No. _____

In the
Supreme Court of the United States

CURTIS MINCHUK,
Petitioner,

v.

CRAIG STRAND,
Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

On May 20, 2013, Merrillville, Indiana police officer Curtis Minchuk was overpowered and attacked by Plaintiff Craig Strand. Plaintiff had illegally parked his semi-truck tractor-trailer in the parking lot of a Planned Parenthood facility; had refused to leave when ordered; had refused to identify himself when ordered; had violently resisted Officer Minchuk's attempts to physically control him; and, when the two fell to the ground during the ensuing physical struggle, had pinned Officer Minchuk to the ground by the throat and beaten him about the face and head, ignoring his cry for help, before suddenly and unexpectedly making a gesture of surrender. Officer Minchuk, feeling the effects of repeated blows to the head and looking up at the unsubdued Plaintiff, who loomed over Officer Minchuk just a few feet away from him, and from where Plaintiff could have resumed his attack just as suddenly and unexpectedly as he had stopped, shot and wounded Plaintiff.

The questions presented are:

1. Whether evidence of a dangerous and violent suspect's sudden and unexpected gesture of surrender immediately and objectively terminates the deadly threat that that suspect had created, such that a police officer is no longer justified in using deadly force in self-defense under the Fourth Amendment, or whether, as the Fifth and Tenth Circuits have held, the totality-of-the-circumstances analysis continues to apply even where there is evidence

suggesting that the suspect had attempted to withdraw from his assault of the officer.

2. Whether Officer Minchuk is entitled to qualified immunity, where neither Plaintiff nor the Court of Appeals could identify any pre-seizure precedent holding that a police officer's use of deadly force within seconds of a violent suspect's assault of that officer was unreasonable, and where the most closely-analogous Circuit precedent established that a police officer is not required to accept a suspect's surrender at face value in tense and uncertain circumstances.

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Every year, dozens of police officers' lives are taken while serving and protecting. According to FBI statistics, 496 law enforcement officers were killed under felonious circumstances in 2008 through 2017. Situations where officers find themselves victim to violent assaults by suspects, even in circumstances that began peacefully, as here, are all too common.[1] When a police officer's choice to enforce the law causes an unexpected violent response from a suspect, police officers should be confident in their ability to defend themselves without fear of civil liability. The panel's decision erodes that confidence, and will cause police officers to become timid in the enforcement of the law out of fear of being subjected to personal civil liability if the suspect reacts violently. This result is squarely at odds with qualified immunity.

The Seventh Circuit departed from its sister circuits in denying qualified immunity to a police officer who used deadly force in self-defense within seconds of a violent suspect's last blow to the officer's head. Officer Minchuk was overpowered by a suspect who had illegally parked a semi-truck tractor-trailer in the parking lot of a Planned Parenthood facility, refused to leave when ordered, refused to identify himself when ordered, and violently resisted his attempt to place him under arrest, pinning him to the ground by the throat and punching him about the face and head at least three times, ignoring his cry for help. In mid-assault, the suspect suddenly and

[1] FBI statistics about law enforcement officers killed or assaulted are available at https://ucr.fbi.gov/leoka.

unexpectedly stood up and made a gesture of surrender. The suspect, however, continued to loom over Officer Minchuk, just a few feet away from where Officer Minchuk remained on the ground, and from where he could have resumed his attack just as suddenly and unexpectedly as he stopped. Officer Minchuk, looking up at the suspect who just a moment earlier had him pinned to the ground by the throat while beating him, and feeling the effects of those blows to the head, shot the suspect. The undisputed evidence establishes that there was no pause or delay before Officer Minchuk fired, and the District Court found that these events were rapidly-evolving. The Seventh Circuit's decision is contrary to precedent from this Court and at least two other Circuits which have considered cases with closely-analogous facts and found officers' decisions to use deadly force to defend themselves from violent assailants to be reasonable notwithstanding a momentary break in the assault. The Seventh Circuit, in contrast with these other courts, abandoned the totality-of-the-circumstances analysis and focused on the evidence of Plaintiff's surrender, dismissing the suspect's violent actions and minimizing the undisputed deadly threat that the suspect presented to the officer just a moment earlier. Petitioner is unaware of any decision by this Court or the Seventh Circuit, other than the opinion below, finding a Fourth Amendment violation where an officer employed deadly force within seconds of being overpowered and beaten by a suspect. The Court should hear this appeal to resolve this Circuit split on what facts may support the termination of a deadly threat to a police officer, such that the officer is no longer entitled to use deadly force in self-defense.

