

No.

In the Supreme Court of the United States

JOSHUA HOLLAMON, PETITIONER,

v.

COUNTY OF WRIGHT, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Zorn v. Linton*, 607 U.S. 568, 146 S. Ct. 926 (2026) (per curiam), this Court left unresolved the constitutional limits on police force against nonviolent civil disobedience. The Second Circuit had held that an officer’s use of significant force against a nonviolent, passively resisting protester violated the Fourth Amendment and that the prohibition was clearly established. This Court reversed without deciding the underlying constitutional question.

The Eighth Circuit decided that question here. It held that an officer acted reasonably in shooting petitioner in the head with pepperballs—resulting in brain injury—because petitioner and his fellow protesters by virtue of their civil disobedience “instigated the need for officer engagement by disobeying officers’ commands.” Pet. App. 6a, 10a. It rested its judgment on the constitutional merits, not qualified immunity.

That holding conflicts with the settled law of other courts of appeals that have held that civil disobedience alone does not justify significant force. The Tenth Circuit recently reaffirmed the opposite rule, holding that it is clearly established that shooting a protester with pepperballs when the protester is committing no crime more serious than a misdemeanor, threatens no one, and is not attempting to flee clearly violates the Fourth Amendment. *Epps v. Christian*, 173 F.4th 1236, 1242-44 (10th Cir. 2026). This case can resolve the conflict on the merits and give police and protesters the clear constitutional rule that *Zorn* left unsettled.

The question presented is:

Whether the police may use significant force against a person engaged in nonviolent civil disobedience—who is not suspected of a serious crime, is not threatening anyone, and is neither fleeing nor resisting arrest—because he refuses to obey their commands.

PARTIES TO THE PROCEEDING

Petitioner is Joshua Hollamon. He was the plaintiff-appellant below.

Respondents are the County of Wright and Dustin Miller, in his official and individual capacities. They were the defendants-appellees below.

RELATED PROCEEDINGS

United States District Court (D. Minn.):

Hollamon v. County of Wright, No. 0:22-cv-02246-KMM-LIB (Aug. 5, 2024)

United States Court of Appeals (8th Cir.):

Hollamon v. County of Wright, No. 24-2795 (Mar. 17, 2026; rehearing denied May 7, 2026)

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 170 F.4th 674. The order of the district court granting summary judgment (Pet. App. 16a-61a) is unreported but available at 2024 WL 3653092. The order of the court of appeals denying rehearing (Pet. App. 62a) is unreported but available at 2026 WL 1255916.

JURISDICTION

The court of appeals entered judgment on March 17, 2026, and denied a timely petition for rehearing on May 7, 2026. On July 27, 2026, Justice Kavanaugh extended the time to file this petition to and including October 4, 2026. *See* No. 26A115. 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:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Title 42 U.S.C. § 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws,
 shall be liable to the party injured in an action at law,
 suit in equity, or other proper proceeding for redress

STATEMENT OF THE CASE

This case presents a square conflict over a significant and recurring question of Fourth Amendment law: whether the police may fire a painful, dangerous projectile at a person engaged in nonviolent civil disobedience—one who is not threatening anyone, fleeing, or resisting arrest.

A county sheriff's sergeant shot petitioner Joshua Hollamon several times with pepperballs, including in the head, while Hollamon was engaged in nonviolent civil disobedience at a pipeline-construction protest. The Eighth Circuit held that force objectively reasonable, and the decisive ground was that Hollamon and his fellow protesters "defied officer commands" and so "cannot be characterized as compliant." Pet. App. 6a, 10a.

The consequence is stark. Civil disobedience is, by definition, the open and nonviolent refusal to obey commands by law enforcement. A rule that noncompliance with such commands alone justifies significant force therefore makes it lawful, in the Eighth Circuit, for police to shoot people engaged in nonviolent civil disobedience—for no reason other than that they are engaged in it. Both judges below saw where that leads. The district court warned of a regime in which officers could use force "to disperse or repel a crowd—including fire hoses, police dogs, live ammunition, and even flame throwers." Pet. App. 40a n.16. And Judge Kelly agreed that the courts "may be required to examine the contours of this 'black hole.'" Pet. App. 11a n.3.

One month after the decision here, the Tenth Circuit rejected the same justification for the same weapon. An

officer who shot a protester with a pepperball, and defended the shot on the ground that the protester was defying police orders to stay away from grounds officers had cleared, lost before a jury and on appeal. In the Tenth Circuit, officers violate the Fourth Amendment when they shoot a protester with pepperballs while she is not committing any crime more serious than a misdemeanor, is not threatening anyone, and is not fleeing—full stop. The courts of appeals have squarely divided, and only this Court can restore uniformity to this recurring and consequential corner of Fourth Amendment law.

Zorn v. Linton makes review especially urgent. *Zorn* brought this question to the Court just last Term but in a qualified immunity posture, leaving the constitutional question unresolved. 607 U.S. ___, 146 S. Ct. 926 (2026) (per curiam) (slip op., at 5-6). Unless this Court decides the merits, the right can never become clearly established. This case supplies the vehicle: the Eighth Circuit decided the constitutional question on the merits and did not reach qualified immunity. Pet. App. 5a, 10a. The Court should grant the petition and reverse.

