact wound. 2-ER-287. The autopsy report showed that the gunshot wounds were to Bradley's chest with three lethal shots travelling at a *downward* trajectory. 2-ER-287; 3-ER-294–296.

Godfrey was at the scene when Farney shot Bradley. 2-ER-114. Like Farney, Godfrey did not have his BWC recording video at the time of the shooting. 2-ER-107–110. Godfrey's BWC was not even powered on. 2-ER-107–110. Godfrey approached Bradley from behind as Bradley fell to the ground. With Bradley on the ground, face-first covered in blood, Godfrey handcuffed Bradley. 2-ER-122. Bradley was left handcuffed for 17 minutes before he was transported to the hospital. Bradley died that night at 10:04 p.m. at Kingman Regional Medical Center from multiple gunshot wounds. 3-ER-314.

II. PROCEDURAL BACKGROUND

A. *District Court*. On April 6, 2022, Respondent Michael Rose ("Rose" or "Respondent") filed his Complaint in the United States District Court for the District of Arizona. Pet. App. 8a; 4-ER-598–614. The Complaint was brought under 42 U.S.C. § 1983 and alleged a Fourth Amendment violation against Farney for the use of excessive force and against Sheriff Schuster on a supervisory liability theory. Pet. App. 2a; 4-ER-605–609.

On March 24, 2023, Defendants moved for summary judgment on Rose's federal claims. 4-ER-623. On September 14, 2023, the district court granted Defendants' Motion for Partial Summary Judgment on qualified immunity grounds. Pet. App. 6a–29a. The court found that Rose failed to show that Farney had violated clearly established law. Pet. App. 23a. Based on this determination, the district court granted Sheriff Schuster qualified immunity on Rose's supervisory liability claim. Pet. App. 27a–28a.

The court declined to exercise supplemental jurisdiction over Rose's state law claims, which were dismissed without prejudice. Pet. App. 28. Rose initiated a state court action to pursue the remaining claims in Mohave County Superior Court. The case has been stayed pending resolution of this appeal.

B. *Ninth Circuit Court of Appeals*. On March 12, 2025, the Ninth Circuit reversed the district court's grant of summary judgment to Farney on Rose's excessive force claim and to Sheriff Schuster on Rose's supervisory liability claim. Pet. App. 4a. The Ninth Circuit found that it was undisputed that Bradley was unarmed and did not jump from his vehicle and begin running away. The Ninth Circuit also found that the evidence contradicted Farney's version of events,

including Farney's statements that he yelled multiple commands and that he did not run at Bradley. Pet. App. 3a.

Importantly, the Ninth Circuit agreed with the district court's finding that there was a dispute as to whether Bradley grabbed Farney's firearm. Based on the conflicting evidence as to whether Bradley did so and the distance between Farney and Bradley when Farney shot Bradley, the Ninth Circuit determined that a reasonable jury could discredit Farney's version of events and find that Bradley did not pose an immediate threat to Farney. The Ninth Circuit concluded that when construing the facts in the light most favorable to Rose, this was an obvious case of excessive force, and that general excessive force standards provided Farney with sufficient notice that shooting Bradley to death was unlawful. Because Farney was not entitled to qualified immunity, the Ninth Circuit held that the district court erred in granting summary judgment to Sheriff Schuster. Pet. App. 3a–4a, 4a n.1.

On April 18, 2025, the Ninth Circuit panel denied Petitioners' Petition for Panel Rehearing and Rehearing En Banc. Pet. App. 6a–7a. The Ninth Circuit stayed issuance of the mandate to allow Petitioners to file a petition for writ of certiorari.

REASONS TO DENY THE PETITION

I. The Ninth Circuit Correctly Applied Settled Qualified Immunity Principles in Reversing Summary Judgment as to Farney and Sheriff Schuster.

A. The first question presented seeks only to revisit the Ninth Circuit's application of the obvious case exception and disputes of fact unworthy of review.

Petitioners' first question seeks review of whether the Ninth Circuit erred by applying the obvious case exception in denying Farney qualified immunity. Pet. (i). Petitioners contend that the Ninth Circuit's reversal of summary judgment as to Farney illustrates why the Court needs to provide guidance to lower courts on the application of the obvious case exception. Pet. 11. They claim that this need for clarification has led to inconsistent decisions in the lower courts. Pet. 11. Petitioners' discussion of an alleged circuit "split" is limited to citing cases where the exception was applied and cases where it was not. Pet. 11. Petitioners do not allege that the circuits are split as to the adoption of a legal principle or test, for example. They do not claim that the circuits have applied the obvious case exception inconsistently in cases involving similar facts. The simple fact that some courts have applied the exception and some have not does not constitute a "split" among the circuits warranting review.