Worse yet, the Seventh Circuit withheld qualified immunity based upon its finding that the undisputed facts could support a violation of the suspect's clearly-established rights. However, the Seventh Circuit defined the right at issue as a general proposition of law that ignored the undisputed deadly threat presented by the suspect just a moment before Officer Minchuk's use of deadly force in self-defense, in violation of this Court's oft-repeated instructions that clearly-established rights must not be defined at a high level of generality. The panel in its initial Opinion relied exclusively upon precedent issued *subsequent to* the events of this case. The panel in its Amended Opinion continues to rely upon post-seizure precedent but also inserted older precedents that it stated clearly established the right at issue. The pre-seizure precedents cited in the Amended Opinion did not involve the use of deadly force in self-defense against a violent suspect within seconds of the violent suspect's attack of the officer, and so could not have provided fair warning to Officer Minchuk that the use of deadly force in self-defense would be unconstitutional. Moreover, the panel failed to credit its own most closely-analogous precedent, *Johnson v. Scott*, 576 F.3d 658, 659 (7th Cir. 2009), in which it had held unequivocally that "[n]ot all surrenders, however, are genuine, and the police are entitled to err on the side of caution when faced with an uncertain or threatening situation." The panel also failed to consider closely-analogous out-of-Circuit precedent demonstrating that the use of deadly force would not be unlawful, and upon which, under *District of Columbia v. Wesby*, 138 S. Ct. 577, 591-93 & nn.8-11 (2018), a reasonable officer would be

entitled to rely. Based upon these closely-analogous precedents, the panel should have recognized qualified immunity. Because qualified immunity is important to "'society as a whole,' the Court often corrects lower courts when they wrongly subject individual officers to liability." *City & County of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1774 n.3 (2015)(citation omitted)(quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982)). The Court should do so here.

This Court should grant the Petition on both questions presented or, alternatively, summarily reverse the panel's refusal to follow this Court's oft-repeated instructions governing qualified immunity, and find that Officer Minchuk did not violate clearly-established law.

OPINIONS BELOW

The District Court's decision is unpublished but available at 2018 WL 741625. The Seventh Circuit panel's original Opinion was to be published in the Federal Reporter at 908 F.3d 300, but was subsequently withdrawn. The panel's Amended Opinion is available at 910 F.3d 909.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Seventh Circuit issued its original Opinion on November 8, 2018. On December 6, 2018, the panel

issued its Amended Opinion and the court denied rehearing *en banc*. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The applicable constitutional and statutory provisions, U.S. Const. Amend. IV and 42 U.S.C. § 1983, are set out in the Appendix.

STATEMENT OF THE CASE

I. Pre-Seizure Facts of which Officer Minchuk Would Have Been Aware at the Time he Employed Deadly Force.

As the summary judgment record establishes, Officer Minchuk worked security at the Merrillville Planned Parenthood in May 2013. R. 207-208, 1454 (pp. 14-45). The Merrillville Planned Parenthood location is in a small strip mall with a small parking lot. R. 1443, 2204 (aerial photograph). Merrillville officers' off-duty employment, such as Officer Minchuk's off-duty employment with Planned Parenthood, is managed through the Merrillville Police Department. R. 557. Officer Minchuk's job at Planned Parenthood included protecting the doctors and employees. R. 209, 1467 (pp. 67-68). Officer Minchuk was aware that Planned Parenthood facilities had been the victim of bomb threats and

violence to buildings, patients, doctors, and employees. R. 1467 (pp. 67-68).

On May 20, 2013, Officer Minchuk arrived for his shift at about 2:00 p.m., in uniform and driving his Merrillville patrol vehicle. R. 208, 211, 249-50, 343, 1459 (p. 33). When he arrived, he noticed a semi-truck tractor-trailer ("the semi") parked in the Planned Parenthood parking lot. R. 212. Officer Minchuk went over to the semi and knocked on the cab, but got no response. R. 213-14, 753.

Officer Minchuk then went into the Planned Parenthood facility and checked with the employees at the front desk and with the patients in the lobby to see if anyone knew about the semi parked in the parking lot. R. 216, 1198, 1209, 1461 (p. 41). One of the managers of the Planned Parenthood facility, Monica Roberts, went and checked with the other employees who were working. R. 1462 (p. 45). None of the employees or patients knew anything about the semi parked in the lot. R. 302, 343, 1209, 1461-62 (pp. 41, 45). After speaking with the Planned Parenthood employees and patients, Officer Minchuk wrote two tickets, one for illegal parking and one for load limit violation, and placed them on the semi. R. 215, 218, 387, 425-26.