A. Factual background

On the evening of July 29, 2021, Joshua Hollamon and several dozen other protesters approached a pipeline-construction site in northern Minnesota. Pet. App. 2a, 17a. Earlier that day, protesters had locked themselves to a vehicle at the entrance gate, shutting down work for several hours. Pet. App. 2a. Hollamon’s group moved to cross the site’s perimeter away from the gate. Pet. App. 2a.

The site was ringed by two barbed-wire fences bearing “No Trespassing” signs, separated by a “No Man’s Land” with a central berm. Pet. App. 2a. Hollamon helped erect ladders and climbed the outer fence into the No Man’s Land as officers shouted warnings not to cross.

Pet. App. 2a-3a. Hollamon was thus engaged in a paradigmatic act of nonviolent civil disobedience: the protesters aimed to lock themselves to construction equipment so that it could not operate, and to that end carried a lock-down device. Pet. App. 7a, 16a-17a. On this summary-judgment record—where every inference must be drawn in Hollamon’s favor—there is no evidence that Hollamon was armed, that he threatened or menaced anyone, that he assaulted anyone, or that he intended anything beyond the two misdemeanors with which he was charged: trespass and obstructing legal process. And when the pepperballs were fired, he was neither fleeing nor resisting arrest. The panel’s description of a goal of “creating havoc and chaos to disrupt and delay construction,” Pet. App. 6a, refers to disrupting and delaying construction of the pipeline—the object of the misdemeanor—not to any threat to the safety of any person.

As the protesters climbed the outer fence, Sergeant Dustin Miller and another officer fired “PAVA” pepperballs at them—a munition that releases a chemical irritant and inflicts pain on impact. Pet. App. 3a. On the summary-judgment record, viewed in the light most favorable to Hollamon, Miller struck Hollamon several times, including in the head. Pet. App. 3a; Pet. App. 19a n.5 (district court: the record “permits a reasonable inference that he was struck in the head by a pepperball fired by Sergeant Miller”). Officers had been trained to fire pepperballs at “center mass” and agreed they were “not permitted to aim the launcher at someone’s neck or head”; their training covered the fact that head shots could cause “severe and permanent injury or death.” Pet. App. 20a-21a. Hollamon presented evidence that he suffered a concussion, loss of consciousness, headaches, disorientation, and memory loss. Pet. App. 7a-8a, 19a.

When Miller fired, the pepperballs did not stop Hollamon's movement, and officers did not advance on him; he took cover behind the berm. Pet. App. 3a, 12a-13a (Kelly, J., concurring). About four minutes in, officers were instructed to stop deploying munitions unless protesters breached the inner fence, and Miller switched to chemical spray. Pet. App. 3a. Hollamon was not arrested until roughly fifty minutes later, and then by entirely different means: officers held him to the ground and zip-tied his wrists. Pet. App. 13a (Kelly, J., concurring). The pepperballs "were not the mechanism of his arrest." Pet. App. 13a (Kelly, J., concurring). Hollamon was charged with two misdemeanors—trespassing and obstructing legal process. Pet. App. 4a.

B. Proceedings below

Hollamon sued Sergeant Miller and the County of Wright under 42 U.S.C. § 1983 for Fourth Amendment excessive force, together with state-law claims for assault and battery. Pet. App. 4a.

The district court granted summary judgment to the defendants on the federal claim. Pet. App. 16a-61a. It held, first, that no reasonable jury could find Miller "seized" Hollamon, reasoning that the pepperballs were used to disperse rather than to restrain; and, second, that even if a seizure occurred, Miller was entitled to qualified immunity because the point was not clearly established. Pet. App. 40a-41a. The district court did not hold that Miller's use of force was reasonable on the merits. It declined supplemental jurisdiction over the state-law claims and remanded them to state court. Pet. App. 61a.

The district court flagged a doctrinal problem with the "no seizure" theory. It "share[d]" the "reservations" of a colleague on the same court, then-Chief Judge Patrick Schiltz, "about the 'legal black hole' created by distinguishing protestors being 'free to leave' and being

‘free to stay’”—the implication “that if force is used to disperse, there would be no Fourth Amendment seizure regardless of the level of force used” to “disperse or repel a crowd—including fire hoses, police dogs, live ammunition, and even flame throwers.” Pet. App. 40a n.16.

The Eighth Circuit affirmed. Pet. App. 1a-15a. Writing for the panel, Judge Graszk declined to resolve the seizure question and “assume[d], without deciding, that a seizure occurred,” resolving the case on reasonableness alone. Pet. App. 5a. Relying on *Graham v. Connor*, 490 U.S. 386 (1989), *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), and this Court’s recent decision in *Barnes v. Felix*, 605 U.S. 73 (2025), the panel held Miller’s use of force “reasonable under the totality of the circumstances.” Pet. App. 6a.

