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2 established Fourth Amendment law. We ask that the  
3 damages award be upheld.

4 CHIEF JUSTICE ROBERTS: Thank you, counsel.  
5 Four minutes, Mr. Rosenkranz.

6 REBUTTAL ARGUMENT OF E. JOSHUA ROSENKRANZ  
7 ON BEHALF OF THE PETITIONERS

8 MR. ROSENKRANZ: Thank you, Mr. Chief  
9 Justice.

10 Let me start with Justice Kagan's question.  
11 Does a warrantless opening of a door create a different  
12 risk from an opening of a door, having called a judge  
13 and -- and received approval in advance? The answer is  
14 no, and it goes directly to one of the last things  
15 Mr. Feldman was saying. An officer, in broad daylight,  
16 in full uniform, when he simply opens a door, is not  
17 expecting to be faced with a gun a foot away from him.

18 JUSTICE SOTOMAYOR: Wait a minute. This  
19 wasn't in the middle of the day.

20 MR. ROSENKRANZ: Yes, it was, Your Honor.  
21 It was 1 p.m.

22 JUSTICE SOTOMAYOR: 1 p.m. in the afternoon?

23 MR. ROSENKRANZ: Yes, Your Honor, middle of  
24 the day. He's drenched in sunlight. Now, he does not  
25 know that Mr. Mendez will not recognize him as a police

1 officer. That goes to Mr. Feldman's point about  
2 culpability. Culpability has to be viewed from the  
3 perspective of the officer. That is what we are doing  
4 in 1983 cases and that's what Graham says you have to  
5 do. From his perspective --

6 JUSTICE GINSBURG: He didn't have the  
7 technicality about the knock and announce. Let's assume  
8 that this was a separate house, so it -- it required a  
9 knock and announce. There's nothing about the closure  
10 or any -- then -- then would you recognize that they had  
11 a good 1983 case?

12 MR. ROSENKRANZ: They -- they would have a  
13 much better 1983 case, Your Honor, which --

14 JUSTICE GINSBURG: Is it much better or  
15 would they -- would they have --

16 MR. ROSENKRANZ: There would still be a  
17 discussion to be had about whether when an officer shows  
18 up in full uniform someone should expect to understand  
19 that he is an officer.

20 But -- but let's just go broaden that to --  
21 to Justice Breyer's question about looking at all of  
22 this holistically. First, this Court has said you don't  
23 look at it holistically. Hudson says you break up the  
24 warrant requirement from the knock-and-announce  
25 requirement. That is what this Court did. And that's

1 what this Court should certainly do in a liability case,  
2 but let's go holistically.

3 Put yourselves in the shoes of these  
4 deputies, which is what 1983 says, and this -- and  
5 Graham says we're supposed to do. You are not looking  
6 to hurt anyone. You're doing your job, which is to  
7 apprehend someone you believe to be armed and dangerous.

8 You look at a shack. You believe there's no  
9 way on God's earth that anyone would live in that shack,  
10 a conclusion that a judge later concludes was  
11 unreasonable but credits that that was a firmly held  
12 belief by these deputies.

13 You move a curtain back, in broad daylight,  
14 but in the darkness you see the silhouette of a gun  
15 pointed at you, and it's only a foot away from your  
16 face. You think it's O'Dell, the armed and dangerous  
17 person who you think -- who you think is hiding in this  
18 shack. You reasonably think this is where I'm going to  
19 die, and you have only a second to decide what to do.  
20 Any rule that says that you can't fire in that  
21 circumstance is an untenable rule.

22 Whether you look at it from the perspective  
23 of proximate cause going forward, or you look at it from  
24 the perspective of the provocation doctrine moving  
25 backwards, when this Court talks about the totality of



1 the circumstances, yes, an officer should be absorbing  
2 the totality of the circumstances, but only with a view,  
3 when you're talking about the seizure, only with a view  
4 toward understanding what is the risk I'm facing here  
5 and now. That's the question he has to answer in that  
6 split second.

7                   And the risk that he is facing here and now  
8 has nothing to do with whether he committed a mistake  
9 earlier on. His life and the lives of the people he is  
10 protecting do not matter any less just because there was  
11 a mistake en route to the confrontation.

12                   If there are no further questions, we  
13 respectfully request that the Court reverse the Ninth  
14 Circuit's judgment. Thank you, your Honor.

15                   CHIEF JUSTICE ROBERTS: Thank you, counsel.

16                   The case is submitted.

17                   (Whereupon, at 11:21 a.m., the case in the  
18 above-entitled matter was submitted.)

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