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 Rose 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

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

GEORGIA A. STATON
RAVI V. PATEL
JUSTIN M. ACKERMAN
Counsel of Record
ASHLEY E. CABALLERO-DALTREY
JONES, SKELTON & HOCHULI P.L.C.
40 N. Central Avenue
Suite 2700
Phoenix, AZ 85004
(602) 263-1700
gstaton@jshfirm.com
rpatel@jshfirm.com
jackerman@jshfirm.com
adaltrey@jshfirm.com

Counsel for Petitioners

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INTRODUCTION

The Petition's two interrelated issues warrant this Court's review. First, the Court should clarify the contours of the "obvious case" exception to qualified immunity under the Fourth Amendment. Although this Court has acknowledged the exception in principle, it has never applied it in the Fourth Amendment context, and particularly in the context of a use of force in a rapidly evolving situation. Moreover, the obvious case exception needs clarity to ensure its proper application in the lower courts or risks swallowing the rule. As this case demonstrates, lower courts, left without guidance, have adopted inconsistent and unworkable standards. This lack of clarity undermines the principle that officers must have fair notice that their conduct violates constitutional rights.

Second, the Court should address whether a heightened scrutiny standard applies to a surviving officer's testimony in deadly force cases at summary judgment. Every circuit imposes a unique burden at summary judgment requiring courts to disregard unrebutted sworn officer testimony and scour the record for circumstantial inconsistencies. This approach conflicts with Rule 56, *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and effectively and improperly shifts the burden from plaintiff to defendant. But even if such scrutiny were permissible, this Court should clarify that only material inconsistencies—here, whether Bradley Rose posed an immediate threat to Deputy Farney—are relevant. The Ninth Circuit's reliance on immaterial discrepancies to disregard undisputed sworn officer testimony illustrates the need for guidance.

These issues recur nationwide, affect law enforcement and civil rights litigation, and implicate funda-

mental principles of qualified immunity and summary judgment. The Court should grant certiorari to provide clear, practical standards for lower courts.

I. THE COURT SHOULD PROVIDE GUIDANCE ON THE OBVIOUS CASE EXCEPTION TO QUALIFIED IMMUNITY.

A. The Contours Of The Obvious Case Exception Need Further Guidance.

There is no question this Court recognizes the *existence* of an obvious case exception to the second prong of qualified immunity. *See Hope v. Pelzer*, 536 U.S. 730, 738 (2002). The problem is that, without further guidance, the specific *contours* of the obvious case exception are unclear. It appears many circuit courts effectively conclude the standard is "I know it when I see it"[1] by making a broad sweeping determination, as the Ninth Circuit did in this case, that "every reasonable official would have understood that" an officer's conduct violated a decedent's Fourth Amendment right without citing a specific case that put the officer on notice. (App. A, at 4a (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)).

But this ad hoc approach to the obvious case exception is not workable in the context of qualified immunity, where this Court recognizes the need for sufficient prior notice to defendant officers that their conduct violates constitutional rights. And it is particularly problematic in the Fourth Amendment context, where officers often have to make split second decisions whether to use deadly force. *Graham v.*

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[1] *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J. concurring) (discussing the difficulty of creating a standard for obscenity claims).

Connor, 490 U.S. 386, 397 (1989). That is why this Court had repeatedly cautioned against applying the obvious case exception in the Fourth Amendment context, *see, e.g.*, *Kisela v. Hughes*, 584 U.S. 100, 105 (2018); *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004), and concurrently rejected repeated requests to do so, *see, e.g.*, *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021); *City of Escondido v. Emmons*, 586 U.S. 38, 43–44 (2019); *Kisela*, 584 U.S. at 105; *District of Columbia v. Wesby*, 583 U.S. 48, 64–65 (2018); *White v. Pauly*, 580 U.S. 73, 80 (2017); *Brosseau*, 543 U.S. at 199. Nevertheless, the circuit courts, and Ninth Circuit in particular, continue to expand the use of the obvious case exception to fact specific scenarios that are far from obvious. That is why review is warranted.