The panel’s decisive reason was the absence of compliance with officer commands. Because Hollamon and the other protesters had “forced the officers’ hands by defying orders and ‘No Trespassing’ signs,” the panel held, they “cannot be characterized as compliant,” and had “instigated the need for officer engagement by disobeying officers’ commands not to cross the security fences and advancing toward the officers.” Pet. App. 9a-10a. The panel also rejected the argument that pepperballs are “deadly force,” distinguishing cases involving “live ammunition,” and observed that the force “did not keep Hollamon from continuing to participate in the protesters’ blitz.” Pet. App. 7a-8a.

Judge Kelly concurred. She would have affirmed on the threshold seizure question, concluding that “no reasonable factfinder could conclude that Miller objectively intended to restrain Hollamon by means of pepperballs,” because the force was used to disperse, Hollamon was not stopped by it, and he was arrested

about 50 minutes later when officers “held Hollamon to the ground and zip-tied his wrists.” Pet. App. 10a-13a. She flagged the “black hole” the district court had identified: if force used to disperse is never a seizure, “officers would be permitted to use any level of force to disperse a crowd,” and “the Fourth Amendment’s reasonableness requirement would not apply.” Pet. App. 11a n.3. “[A]t some point,” she wrote, “we may be required to examine the contours of this ‘black hole.’” *Id.*

The Eighth Circuit denied rehearing en banc and panel rehearing. Pet. App. 62a.

REASONS FOR GRANTING THE PETITION

The decision below holds that a person forfeits the Fourth Amendment’s protection against excessive force the instant he disobeys a police command—even if he threatens no one, commits no serious crime, and neither flees nor resists arrest. Because every act of civil disobedience entails a refusal to obey commands, that holding makes it lawful in the Eighth Circuit to use significant, painful force against anyone engaged in peaceful civil disobedience. That holding cannot be reconciled with the decisions of at least seven other courts of appeals, and it collides head-on with a Tenth Circuit decision, issued one month later, that rejected the same justification for the same weapon.

This Court’s decision last Term in *Zorn v. Linton*, 607 U.S. ___, 146 S. Ct. 926 (2026) (per curiam), shows why only this Court can settle the question. There, the Court held that it was not clearly established that an officer violates the Fourth Amendment by putting a sit-in protester who “passively resisted” into a rear wristlock and “twist[ing] her arm.” *Zorn*, 607 U.S., at ___ (slip op., at 2, 5-6). The Court did not hold that force reasonable; it held only that no precedent had settled the question. So long as the constitutional question goes unanswered, it

can never become clearly established—and officers will remain immune for using significant force against peaceful civil disobedience indefinitely. As this Court has recognized, resolving such cases on immunity alone “threatens to leave standards of official conduct permanently in limbo.” *Camreta v. Greene*, 563 U.S. 692, 706 (2011). This case, decided on the merits and without any qualified-immunity holding, presents that question cleanly. The conflict is square and will not resolve itself. The question is important and recurs constantly, the decision is wrong, and this case is an ideal vehicle. The petition should be granted.

**I. THE DECISION BELOW DEEPENS A SQUARE
CONFLICT OVER A RECURRING QUESTION OF
FOURTH AMENDMENT LAW.**

Before significant force may be used, the courts of appeals ask the questions this Court’s cases pose: Did the person commit a serious crime? Did he pose an immediate threat? Did he flee or actively resist arrest? *Graham v. Connor*, 490 U.S. 386, 396 (1989). Where the answers are no, the courts have overwhelmingly held that an officer may not escalate to significant force merely because the person failed to obey. The decision below rejects that rule, treating noncompliance itself as the justification for significant force. The disagreement is not one of degree or emphasis; it is a flat conflict over the governing standard. And—as a decision handed down one month after the ruling below vividly shows—it will not correct itself.

**A. At least seven courts of appeals hold that
noncompliance, without more, does not justify
significant force.**

The Third Circuit has described the point as a settled “consensus.” Reviewing “cases from our sister Circuits,” it held that they “establish a ‘consensus . . . of persuasive

authority’ . . . that an unarmed individual who is not suspected of a serious crime—including one who is verbally uncooperative or passively resists the police—has the right not to be subjected to physical force such as being grabbed, dragged, or taken down.” *El v. City of Pittsburgh*, 975 F.3d 327, 340 (3d Cir. 2020).

That consensus is real and deep. The Fourth Circuit holds that “[p]ainful, injurious . . . inflictions of force, like the use of a taser, do not become reasonable simply because officers have authorization to arrest a subject who is unrestrained,” and that “[e]ven noncompliance with police directives and nonviolent physical resistance do not necessarily create ‘a continuing threat to the officers’ safety.’” *Estate of Armstrong v. Village of Pinehurst*, 810 F.3d 892, 904 (4th Cir. 2016). The Fifth Circuit holds that where a suspect’s “resistance was, at most, passive,” significant force may be found “not justifiable,” because officers must weigh “the relationship between the need and the amount of force used.” *Dewille v. Marcantel*, 567 F.3d 156, 167-68 (5th Cir. 2009). The Sixth Circuit holds that passive resistance justifies “only the amount of force that a reasonable officer . . . could have believed was needed to end [the] passive resistance”—no more. *Shreve v. Jessamine County Fiscal Court*, 453 F.3d 681, 687 (6th Cir. 2006). It has applied that principle to less-lethal projectiles, holding that shooting a man with a beanbag round as he tried to leave the scene of a riot and approached an officer with his hands raised was “objectively unreasonable,” because individuals “have a right not to be shot unless they are perceived as posing a threat to officers or others.” *Ciminillo v. Streicher*, 434 F.3d 461, 466, 468-69 (6th Cir. 2006). The Seventh Circuit holds flatly that “officers cannot use significant force on a nonresisting or passively resisting suspect.” *Becker v. Elfreich*, 821 F.3d 920, 929 (7th Cir. 2016). And the Ninth Circuit holds that “the right to be free from the