The problem with Petitioners' request for bright line guidance on the application of the obvious case exception is that Fourth Amendment excessive force cases "require[] careful attention to the facts and circumstances of each particular case…." *Graham v. Connor*, 490 U.S. 386, 396 (1989). Because of the fact-

specific nature of excessive force cases, bright-line guidance is not only unnecessary but would also be impractical in its application. This Court and the lower courts have consistently recognized that the obvious case exception applies in instances where the general standards set forth in *Graham* and *Tennessee v. Garner*, 471 U.S. 1 (1985), provide officers with fair warning on the constitutional limitations of the use of force, *e.g.*, *Hope*, 536 U.S. at 740–41; *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004); *Est. of Aguirre*, 29 F.4th at 629. It is difficult to envision how additional, one-size-fits-all guidance could be practically fashioned. The courts are already quite capable of applying the obvious case exception under established qualified immunity principles.

What Petitioners really want is for the Court to resolve disputes of fact in their favor and come to a different conclusion than the Ninth Circuit. Petitioners reference cases cited by the Ninth Circuit, Pet. App. 4a, in which the Court and the Ninth Circuit did not apply the obvious case exception. Pet. 11. Petitioners do not argue that the facts of these cases are analogous to Respondent's case. The fact that the obvious case exception did not apply in these factually distinct cases is immaterial.

Petitioners next turn their focus more specifically to an attack on the Ninth Circuit's reversal of summary judgment as to Farney. Their reliance on *Plumhoff v. Rickard*, 572 U.S. 765 (2014), is misplaced. *Plumhoff* involved a car chase with speeds exceeding 100 miles per hour. *Id.* at 776. The officers fired at the suspect when he was still attempting to flee in his vehicle. *Id.* at 776–77. The Court found that under these facts, the use of force was reasonable. *Id.* at 777. In contrast, Bradley's speed reached no more

than 30–35 miles per hour. One deputy described Bradley's driving as "super slow" and inconsistent with the driving of someone attempting to evade the police. During the pursuit, Farney heard a report that Bradley may be having a mental health issue. Bradley was not attempting to flee in his vehicle when Farney shot him. Bradley had voluntarily parked his car, exited the vehicle, and was standing still with a blank look on his face. As the Ninth Circuit found, "[i]t is undisputed that Bradley did not 'jump out of his vehicle and start running away,' and that Bradley was unarmed." Pet. App. 3a. The facts and circumstances in *Plumhoff* are a far cry from those facing Deputy Farney, making *Plumhoff* of no help to Petitioners.

For the same reasons, *Scott v. Harris*, 550 U.S. 372 (2007), does not help Petitioners. *Scott* involved a high-speed chase of a suspect traveling at 73 miles per hour. *Id.* at 375. The defendant officer in *Scott* was told by his supervisor to "[g]o ahead and take him out." *Id.* In contrast, Farney's supervisor twice ordered Farney and the other deputies to disengage and "back off" from the pursuit. In *Scott*, the officer employed a Precision Intervention Technique. 550 U.S. at 375. This caused the suspect's vehicle to overturn and crash, rendering the suspect a quadriplegic. *Id.* Like in *Plumhoff*, the facts in *Scott* are materially distinct from those confronting Farney.

Petitioners claim that *Plumhoff* and *Scott* illustrate how the Ninth Circuit erred in Respondent's case. Pet. 13. The problem is that Petitioners improperly rely on their version of events. Regarding the pre-shooting pursuit, taking Respondent's facts as true, Bradley made no attempt to hit anyone. He swerved to avoid hitting Godfrey's vehicle and navigated between two patrol units without hitting either. Bradley then

brushed the bumper of Cardenas' vehicle so lightly that Cardenas was "pretty sure" that it had even happened. Shortly after, Bradley corrected his vehicle to avoid hitting a tow truck driver and did the same to avoid Cardenas. If Bradley had wanted to strike the deputies, their patrol units, or the tow truck driver, he could have. Instead, he swerved and corrected to avoid doing so.

Further mitigating a reasonable perception of the seriousness of the pursuit is that Farney heard Godfrey announce that Bradley may be suffering from a mental health issue. Bradley was driving erratically, was often moving at a slow rate of speed, was heading toward others and then swerving to avoid them, was stopping briefly when signaled to do so, and was then performing U-turns. Bradley voluntarily terminated the pursuit by parking and exiting his vehicle.