In this regard, lower courts must grapple with two standards that are seemingly at odds when assessing qualified immunity. On the one hand, it is well established that for a plaintiff to defeat an officer's qualified immunity a plaintiff "must identify a case that put [the officer] on notice that his specific conduct was unlawful." *Rivas-Villegas*, 595 U.S. at 6. On the other, a court may look to whether the constitutional violation is "obvious" without any reference to a prior case. Guidance is needed to instruct the lower courts on how to better harmonize these standards.

Although this Court has also stated the obvious exception can be based on *Garner* and *Graham*, *see Brosseau*, 543 U.S. at 199, the facts of *Garner* and *Graham* represent only a sliver of potential factual scenarios implicating the Fourth Amendment that police officers face on a day-to-day basis. Most of these situations, like the one faced by Farney in this case, are ones "in which the result depends very much on the facts of each case" and require a case sufficiently

on point to provide clear guidance. *Id*. at 201. And contrary to the Response's arguments, this Court has never even applied the obvious exception in the Fourth Amendment context.[2] Thus, lower courts lack direction from this Court for scenarios that are different from *Garner* and *Graham*[3] or even in the Fourth Amendment context at all.

Yet, quoting *Graham*, the Response argues this Court cannot give guidance on how to apply the obvious case exception because the Fourth Amendment "requires careful attention to the facts and circumstances of each particular case." (Resp. at 9). This is, of course, exactly why such guidance is needed. The Response then goes on to argue that it is difficult to envision what guidance can be given. (*Id.* at 9–10). But *Graham* is the perfect example of the type of guidance Petitioners seek. In *Graham*, despite the Court recognizing that the "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application" this Court was *still* able to fashion factors for lower courts to evaluate reasonableness under the Fourth Amendment. 490 U.S. at 396. The Court should do the same here.

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[2] Despite relying on *Hope*, the Response readily admits *Hope* is an Eighth Amendment case. Neither does the Response provide any explanation for how the Eighth Amendment is a viable proxy for the Fourth Amendment. Nor can it. The Eighth Amendment's cruel and unusual standard is entirely different than the Fourth Amendment's reasonableness standard.

[3] There is also a degree of confusion even with this proposition as this Court has repeatedly stated that *Garner* and *Graham* fail to provide the requisite notice under qualified immunity. *See, e.g., Plumhoff v. Rickard*, 572 U.S. 765, 779 (2014).

B. The Ninth Circuit's Decision In This Case Is An Example For Why Guidance On The Obvious Case Exception Is Needed.

The Response is also incorrect that the Petition is simply a rehash of the facts of this case. At this juncture, the issue before the Court whether the standard for the obvious case exception under the Fourth Amendment is sufficiently undefined that the Court should grant review. Supplemental briefing can, and will, address the appropriate clarifying standard for the obvious case exception and its application to the facts of this case.

However, a brief examination of the Ninth Circuit's decision in this case provides an example for why the obvious case exception needs clarification. This case involved an eight to twelve minute police chase where Bradley Rose ran stop signs, red lights, struck a police vehicle, endangered the deputies when they attempted to stop him on foot, and drove erratically into oncoming traffic and almost struck civilians. After Bradley stopped at an unknown residence, Farney arrived close behind, exited his vehicle, drew his weapon, issued commands,[4] and then quickly closed the distance to arrest Bradley. Bradley then struck Farney in the face, stunning him.[5] The Response asserts there is a

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[4] Deputy Shrader testified she heard Farney give commands and undisputedly stated she gave her own commands to Bradley.

[5] The Response's incorrect intimates that Bradley unintentionally struck Farney. Farney testified that Bradley struck him in the face as he approached Bradley with his gun drawn. Shrader testified she saw Bradley strike Farney's upper body, face, and shoulders from her position on the other side of Bradley's car. The Response's argument to the contrary lacks a basis in fact and should be rejected by this Court.

genuine issue of material fact as to what happened next, specifically, whether Bradley then tried to grab Farney's gun as he was stunned. Farney gave undisputed sworn testimony this occurred, that he fought Bradley off, after which Bradley tried to grab his gun again.[6] At this point Farney discharged his weapon in self-defense and in fear for his life.