application of non-trivial force for engaging in mere passive resistance was clearly established” long ago, and has applied that rule to the very munition used here, holding it unreasonable to fire pepperballs at a nonthreatening person engaged in only “passive resistance” where the “governmental interest . . . was minimal at best.” *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1093-94 (9th Cir. 2013); *Nelson v. City of Davis*, 685 F.3d 867, 881, 883, 886 (9th Cir. 2012).

The Ninth Circuit has applied that rule to civil disobedience of the very kind at issue in this case. In *Headwaters Forest Defense v. County of Humboldt*, 276 F.3d 1125 (9th Cir. 2002), environmental protesters locked themselves together with “black bear” devices and refused to release after officers warned that pepper spray would be used; the officers then applied it. *Id.* at 1128-29. The court rejected the officers’ claim that the protesters were engaged in active resistance: they “were sitting peacefully, were easily moved by the police, and did not threaten or harm the officers.” *Id.* at 1130. It held that “it would be clear to a reasonable officer that it was excessive to use pepper spray against the nonviolent protestors under these circumstances.” *Id.*

The Tenth Circuit applies the same rule to pepperballs fired at protesters: an officer may not shoot a protester with pepperballs or other less-lethal munitions when the protester is committing no crime more serious than a misdemeanor, is not threatening anyone, and is not attempting to flee. *Packard v. Budaj*, 86 F.4th 859, 868-69 (10th Cir. 2023); see Part I.C, *infra*. It has done so for nearly two decades. In *Fogarty v. Gallegos*, it held unreasonable the force used against an antiwar protester who was at most a petty misdemeanor, posed no immediate threat, and neither resisted nor fled, noting testimony that the officers’ “main priorities in dispersing the protesters were reopening the street to traffic and

avoiding disruption to local businesses, not quelling an immediate threat of violence.” 523 F.3d 1147, 1160-61 (10th Cir. 2008). And the Second Circuit has recognized that “the police may violate clearly established law by initiating significant force against a suspect who is only passively resisting.” *McKinney v. City of Middletown*, 49 F.4th 730, 742 (2d Cir. 2022).

B. The decision below adopts the opposite rule.

In the vocabulary of excessive-force law, peaceful civil disobedience of the kind Hollamon engaged in is “passive resistance”—simply not doing what the officer says—as distinguished from active, physical resistance. That is exactly the conduct the other circuits’ rule protects. The panel below made no finding that Hollamon committed a serious crime, threatened anyone, fled, or actively resisted arrest when Miller fired. On the summary-judgment record, with every inference drawn in Hollamon’s favor, there was no such finding to make: the only conduct the record shows is the misdemeanor itself—crossing a fence to trespass and to facilitate locking down to equipment. Yet the panel held the force reasonable as a matter of law, on the decisive ground that Hollamon and the other protesters had “defied officer commands” and so “cannot be characterized as compliant,” having “instigated the need for officer engagement by disobeying officers’ commands.” Pet. App. 6a, 10a.

That is the precise proposition the other circuits reject. Their rule is that noncompliance alone does not supply what *Graham* requires—a serious crime, an immediate threat, flight, or active resistance. The rule below is that noncompliance is enough. The same pepperballs fired at the same nonviolent misdemeanant would state a Fourth Amendment claim in the Third, Fourth, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits, and would be held reasonable in the Eighth.

C. The conflict is square and entrenched.

Any doubt that the conflict is real was dispelled one month after the decision below. In *Epps v. Christian*, the Tenth Circuit reached the opposite result. A Denver officer shot Elisabeth Epps with a pepperball during a protest as she crossed a street toward the Colorado Capitol. 173 F.4th 1236, 1239 (10th Cir. 2026). The officer defended the shot on exactly the ground the Eighth Circuit accepted here: that Epps was defying police orders. The officer’s unit had just cleared the Capitol grounds, he told the Tenth Circuit, and “[p]art of their orders were to keep people from returning to the grounds”; Epps was “potentially failing to follow the orders of the police by returning to the State Capitol grounds,” conduct “at least analogous conceptually to fleeing from an arresting officer.” Appellant’s Opening Br. 18-20, *Epps v. Christian*, No. 24-1371 (10th Cir. Dec. 18, 2024). The Tenth Circuit rejected that defense. It applied its settled rule that officers violate the Fourth Amendment when they “shoot a protestor with pepper balls or other less-lethal munitions when that protestor is committing no crime more serious than a misdemeanor, not threatening anyone, and not attempting to flee.” 173 F.4th at 1242 (quoting *Packard v. Budaj*, 86 F.4th 859, 869 (10th Cir. 2023)). Any crime Epps may have been committing, the court said, “was minor.” *Id.* at 1243. It upheld a jury verdict against the officer and held that the illegality of his force was clearly established. *Id.* at 1239-40, 1243-44. The same justification—a nonviolent protester’s defiance of police orders to stay out of an area officers were securing—won as a matter of law in the Eighth Circuit, Pet. App. 9a-10a, and lost before a jury, and again on appeal, in the Tenth. Two courts of appeals, weeks apart, confronted the same weapon, the same kind of protester, and the same noncompliance-with-