Petitioners also claim that after the pursuit, Bradley refused multiple commands, attacked Farney by punching him in the face, and grabbed Farney's gun. Pet. 13. Again, Petitioners ignore the proper summary judgment standard. Accepting Respondent's version of events, when Farney gave the alleged commands, he was within two to three feet of his patrol unit. Farney's BWC had begun automatically recording audio from inside the vehicle, where the BWC was left until after the shooting. Nothing from Farney can be heard on the recording. The only words from Farney were captured on Shrader's BWC, though the words are unclear. Whatever was said by Farney, who admitted he gave no warning before the shooting, was less than a second before Farney opened fire. As the Ninth Circuit found, a reasonable jury could determine that no commands were given based on evidence that "no commands from Deputy Farney are

on the audio from the bodycam left in Deputy Farney's police vehicle, although another deputy and the sound of gunshots can be heard." Pet. App. 3a–4a.

Admittedly, it is not disputed that Bradley struck Farney. When Farney attempted to grab Bradley, Bradley flailed his arms at Farney, striking him *one time*. There is no evidence that Bradley was the aggressor, initiated the encounter, or ever advanced toward Farney. Instead, Farney ran at Bradley, gun drawn, without a word of warning. Taking Plaintiff's facts as true, this reasonably could be viewed as nothing more than a confused, mentally unsound individual flailing his arms in a defensive manner. In fact, Farney believed that Bradley was confused and unaware of what was occurring.

Finally, Petitioners assert that Bradley grabbed Farney's firearm. Pet. 13. They again ignore that there is a genuine dispute as to whether Bradley did so. Godfrey and Shrader, who were at the scene during the shooting, did not see Bradley grab Farney's firearm. Bradley's fingerprints were not found on the gun. As the district court stated, "there is a dispute as to whether [Bradley] grabbed Officer Farney's service weapon." Pet. App. 23a. The Ninth Circuit agreed. It found that a reasonable jury could reject Farney's claim that Bradley reached for his weapon. Pet. App. 4a.

A critical fact omitted by Petitioners is that Farney had disengaged to a relatively safe distance when he shot Bradley. Farney was far enough away that the shooting produced an intermediate range wound as opposed to a close contact wound. The autopsy report showed that the gunshot wounds were to Bradley's chest with three lethal shots travelling at a downward trajectory. This contradicts Farney's claim that he

shot Bradley at an upward angle with his gun canted upward at his hip, presumably to show how close he was to Bradley. 2-ER-283; 3-ER-308 at 24:55–25:10.

The inference to be drawn in Respondent's favor is that at the time of the shooting, Farney had put a safe amount of distance between himself and Bradley, eliminating any reasonable perception of an immediate threat of death or serious physical injury necessary to justify the use of deadly force. *See Scott*, 39 F.3d at 914 ("An officer's use of *deadly* force is reasonable only if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."); *Garner*, 471 U.S. at 3 (explaining that deadly force is not justified where there is no *immediate* threat). As the Ninth Circuit found, a reasonable jury could determine that "Bradley, who was unarmed and some distance from Deputy Farney, did not pose an immediate threat." Pet. App. 3a. Rather, Farney, "without giving any commands, simply stepped back and shot Bradley dead." Pet. App. 4a.

The importance of the distance between Farney and Bradley is that even if Bradley had grabbed Farney's gun, Farney was able to disengage and eliminate the immediate safety threat. Notably, though, as the Ninth Circuit found, Respondent showed a genuine dispute as to not only the distance between Farney and Bradley, but also as to whether Bradley grabbed Farney's firearm. Accepting Respondent's evidence on either of these issues allows a finding that Bradley did not pose an immediate threat of death or serious physical injury at the time of the shooting.

Rose's case is an obvious one. A reasonable jury could find that Farney was the only individual to

whom Bradley could potentially have posed an immediate threat of harm. Bradley was unarmed and appeared confused and unaware of what was happening. Importantly, Farney believed that Bradley was unarmed and possibly experiencing a mental health episode. Bradley flailed his arms, striking Farney one time, after Farney had charged him and went hands-on without a single warning or command. Bradley never grabbed Farney's firearm. Farney was able to disengage and shoot Bradley from an intermediate range while Bradley was stationary. Farney fired four shots at Bradley, three of them lethal, without warning. He did so in the presence of multiple back-up deputies, whom he failed to utilize. Viewing the evidence and all reasonable inferences in Respondent's favor, the general standards set forth in *Graham* and *Garner* provided Farney with fair notice that it was unlawful to shoot Bradley dead.