Roberts later came to Officer Minchuk, who was in his patrol vehicle behind the facility, and informed him that the truck driver (Plaintiff) wanted to speak to him about the tickets. R. 1190-91, 1224-25, 1461 (p. 41), 2168-70.

Officer Minchuk drove his patrol vehicle over to the semi and met Plaintiff. R. 221, 1365-66, 1461 (p. 42). Plaintiff wanted Officer Minchuk to tear up the tickets because of the lack of "No Parking" signs, and claiming that he was told he could park there. R. 902-903. Officer Minchuk refused and drove back over to another spot in the parking lot where he could watch that side of the building. R. 228-29.

After Officer Minchuk saw Plaintiff walking around with his cell phone for three to five minutes, "doing everything but not leaving," he drove back over, parked near the semi, and ordered Plaintiff to leave. R. 904, 229-31, 1366, 1461 (p. 42), 2204. Plaintiff refused to leave as ordered, but instead wanted to take pictures first. R. 904, 1366-67. Officer Minchuk told Plaintiff that he was calling a tow truck and that he had two minutes to get out of there. R. 905-906, 1368. Plaintiff responded that he would have his pictures and be gone before the tow truck arrived. R. 906, 1368.

Officer Minchuk did not know why Plaintiff was there, what was in Plaintiff's truck, or if anything in the truck could have posed a risk of harm to the people at the Planned Parenthood. R. 1467 (p. 68).

II. During the Ensuing Physical Struggle, Plaintiff Overpowers Officer Minchuk, and Officer Minchuk Employs Deadly Force.

When Plaintiff again refused to leave, Officer Minchuk demanded Plaintiff's driver's license. R. 225, 907, 949, 1369, 1374, 1378, 1380. Plaintiff responded, "No, I'm not gonna give you my fuckin' I.D. I don't

have to give you shit. As a matter of fact, who are you? What's your badge number? What's your I.D.? What gives you the right to attack somebody who is acting in a peaceful manner; who's simply come to a place to try and do business?" R. 1378-79; see also R. 907. Officer Minchuk replied, "I said, give me your I.D." and initiated physical contact to arrest Plaintiff by attempting to force him to the ground, which Plaintiff resisted by pushing Officer Minchuk away. R. 244, 367, 369, 907-908, 1000, 1203, 1402.

When the altercation became physical, Officer Minchuk sent out a call over his radio for "78," which is a code for officer in need of assistance. R. 241-42. An officer would only use this code in an emergency, when the officer feels that he needs immediate backup. R. 1590-92, 1719.

When Plaintiff pushed Officer Minchuk away, Plaintiff's shirt ripped off and they both fell back a couple of steps. R. 907, 1382-83. Officer Minchuk continued to try to gain physical control over Plaintiff and force him to the ground, and Plaintiff continued to resist. R. 908, 1383, 1402.

Plaintiff and Officer Minchuk were not stationary during this altercation. Rather, they drifted as they fought. The altercation began between Plaintiff's semi and Officer Minchuk's patrol vehicle, R. 959, and as they fought Plaintiff and Officer Minchuk drifted towards a landscaped area at the edge of the Planned Parenthood property about fifty feet (50') away, R. 370, 440, 1271-73, 2204.

At that point, Plaintiff tripped and began to fall; he grabbed Officer Minchuk's arm and they both fell to the ground. R. 908, 1383. Officer Minchuk fell onto his back, and Plaintiff fell onto his side next to Officer Minchuk. R. 908, 966-67. Plaintiff then reached over with his left hand, grabbed Officer Minchuk by the neck, and, pushing his weight down onto Officer Minchuk's throat, punched Officer Minchuk in the face. R. 908, 977-78, 1384. Plaintiff punched Officer Minchuk about the face and head repeatedly—at least three times—over ten (10) to twenty (20) seconds while Officer Minchuk was on his back on the ground with Plaintiff's hand around his throat. R. 370-72, 435-38, 908-909, 919, 975, 1229-30, 1262-63. Plaintiff struck Officer Minchuk in the face even after Officer Minchuk cried out for help. R. 909, 1384. Plaintiff acknowledges that he was hurting Officer Minchuk when he had Officer Minchuk by the throat and was punching him about the face and head, but felt "very justified" in doing so. R. 1393-94.