commands defense, and came out opposite ways. A squarer conflict is difficult to imagine.

Nor is there any prospect that the conflict will resolve itself. The competing rules are long-settled and were reaffirmed on both sides after this Court’s decision in *Barnes v. Felix*, 605 U.S. 73 (2025): the Tenth Circuit adhered to its rule in *Epps*, and the Eighth Circuit adhered to its own in the decision below—the two courts dividing within weeks of each other, after *Barnes*. Each side has staked out its position, and the arguments are fully developed. Only this Court can restore uniformity.

II. THE DECISION BELOW LICENSES SIGNIFICANT FORCE AGAINST PEACEFUL CIVIL DISOBEDIENCE, AND THE QUESTION RECURS CONSTANTLY.

The practical effect of the decision below is to strip peaceful civil disobedience of Fourth Amendment protection against significant force. Civil disobedience is the deliberate, open, nonviolent violation of law—the sit-in, the blockade, the lock-down. Its defining feature is that the participant does not do as he is told, and accepts arrest for it. Under the rule below, that defining feature is itself the justification for significant force: once the protester refuses to leave or disperse, the officer may shoot him with painful chemical projectiles, without any serious crime, any threat, any flight, or any resistance to arrest. Everywhere else in the country, a nonviolent protester who breaks the law to make a point faces arrest and prosecution. In the Eighth Circuit, he may also be shot in the head multiple times.

That is no small thing, because civil disobedience is one of the oldest and most consequential forms of political expression in the Nation’s history—and the world’s. Writing from a Birmingham jail cell, Martin Luther King, Jr. traced it from “the refusal of Shadrach, Meshach and Abednego to obey the laws of Nebuchadnezzar,” through

“the early Christians” and Socrates, to our own founding: “In our own nation, the Boston Tea Party represented a massive act of civil disobedience.” Martin Luther King, Jr., *Letter from Birmingham Jail* (Apr. 16, 1963). Its defining ethic, King explained, is that “[o]ne who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty.” *Id.* The sit-ins and marches of the civil-rights movement were acts of that kind—open refusals to obey, undertaken with a willingness to accept arrest—and this Court repeatedly set aside the convictions of the protesters, including those who would not leave or disperse when the police told them to. *See Garner v. Louisiana*, 368 U.S. 157 (1961) (lunch-counter sit-ins); *Edwards v. South Carolina*, 372 U.S. 229, 236-37 (1963) (students who, when “told by police officials that they must disperse on pain of arrest,” instead “sang patriotic and religious songs”); *Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (opinion of Fortas, J.) (the right “to protest by silent and reproachful presence”); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 148 (1969) (Good Friday march held without a permit).

Consider what the rule below makes of that tradition’s defining moments. On Sunday, March 7, 1965, some 650 people left a church in Selma, Alabama, to walk to Montgomery and petition the Governor about the right to vote. *Williams v. Wallace*, 240 F. Supp. 100, 104 (M.D. Ala. 1965). Just past the bridge on the road to Montgomery, they “were ordered to disperse and were given two minutes to do so.” *Id.* at 105. They “failed to disperse.” *Id.* Within about a minute, state troopers “equipped with tear gas, nausea gas and canisters of smoke, as well as billy clubs, advanced.” *Id.* The marchers “were then prodded, struck, beaten and knocked down,” and mounted “possemen” “chased and beat the fleeing Negroes.” *Id.* “Approximately 75 to 80” were injured. *Id.*



Figure 1. Birmingham, Alabama, May 3, 1963: Walter Gadsden attacked by police dogs. Photograph by Bill Hudson, Associated Press.



Figure 2. Birmingham, Alabama, May 3, 1963: demonstrators seek shelter from a fire hose. Photograph by United Press International.