Contrary to the Ninth Circuit's decision, no witness testified that Farney "without giving any commands, simply stepped back and shot Bradley dead," and based on this the Ninth Circuit held it was obvious Farney violated Bradley's Fourth Amendment rights. (App. A at 4a). That depiction of events is entirely unsupported by the record or even Plaintiff's account of the record. (*See* Resp. at 2–6). Thus, in making its "obvious" pronouncement, the Ninth Circuit failed to give due consideration to the preceding car chase, the commands given to Bradley once he was on foot, and that Bradley struck Farney in the face before he used deadly force.

The Response also improperly relies on *Deorle* and *Hayes*. (Resp. at 16–17). *Derole* involved the use of significant force against a mentally or emotionally disturbed individual who did not pose a flight risk, did not endanger officer safety (i.e., had not struck an officer), and was surrounded by multiple officers. *Deorle v. Rutherford*, 272 F.3d 1272, 1986 (9th Cir. 2001). *Hayes* involved a suspect who had no predecessor chase history, officers arrived on scene to a suspect holding a knife pointed down, the suspect did not

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[6] The Response disingenuously states that other officers "did not see Bradley grab Farney's firearm." (*See* Resp. at 13). No other officer was ever *in a position to see* whether the grab occurred. and, therefore, could not testify if it occurred.

engage with the officer, let alone strike him, and no furtive movement was made towards the officers before shots were fired. *Hayes v. County of San Diego*, 736 F.3d 1223, 1234–35 (9th Cir. 2013). Neither case is remotely similar to this case which undisputedly involves an erratic and dangerous car chase and violence seconds after on foot with Bradley striking Farney in the face.[7] Therefore, neither *Deorle* nor *Hayes* established Farney's conduct would "obviously" violate Bradley's Fourth Amendment rights.

In sum, the Ninth Circuit's decision illustrates the need for this Court's clarification of the obvious exception.

II. THE COURT SHOULD CLARIFY A HIGHER DEGREE OF SCRUTINY DOES NOT APPLY TO AN OFFICER'S TESTIMONY AT SUMMARY JUDGMENT SIMPLY BECAUSE HE IS THE SOLE SURVIVING WITNESS TO HIS USE OF DEADLY FORCE.

A. The Ninth Circuit And All Other Circuits Impose A Higher Standard At Summary Judgment Against Surviving Officers Who Used Deadly Force.

There is no dispute the Ninth Circuit (and every other circuit) has adopted an inappropriately heightened standard for a addressing a surviving officer's testimony in a deadly force shooting at summary judgment. The Response also does not dispute that this Court has not adopted or recognized this standard. (*See* Resp. at

[7] Although not required, Petitioners provided authority to the contrary under *Plumhoff* and *Scott v. Harris,* 550 U.S. 372 (2007), which clearly stand for the proposition that a preceding car chase can inform an officer's subsequent decision to use force.

18–21). Rather, the Response simply, and incorrectly, argues that this standard is somehow *not* heightened, despite clearly imposing additional requirements on officer-defendants than what is ordinarily required under Rule 56. This Court should reject that standard.

The Response errs first in ignoring Rule 56, which requires summary judgment absent a "genuine dispute as to any *material fact*." (Emphasis added). In any other circumstance, if a plaintiff fails to provide evidence in support of the elements of his claim or otherwise fails to materially dispute the opposing party's evidence, summary judgment is warranted. But *every circuit* departs from the basic requirements of Rule 56 when it comes to a police officer's use of deadly force.

In this circumstance, two additional requirements are <u>*added*</u> to Rule 56. First, "the court may not simply accept what may be a self-serving account by the police officer." *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994). The rationale for this appears to be the court's concern that the officer is "taking advantage of the fact that the witness most likely to contradict his story—the person shot dead—is unable to testify." *Id.* But an outright rejection of sworn and unrebutted deposition testimony flips the summary judgment standard on its head—it is the plaintiff who has the burden to establish his case—not the defendant. *Celotex*, 477 U.S. at 322. In other words, if Plaintiff in this case had no testimony to directly contradict Farney's testimony regarding his reason for his use of deadly force, that should have been the end of the court's inquiry at summary judgment: Plaintiff failed to carry his burden.