B. Ninth Circuit precedent gave Farney fair notice that his use of deadly force was unlawful.

The Ninth Circuit held that Farney's use of deadly force was an obvious violation of Bradley's Fourth Amendment rights. Though the Ninth Circuit did not reach the issue, the court could have alternatively found that existing case law provided Farney fair warning that shooting Bradley was unlawful.

The pertinent question is whether on the date of the shooting, the law was clearly established that an officer, without utilizing back-up, a cover position, or less lethal alternatives, was constitutionally prohibited from using deadly force against a suspect who was unarmed, was mentally disturbed, had been given no warning, was not attempting to evade arrest, and presented no immediate threat of death or serious

physical injury to the officer or others. Although no body of relevant case law is necessary in an obvious case such as this one, Ninth Circuit precedent also put Farney on notice that his conduct was unlawful.

In *Deorle v. Rutherford*, 272 F.3d 1272, 1986 (9th Cir. 2001), the Ninth Circuit concluded that any officer would have understood that it was objectively unreasonable to use significant force against an unarmed suspect who has not committed a serious offense, is mentally or emotionally disturbed, has been given no warning, does not pose a flight risk, and does not pose an objectively reasonable threat to the officer's safety or the safety of others. Given the apparent mental health disturbance and number of officers present, "the situation here was far from that of a lone police officer suddenly confronted by a dangerous armed felon threatening immediate violence." *Id.* at 1283.

Similarly, Bradley exhibited signs of mental illness, was given no warning prior to the shooting, and was not a flight risk. There were multiple officers present as Farney shot Badley. Taking Respondent's facts as true, Bradley did not grab Fareny's firearm, and Farney had disengaged to a safe distance when he shot Bradley. As to the seriousness of any offense, the pursuit had voluntarily come to an end. The one strike by Bradley did not justify the use of deadly force after Farney had disengaged, if ever. A reasonable jury could conclude that at the time of the shooting, there was no immediate threat of death or serious bodily injury to Farney. *Deorle* provided Farney with sufficient notice that shooting Bradley was unlawful.

In *Hayes v. Cnty. of San Diego*, 736 F.3d 1223, 1234–35 (9th Cir. 2013), the Ninth Circuit reversed the district court's determination that it was

objectively reasonable for sheriff's deputies to shoot a suspect who was six to eight feet away, was holding a knife pointed tip-down, was walking toward the deputies, and had a clueless expression on his face. The court explained it was unclear from the evidence that the suspect was threatening the deputies with a knife. *Id*. at 1234. It was also "significant that Hayes was given no warning before the deputies shot him." *Id*.

Here, Farney shot Bradley at an intermediate range. Farney could see that Bradley looked confused and did not appear to appreciate what was happening. Farney gave no warnings prior to discharging his firearm four times. There is a genuine dispute as to whether Bradley presented an immediate threat of death or serious harm at the time of the shooting. *Hayes* clearly established that Farney's use of deadly force was excessive.

II. The Ninth Circuit Has Not Adopted a Heightened Summary Judgment Standard.

Petitioners claim that in *Henrich*, the Ninth Circuit created a heightened summary judgment standard in police deadly force cases. Pet. 14. In *Henrich*, the Ninth Circuit explained:

> Deadly force cases pose a particularly difficult problem under this regime because the officer defendant is often the only surviving eyewitness. Therefore, the judge must ensure that the officer is not taking advantage of the fact that the witness most likely to contradict his story—the person shot dead—is unable to testify. The judge must carefully examine all the evidence in the record, such as medical reports, contemporaneous statements by the officer and the available physical evidence, as well as any

> expert testimony proffered by the plaintiff, to determine whether the officer's story is internally consistent and consistent with other known facts. In other words, the court may not simply accept what may be a self-serving account by the police officer. It must also look at the circumstantial evidence that, if believed, would tend to discredit the police officer's story, and consider whether this evidence could convince a rational factfinder that the officer acted unreasonably.

Henrich, 39 F.3d at 915 (citations omitted). The Ninth Circuit did not create a heightened standard. The Ninth Circuit simply explained that circumstantial evidence can create a genuine dispute, even though the moving party has submitted direct evidence on the matter. The court cautioned against too readily accepting as true an officer's self-serving statements and reminded the courts of why there may be no direct evidence to dispute the statements.