Two years earlier, the Birmingham police had turned “dogs, clubs, and firehoses” on civil-rights protesters, *Walker v. City of Birmingham*, 388 U.S. 307, 325 (1967) (Warren, C.J., dissenting) (describing findings of the United States Commission on Civil Rights)—the dogs, in King’s words, “sinking their teeth into unarmed, nonviolent Negroes.” King, *supra*. See Figs. 1-2. Under the decision below, every one of those blows was reasonable as a matter of law. The marchers at Selma had been warned. They defied officer commands. They could not “be characterized as compliant.” Pet. App. 10a. By refusing to disperse, they “instigated the need for officer engagement.” *Id.* In April 1963, Birmingham’s marchers had paraded without a permit and in open defiance of a court injunction. See *Walker*, 388 U.S. at 310-11. The district court below saw where a rule like this leads, warning of a regime in which officers could use “fire hoses, police dogs, live ammunition, and even flame throwers” to “disperse or repel a crowd.” Pet. App. 40a n.16. The decision below takes the Eighth Circuit most of the way there.

For decades, opponents of abortion have practiced civil disobedience by occupying clinic entrances with their bodies—chaining themselves together, refusing to move, and going limp when the police arrive. See *Amnesty America v. Town of West Hartford*, 361 F.3d 113, 118 (2d Cir. 2004) (protesters “chained themselves together in order to block entry” and used “‘passive resistance’ techniques,” “including going limp”); *Forrester v. City of San Diego*, 25 F.3d 804, 805 (9th Cir. 1994) (Operation Rescue demonstrators “blocked entrances to private medical clinics”). Under the decision below, an officer who finds a protester lying across a clinic doorway need not lift him and carry him away. He may warn him once, and then shoot him in the head with multiple pepperballs—in the doorway, on the ground, in the face—until he moves or

can be dragged out hurt. The same goes for a sit-in at a Senator's office, a vigil that will not leave a courthouse plaza, or a pipeline protester who climbs a fence to chain himself to a bulldozer. Whatever the cause, the protester's refusal to obey is the whole of the justification.

This Court has already seen where that leads. In *Zorn*, protesters staged a sit-in at the Vermont capitol and refused to leave when it closed. One of them, Shela Linton, planned to refuse to leave and expected to be forcibly removed: "That's the point of the sit-in part of the protest," she explained. *Zorn*, 607 U.S., at ____ (slip op., at 1). As she "passively resisted," an officer "put [her arm] behind her back in a rear wristlock, and twisted her arm." *Id.*, at ____ (slip op., at 2). This Court held that no precedent clearly established that this conduct violated the Fourth Amendment. *Id.*, at ____ (slip op., at 5-6). It so held even though the Second Circuit had read its own precedent to establish precisely "that the gratuitous use of pain compliance techniques—such as a rear-wristlock—on a protestor who is passively resisting arrest constitutes excessive force," *id.*, at ____ (slip op., at 5) (quoting *Linton v. Zorn*, 135 F.4th 19, 35 (2d Cir. 2025)); and even though the crime was trespass, the threat to safety was "[v]ery low," and the officer's own expert stated that "the general police practice in response to passive resistance is 'low level physical contact . . . with little or no pain,'" *id.*, at ____ (slip op., at 4) (Sotomayor, J., dissenting) (quoting 135 F.4th, at 36, 38). Three Justices would have held otherwise, warning that the decision "gives officers license to inflict gratuitous pain on a nonviolent protestor even where there is no threat to officer safety or any other reason to do so." *Id.*, at ____ (slip op., at 9) (Sotomayor, J., dissenting). Whichever view is right about the state of the law in 2015, *Zorn* left the constitutional question itself unanswered. And a question that is never answered on the merits can never become

clearly established. Only this Court can break that cycle—with a clear rule, not another round of case-by-case balancing—and it can do so only in a case, like this one, in which the court of appeals decided the constitutional question rather than immunity.

A warning cannot supply what the Fourth Amendment requires. The *Zorn* majority gave weight to the officer’s warnings, *Zorn*, 607 U.S., at ____ (slip op., at 4-5), and officers here shouted warnings too, Pet. App. 3a. But warnings cannot be a license for force against civil disobedience, the whole point of which is that the protester hears the command, understands the consequence, and refuses anyway—“with a willingness to accept the penalty.” King, *supra*. A warning tells such a protester nothing he does not already know. It merely announces that the officer intends to inflict pain for disobedience. If a warning sufficed, every command would carry its own license: an officer would need only say “move or I will shoot” to make the shooting reasonable. *Barnes* lists warnings among the relevant circumstances, 605 U.S. at 80; but relevant does not mean sufficient. The marchers at Selma were warned—they were given two minutes. *Williams*, 240 F. Supp. at 105. No one would say that the warning made what followed reasonable. The protesters in *Headwaters* were warned too, and the Ninth Circuit held the pepper spray excessive anyway. 276 F.3d at 1128-30.