While being beaten by Plaintiff, Officer Minchuk was afraid that Plaintiff was going to kill him. R. 253, 1461 (p. 44), 1466 (p. 63), 1468 (p. 71). Officer Minchuk was seeing stars and felt like he was going to pass out on the next hit. R. 253, 1468 (p. 71). Officer Minchuk was thinking that, if he passed out, Plaintiff could take his gun and kill him. R. 1468 (p. 71). Both parties' experts agree that Plaintiff presented a threat of death or serious bodily harm while Plaintiff was beating Officer Minchuk. R. 1638-41, 1719-20.

Officer Minchuk again cried out for help, and, according to Plaintiff's testimony, Plaintiff got up,

took a few steps back, put his hands in the air, and said "I surrender. Do whatever you think you need to do. I surrender, I'm done." R. 909-910, 1385, 1388-89. Plaintiff was still standing over Officer Minchuk just four to eight feet away, in a position of advantage over Officer Minchuk, who was in a vulnerable position on the ground. R. 918, 1389-90, 1599-1602, 1643, 1719, 1721. Plaintiff was not handcuffed or restrained in any way; he had complete freedom of movement. R. 1643. There was no barrier between Plaintiff and Officer Minchuk. R. 1643. Officer Minchuk had not had any opportunity to check Plaintiff for weapons, and did not know whether Plaintiff had any weapons on him. R. 1643. There were no backup officers around and Officer Minchuk, who had lost his radio at some point during the fight, had no way of knowing when backup would arrive. R. 1718-19. Plaintiff had just exhibited extreme changes in behavior, and Officer Minchuk had no way of knowing whether Plaintiff's surrender was sincere. R. 1645-46.

Officer Minchuk, still on the ground and suffering the effects of repeated blows to the head, unholstered his gun and fired one bullet, striking Plaintiff in the abdomen. R. 910, 983, 1387, 1392. Plaintiff survived.

Eyewitness Karene Orsini testified in Plaintiff's criminal trial for assaulting Officer Minchuk that Plaintiff was shot within a second of when he stopped hitting Officer Minchuk. R. 374-75. Eyewitness Joann Gonzalez testified in her deposition in the criminal case that Plaintiff was up for a second before grabbing his stomach and falling over. R. 1267. Eyewitness Kynneisha Mitchell-Phillips testified at Plaintiff's criminal trial that there was no pause from

the time Plaintiff stood up until Officer Minchuk fired. R. 442. Officer Minchuk testified in this case that it was "[s]econds" between the time that Plaintiff rose up and when he fired. R. 1468 (p. 70). Plaintiff's father testified in this case that, based upon the numerous times that his son described these events to him, he had the impression that "it was no delay at all, maybe simultaneous" between Plaintiff's surrender and Officer Minchuk's use of deadly force. R. 1495. In the 911 call reporting this incident, the caller reports that Plaintiff is "fighting" Officer Minchuk (present tense) and then immediately reports that Officer Minchuk "just shot him" (past tense). R. 1179.

Less than thirty seconds elapsed from the time that the altercation between Plaintiff and Officer Minchuk became physical to the time that Officer Minchuk fired his weapon. R. 1176-79, 1720-21. In those less-than-thirty seconds, Plaintiff and Officer Minchuk engaged in a push-pull match during which they drifted about fifty feet (50'); Officer Minchuk and Plaintiff fell to the ground; Plaintiff grabbed Officer Minchuk by the throat, pressing his weight down; Plaintiff struck Officer Minchuk three or more times over the course of ten (10) to twenty (20) seconds as Officer Minchuk called out for help; Plaintiff rose up off of Officer Minchuk, took a few steps back, put his hands up, and voiced his surrender; and Officer Minchuk drew his weapon and fired.

Plaintiff did not dispute Defendants' evidence regarding the timing of the physical struggle or of the shooting in his response to Defendants' Motion for Summary Judgment. App. 39.

III. Proceedings.

A. Plaintiff's Criminal Conviction.

As a result of this incident, Plaintiff was convicted of felony battery on a police officer causing injury. R. 1300-1303. Plaintiff asserted the defense of self-defense in his criminal trial; the jury was instructed on self-defense, but rejected it. R. 1074-75, 1300-1303.