Petitioners go so far as to contend that the eleven other circuits have erroneously adopted this illusory heightened standard purportedly set forth in *Henrich*. Pet. 15–16. Petitioners provide no discussion of any of the cases cited. This is because there is no heightened standard. Petitioners raise this non-existent issue because they are unhappy with the Ninth Circuit's ruling. For argument's sake, if another circuit has misinterpreted *Henrich*, a case from that circuit would be the proper vehicle to seek review. Review is unnecessary here, where the Ninth Circuit correctly applied the proper standard.

Petitioners turn their argument to why the Court should not adopt this imagined heightened summary judgment standard. Pet. 16–18. Petitioners' points are

moot because they rely on the faulty premise that a heightened standard exists. The Ninth Circuit has not swapped the burdens of production or persuasion. And Petitioners' discussion of *Cnty. of Los Angeles v. Mendez*, 581 U.S. 420 (2017), is entirely inapplicable.

Also misplaced is Petitioners' attempt to compare and contrast other types of cases with police deadly force cases. Petitioners ask why it makes sense to treat a fatal car accident case differently than a police deadly force case. They claim that *Henrich* could undermine the summary judgment standard in every case involving a decedent. Pet. 17. But again, *Henrich* did not create a heightened standard. The same, settled standard applies to police shooting cases, car accident cases, and other cases involving a decedent. For example, in a car accident case brought as a survival action, testimony or other direct evidence may not be available to dispute the testimony of the alleged at-fault driver. *Henrich* would simply remind the court not to overlook circumstantial evidence.

Petitioners continue by arguing that *Henrich* could be interpreted as suggesting that a police officer may never be granted summary judgment in a § 1983 case, even when there is no evidence in the record to create a dispute of fact. Pet. 17, 21. Neither *Henrich* nor any other case cited by Petitioners supports this concern. The Ninth Circuit in *Henrich* expressly directed courts to look to evidence in the record. *Henrich*, 39 F.3d at 915. In Respondent's case, the Ninth Circuit did just that. The court reached its decision based on the evidence, including BWC audio, Farney's testimony, other officers' testimony, and autopsy reports. The Ninth Circuit correctly concluded that Respondent's evidence created genuine disputes of

material facts in reversing the lower court's grant of summary judgment as to Farney and Sheriff Schuster.

III. The Ninth Circuit Denied Summary Judgment as to Farney and Sheriff Schuster Based on Disputes of *Material* Facts.

Another argument by Petitioners regarding this illusory summary judgment standard is that there is no limit to the evidence that may be found to create a genuine dispute of material fact. Pet. 18. They claim that immaterial inconsistencies in the evidence can, and in this case did, serve as a basis for a court to find a dispute of material fact. Pet. 18, 21–22. It is difficult to even speculate as to how the cases cited by Petitioners, Pet. 21, support the notion that courts are focusing on immaterial disputes of fact. For example, in one case cited by Respondents, the Ninth Circuit reversed the lower court's grant of summary judgment because it was disputed whether the suspect attempted to use a weapon against an officer. *Daily v. City of Phoenix*, 765 F. App'x 325, 326 (9th Cir. 2019). Pursuant to this Court's Rule 15.2, Respondent notes that in *Johnson v. Myers*, 129 F.4th 1189, 1196 (9th Cir. 2025), the Ninth Circuit did not reverse and remand, as claimed by Petitioners, Pet. 21, but instead affirmed the district court's denial of qualified immunity. And in *Singh v. City of Phoenix*, 124 F.4th 746 (9th Cir. 2024), the Ninth Circuit did not reverse the grant of summary judgment based on disputes of fact. The court did so because it found that specific case law put the officer on notice that her use of deadly force was unlawful. *Id*. at 755.

Petitioners are again doing nothing more than asking the Court to resolve disputed factual issues or reject facts found by the Ninth Circuit in the instant

action. Respondent will not belabor the Court by again walking through the same facts and evidence. In Rose's case, the Ninth Circuit looked to autopsy reports, fingerprints, Farney's own statements, and other officers' statements in finding disputes of material facts, including on the critical issue of whether Bradley presented the sort of immediate threat that would justify the use of deadly force. The Ninth Circuit has never adopted a standard that would allow courts to deny summary judgment based on disputes of immaterial facts, and it did not do is in reversing summary judgment as to Farney and Sheriff Schuster.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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