The question is one of obvious national importance, and it arises constantly. Fourth Amendment claims arising from protests—pipeline protests, the 2020 George Floyd demonstrations, curfew enforcement, and mass-arrest scenarios—reach the courts of appeals over and over, and they routinely involve “less-lethal” munitions like pepperballs, 40 millimeter rounds, and chemical agents. Commentators have documented the resulting disarray: the courts of appeals have “reached seemingly

unharmonious results in an array of cases in which police officers have used force to remove activists engaging in sit-ins or refusing to leave in protest.” Karen J. Pita Loor, *The Expressive Fourth Amendment*, 94 S. Cal. L. Rev. 1311, 1330 (2021); *see also* Karen J. Pita Loor, *Tear Gas + Water Hoses + Dispersal Orders: The Fourth Amendment Endorses Brutality in Protest Policing*, 100 B.U. L. Rev. 817, 840 (2020) (courts “are divided regarding how the Fourth Amendment applies to dispersal cases”). The Eighth Circuit alone has confronted such force again and again, in pipeline-protest, racial-justice-protest, mass-arrest, and legal-observer cases. *See, e.g., Dundon v. Kirchmeier*, 85 F.4th 1250 (8th Cir. 2023); *Wolk v. City of Brooklyn Center*, 107 F.4th 854 (8th Cir. 2024). The decision below is thus not an isolated ruling; it reflects a recurring approach in a court that decides these questions term after term, and this Court’s review would bring a large and recurring body of less-lethal-force litigation back into line with the Fourth Amendment.

The rule below produces an untenable state of affairs. As matters stand, whether a person may be shot with a painful, dangerous projectile for peaceful civil disobedience turns on nothing more than the circuit in which he happens to stand. Pepperball force against a nonviolent misdemeanor who threatens no one—force that states a Fourth Amendment claim in seven circuits, and that produced a jury verdict against the officer in the Tenth, *see Epps*, 173 F.4th at 1239-40—is lawful in the Eighth once the protester has refused to obey. That is precisely the disuniformity this Court’s review exists to correct.

The consequences reach well beyond qualified immunity. A municipality may not assert its officers’ good faith as a defense, *Owen v. City of Independence*, 445 U.S. 622, 638 (1980), and this Court has identified suits against

municipalities and suits to enjoin future conduct as settings in which questions like this one can be decided free of immunity, *Camreta*, 563 U.S. at 706 n.5. But a holding that the force itself was reasonable closes those doors too: if the officer “inflicted no constitutional injury,” the city cannot be liable. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (per curiam). That accountability matters. The same day it decided *Epps*, the Tenth Circuit affirmed \$13.75 million in verdicts against Denver for failing to train its officers for the 2020 George Floyd protests, at which officers fired pepperballs and other less-lethal munitions at peaceful protesters. *Packard v. City & County of Denver*, 173 F.4th 1247, 1250-51, 1262-64 (10th Cir. 2026). And the First Amendment is no substitute: the *Epps* jury found that the officer violated the Fourth Amendment but not the First. 173 F.4th at 1240.

The stakes are high, because “less-lethal” force is not harmless. The scale is national: one dataset recorded more than 10,000 racial-justice demonstrations in 2020, the overwhelming majority of them peaceful; independent investigators documented scores of incidents of less-lethal force and at least 115 people were shot in the head or neck with kinetic-impact projectiles in the first two months alone. ACLED, *US Crisis Monitor Releases Full Data for 2020* (Feb. 5, 2021); Physicians for Human Rights, *Shot in the Head* (Sept. 2020). Federal agencies alone reported more than 120 less-lethal-force incidents in Washington, D.C., in three weeks, and more than 700 in Portland over the summer of 2020. GAO, *Federal Agencies Should Improve Reporting and Review of Less-Lethal Force*, GAO-22-104470 (Dec. 2021).

Pepperballs and kinetic-impact projectiles can cause serious injury and death—especially when fired at the head, face, and eyes. A systematic review collected injury data on 1,984 people struck by kinetic-impact projectiles,

53 of whom died and 300 of whom were permanently disabled, with head and neck strikes driving the most severe outcomes. Haar et al., *Death, Injury and Disability from Kinetic Impact Projectiles in Crowd-Control Settings: A Systematic Review*, 7 BMJ Open e018154 (2017). A study of the 2020 Minneapolis protests—occurring in the same State as this case—identified protesters with traumatic brain injuries and eye trauma from projectiles, many struck in the head, neck, or face. Kaske et al., *Injuries from Less-Lethal Weapons During the George Floyd Protests in Minneapolis*, 384 N. Engl. J. Med. 774 (2021). United Nations guidance accordingly provides that such projectiles “should not be targeted at the head, face or neck.” U.N. Office of the High Commissioner for Human Rights, *Guidance on Less-Lethal Weapons in Law Enforcement* § 7.5.8 (2020). Judge Kelly’s concurrence below noted record evidence “that pepperballs can cause serious injury or death . . . particularly when fired at the head or neck,” Pet. App. 14a—as the record shows happened here.

A rule that removes such force from Fourth Amendment scrutiny whenever a protester disobeys a command leaves a large and recurring category of police conduct effectively unregulated by the Constitution.

III. THE DECISION BELOW IS WRONG.

The Fourth Amendment’s reasonableness inquiry weighs “the nature and quality of the intrusion” against “the countervailing governmental interests,” considering “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396. This Court reaffirmed in *Barnes* that the inquiry takes into consideration the “totality of the circumstances” and has “no time limit,” so that a court

may not put on “chronological blinders.” *Barnes*, 605 U.S. at 80, 82.