B. District Court.

Plaintiff sued Officer Minchuk and the Town of Merrillville in the United States District Court for the Northern District of Indiana, asserting a claim under 42 U.S.C. § 1983 for excessive force. Dist. Ct. Dkt. #1. The District Court had jurisdiction over Plaintiff's claims under 28 U.S.C. § 1331. Defendants moved for summary judgment, which the District Court denied. Dist. Ct. Dkt. #38.

Although finding that the circumstances of this case were "rapidly-evolving," the court nonetheless decided that it could not determine whether the use of force was objectively reasonable in light of Plaintiff's surrender. App. 49. Upon deciding that a trial was necessary to determine objective reasonableness, the court decided that it could not determine qualified immunity under the clearly-established prong, either. App. 50.

C. Court of Appeals.

1. Original Panel Opinion.

Officer Minchuk appealed the denial of qualified immunity. The Seventh Circuit panel affirmed, holding that factual issues regarding the timing of the surrender and of the use of force precluded summary judgment. App. 28-35.

On the objective-reasonableness inquiry, the panel noted that, "[f]or Minchuk to prevail at this stage, the record must show that he fired while Strand still posed a threat," but found that "the record shows that Strand had backed away, voiced his surrender, and up to five, ten, or fifteen seconds may have elapsed while Strand stood with his hands in the air." App. 31. The panel supported its holding by noting that this case does not involve "hot pursuit of an individual known to be armed and dangerous. Nor had the police responded to a report of violent crime. . . . To the contrary, the entire fracas leading to Officer Minchuk's use of deadly force began with his issuance of parking tickets." App. 29. The panel blamed Officer Minchuk for "allow[ing] the situation to escalate and boil over" when he attempted to arrest Plaintiff. App. 29-30. The panel also cited the fact that Plaintiff was unarmed, App. 29, a fact of which Officer Minchuk was unaware at the time he employed deadly force.

The panel held that the timing issues also precluded qualified immunity under the clearly-established prong. App. 34-35. The panel defined the right at issue in this case as "a subdued suspect['s] right not to be seized by deadly force." App. 34. The

panel based its determination that Officer Minchuk may have violated clearly-established law upon three Seventh Circuit opinions, each issued subsequent to the events at issue in this case: *Weinmann v. McClone*, 787 F.3d 444 (7th Cir. 2015), *Becker v. Elfreich*, 821 F.3d 920 (7th Cir. 2016), and *Miller v. Gonzalez*, 761 F.3d 822 (7th Cir. 2014). App. 34. Absent from the panel's analysis of clearly-established law is any discussion of pre-existing precedent from which it must have been clear to a reasonable officer under the particular facts of this case that Plaintiff was indeed "subdued," and therefore no longer a threat, at the time that Officer Minchuk employed deadly force.

In its analysis of clearly-established law, the panel distinguished its pre-seizure opinion of *Johnson v. Scott*, in which it had held that police officers are not necessarily required to take a suspect's surrender at face value in tense and uncertain circumstances, *Johnson*, 576 F.3d 658, 659 (7th Cir. 2009), because in *Johnson* the crimes leading to arrest were severe, the suspect had "'used every method at his disposal to flee,'" and the officer used force within a second of the suspect's surrender. App. 33. The panel contrasted *Johnson* with Plaintiff's confrontation with Officer Minchuk, which it said "involved no high-speed car and foot chase, no report of a violent crime, and no reason to believe an offender was armed." App. 33. Absent from the panel's analysis is any mention of Plaintiff's resistance to Officer Minchuk's attempt to arrest him, Plaintiff's felony battery of Officer Minchuk, or the undisputed facts that Officer Minchuk did not know whether Plaintiff was armed

and that, if Plaintiff had been armed, he could have pulled that weapon at any time.

The panel suggested that qualified immunity may be determined at trial based upon special interrogatories to the jury about the circumstances and timing surrounding the use of force, but gave no direction to the parties about how long of a delay before the use of deadly force would be too long for either the objective-reasonableness or clearly-established-law inquiries. App. 35.