Second, *Henrich* requires the trial court to "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." 39 F.3d at 915. A court is to scour the record "to determine whether the officer's story is internally consistent and consistent with other known facts." *Id.* Thus, *Henrich* requires more than just ensuring the court not "overlook" circumstantial evidence. *Henrich* expands and increases the summary judgment standard by directing the trial court to focus on circumstantial evidence, *regardless of materiality to an officer's decision to use deadly force*. In short, any immaterial fact dispute provides a basis to disregard *all* of an officer's sworn, undisputed testimony. Such was the situation in this case. *See infra* § II(B); *see also* (Petition at 14–22).

The Response does not attempt to defend this heightened standard. Again, in other contexts where the "witness most likely to contradict the [defendant's] story . . . is unable to testify" this Court has not imposed any similar standard. *See, e.g., Henrich*, 39 F.3d at 915. For example, as Plaintiff recognizes, 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. (Resp. at 19). In that case, if there is undisputed testimony from the defendant that established the decedent plaintiff was at fault, the court's inquiry is at an end. There is *no* reason why it should be any different when a case involves a surviving law enforcement officer.

In sum, circuit courts impose a heightened standard above Rule 56 that uniquely and unfairly applies to law enforcement defendants. This Court's review is necessary to correct the circuit courts' inappropriate

application of the summary judgment standard in this context.[8]

B. Regardless, This Court Should Clarify That Only Material Inconsistencies Can Discredit A Surviving Officer's Testimony At Summary Judgment.

Finally, even assuming this Court were willing to adopt a *Henrich* type analysis, it should still clarify, consistent with Rule 56 and summary judgment jurisprudence, that only *material* disputes of fact can discredit a surviving officer's sworn testimony. These cases all arise in the context of whether the suspect posed an immediate threat to an officer before deadly force is used. *Graham*, 490 U.S. at 396. That, in conjunction with whether a plaintiff violated the law and was fleeing custody are the relevant, material considerations for the Court in evaluating a Fourth Amendment excessive force claim. *Id.*

Here, the critical dispute is whether Bradley grabbed Farney's gun in the seconds before he shot. It was not material under *Graham* whether, before the grab occurred, Farney instructed Bradley to get on the ground and the speed at which Farney approached Bradley, or after the grab occurred, the distance between Bradley and Farney when shots were fired. Yet, those were the factual discrepancies the Ninth Circuit largely (and incorrectly) claimed served as a

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[8] The Response wrongly states the Petition inaccurately cited *Johnson v. Myers,* 129 F.4th 1189, 1196 (9th Cir. 2025). Although the petition discussed cases the Ninth Circuit had reversed and remanded, it also qualified *Johnson* by saying it was remanded. Regardless, that argument misses the point: the Ninth Circuit sent the case to the jury to determine whether the suspect posed an immediate threat.

basis to discredit and disregard Farney's undisputed sworn testimony about the grab. It also ignored the one piece of material evidence in the record on the grab itself: whether fingerprint evidence contradicted Farney's account. On this, the Ninth Circuit perplexingly held that the presence of incomplete fingerprint evidence somehow discredited Farney's account (despite it entirely supporting it).

Should the Court accept jurisdiction, it should also provide guidance on what facts are material in the context of a sole surviving officer witness scenario in order to ensure that the lower courts properly determine whether an officer's testimony should be disregarded in the context of a larger qualified immunity analysis. This in turn feeds into the first question presented — whether the lower courts are properly applying the obvious case exception to qualified immunity.

CONCLUSION

For the reasons stated above and all those stated in the Petition for Writ of Certiorari, the Petition should be granted.

Respectfully submitted,

GEORGIA A. STATON
RAVI V. PATEL
JUSTIN M. ACKERMAN
Counsel of Record
ASHLEY E. CABALLERO-DALTREY
JONES, SKELTON &
HOCHULI P.L.C.
40 N. Central Avenue
Suite 2700
Phoenix, AZ 85004
(602) 263-1700
gstaton@jshfirm.com
rpatel@jshfirm.com
jackerman@jshfirm.com
adaltrey@jshfirm.com

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