Noncompliance is not among the *Graham* factors. Almost every use of force follows a refusal to obey, and every act of civil disobedience is such a refusal. Treating disobedience as itself justifying significant force would let it stand in for the factors *Graham* actually identifies—a serious crime, immediate threat, active resistance, or flight—and the reasonableness inquiry would collapse into a single question: did the person do as he was told? The correct question is whether the *Graham* factors are present. On the summary-judgment record here—viewed, as it must be, in Hollamon’s favor—they are not. Hollamon was suspected of misdemeanor trespass, not a serious or violent crime. Pet. App. 4a. Nothing in the record suggests he threatened or endangered anyone: he was struck while climbing over a fence and occupying the No Man’s Land, and he then took cover behind the berm. Pet. App. 3a. And he was neither fleeing nor resisting arrest when the force was used—his arrest came about 50 minutes later by other means. Pet. App. 13a (Kelly, J., concurring). On the record as it must be viewed, then, not one of the *Graham* aggravators was present.

The right rule is a categorical one, and the Eighth Circuit itself long embraced it: “if a person is not suspected of a serious crime, is not threatening anyone, and is neither fleeing nor resisting arrest, then it is unreasonable for an officer to use more than de minimis force against him.” *Mitchell v. Kirchmeier*, 28 F.4th 888, 898 (8th Cir. 2022). That rule follows directly from *Graham*. Where none of the circumstances that could justify force are present, nothing on the government’s side of the balance can justify more than de minimis force. Passive resistance—the refusal to do as one is told, as opposed to active, physical resistance—does not change that.

Zorn shows why the rule must be categorical. When the question is left to open-ended balancing of “the facts and circumstances of each particular case,” *Zorn*, 607 U.S., at ____ (slip op., at 4) (quoting *Graham*, 490 U.S. at 396), every new variation in the facts—a warning, a different hold, a different weapon—becomes a reason the law was not clearly established. Officers may then inflict pain on peaceful protesters without consequence, one variation at a time. A categorical rule gives officers clear notice and civilians engaged in expressive conduct real protection. It is the rule the Fourth Amendment requires.

Barnes does not rescue the decision below; if anything it confirms the error. *Barnes* requires courts to consider the whole context rather than freezing on a single instant. 605 U.S. at 80-82. The panel invoked that principle to spotlight the planned breach, the ladders, and the fences. Pet. App. 6a-7a. But the full context here still lacks what the Fourth Amendment requires to justify significant force: no violent or serious crime, no assault, no immediate threat to officer safety, and no resistance to arrest at the time the pepperballs were fired. Taking account of everything Hollamon did, he remained a nonviolent misdemeanor—and the panel’s own rationales do not supply the missing *Graham* factors. That the force “did not keep Hollamon from continuing to participate” in the protest, Pet. App. 8a, speaks to the *ineffectiveness* of the force, not its reasonableness. And describing a protester’s fence-crossing as conduct that “instigated the need for officer engagement,” Pet. App. 10a, simply relabels civil disobedience. The Fourth Amendment does not permit an officer to shoot a nonthreatening misdemeanor in the head because he disobeyed—and it does not make peaceful civil disobedience a license for significant force.

IV. THIS CASE IS AN IDEAL VEHICLE.

The question is squarely presented and was outcome-determinative below. The panel's judgment rests on its reasonableness holding, which turned on treating noncompliance as sufficient to defeat the de-minimis-force rule; the issue was fully briefed, with amicus participation, and decided in a published opinion, over a separate concurrence.

This is an ideal vehicle to decide the question. Although the district court had ruled in the alternative that the pepperballs were not a "seizure" and that Sergeant Miller was in any event entitled to qualified immunity, the court of appeals adopted neither rationale. It "assume[d], without deciding, that a seizure occurred," and it did not reach qualified immunity—resting its judgment solely on its holding that the force was reasonable. Pet. App. 5a, 10a. This Court reviews the judgment of the court of appeals, and that judgment stands on the reasonableness holding alone. Unlike *Zorn*, which came to this Court on qualified immunity alone, this case squarely presents the underlying constitutional question. The seizure and immunity questions are not part of the decision under review and present no obstacle to deciding the question the panel actually decided; indeed, this Court routinely decides a question after a lower court has assumed the answer to an antecedent one. See, e.g., *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009). Judge Kelly's separate view that no seizure occurred is a concurrence, not the court's holding, and does not alter the ground of decision.

That the panel reached the question by assuming a seizure is, if anything, a mark of the question's importance: the recurring pattern in these protest cases is precisely that courts assume a seizure and resolve the case on reasonableness, as the panel did here. This Court

can decide the reasonableness rule the decision announced cleanly and squarely.

Finally, the summary-judgment posture sharpens the question. The panel sustained significant force without any finding—and on this record, viewed in Hollamon’s favor, without any basis for a finding—that Hollamon committed a serious crime, threatened anyone, or fled or resisted arrest when the force was used. It rested instead on his civil disobedience—crossing a fence, against commands, to commit a misdemeanor. Whether that suffices under the Fourth Amendment to justify the use of significant force is the question on which the courts of appeals divide.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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