2. Amended Panel Opinion.

Officer Minchuk filed a Petition for Rehearing and Rehearing *en Banc*. Ct. App. Dkt. #28. The court denied the requests for rehearing, but issued an Amended Opinion. Ct. App. Dkt. ##29-30; App. 1-18. The panel revised its definition of clearly-established law to "a subdued suspect['s] right not to be seized by deadly or significant force" (adding the "or significant"), and revised its citations in support of clearly-established law. The panel added citations to two pre-existing cases—*Abbott v. Sangamon County*, 705 F.3d 706 (7th Cir. 2013), and *Ellis v. Wynalda*, 999 F.2d 243 (7th Cir. 1993)—and removed the citation to *Weinmann v. McClone*. App. 16-17. The panel in its Amended Opinion continues to rely in support of clearly-established law on its post-seizure opinions of *Becker v. Elfreich* and *Miller v. Gonzalez*. App. 16-17.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to clarify Fourth Amendment standards governing the circumstances under which a violent suspect may objectively terminate the deadly threat created by that suspect, such that a police officer is no longer entitled to employ deadly force in defense of self or others. Additionally or alternatively, this Court should grant certiorari and summarily reverse the Seventh Circuit to ensure the proper application of qualified immunity.

I. The Court Should Hear this Case to Resolve the Circuit Split Regarding Whether the Use of Deadly Force in Self-Defense Remains Justified Notwithstanding a Momentary Break in the Suspect's Assault of the Officer.

At the heart of this appeal is whether a sudden, unexpected, and subjective gesture of a dangerous and violent suspect's intent to discontinue his physical assault of a police officer immediately and objectively terminates the deadly threat presented by that suspect, such that the officer is no longer entitled to use deadly force in self-defense. Petitioner is unaware of any opinion in which this Court has previously addressed under what circumstances a dangerous suspect may be considered to have, through his own actions, terminated the deadly threat that that suspect had himself created. The panel's opinion conflicts with decisions of the Fifth and Tenth Circuits which found, based upon the totality of the circumstances, no constitutional violation where deadly force was used despite evidence that the

suspect had attempted to withdraw from the suspect's attack of the officer. By contrast, the panel focused on Plaintiff's gesture of surrender, to the near-total exclusion of any other facts which a reasonable officer could have considered, in holding that a jury could find that Officer Minchuk used excessive force. The Court should hear this case to resolve this Circuit split about the facts under which an officer's use of deadly force in self-defense may no longer be objectively reasonable.

In order to be considered lawful under the Fourth Amendment, a police officer's use of force must be objectively reasonable in light of the totality of the circumstances. *E.g., Plumhoff v. Rickard*, 572 U.S. 765, 774 (2014). Deadly force is objectively reasonable "[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others. . . ." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

There is no dispute that, at the time that Plaintiff had Officer Minchuk pinned to the ground by the throat and was punching him in the head despite Officer Minchuk's cry for help, Plaintiff posed a threat of death or serious bodily harm warranting the use of deadly force. Plaintiff flatly acknowledges that he was hurting Officer Minchuk at that time. The dispute in this appeal is solely whether Plaintiff's sudden and unexpected gesture of surrender objectively terminated Officer Minchuk's right to use deadly force in self-defense.

The panel held that Plaintiff's sudden and unexpected surrender may have objectively

terminated the threat that Plaintiff had created in assaulting Officer Minchuk. The panel's analysis, focusing almost exclusively on the surrender and turning a blind eye to Plaintiff's assault of Officer Minchuk, conflicts with the analyses of the Fifth and Tenth Circuits in closely-analogous opinions: *Colston v. Barnhart*, 130 F.3d 96 (5th Cir. 1997); *Mendez v. Poitevent*, 823 F.3d 326 (5th Cir. 2016); and *Beckett-Crabtree ex rel. Estate of Crabtree v. Hair*, 298 Fed. Appx. 718 (10th Cir. 2008). Each of these opinions involved the use of force against a violent suspect who had assaulted the officer, placing the officer in reasonable fear of death or serious bodily harm. In each, the court found, based upon the totality of the circumstances, that the use of deadly force was objectively reasonable, notwithstanding evidence that the suspect had attempted to withdraw from his assault of the officer. Officer Minchuk presented these opinions to the panel. The panel does not distinguish or otherwise address them in its Amended Opinion.

In *Colston v. Barnhart*, a traffic stop turned into a dangerous, violent confrontation. *See Colston*, 130 F.3d at 97-98. There, a suspect refused to get on the ground when ordered, and both officers on-scene attempted to push the suspect to the ground. *Id.* at 98. The suspect overpowered both officers and knocked them to the ground. *Id.* One officer ended up unconscious; the other dazed and his glasses broken. *Id.* The still-conscious officer drew his gun and fired a shot that missed. *Id.* The suspect then took two steps away from the officer towards the officer's patrol car, where his shotgun was located. *Id.* The officer, still on the ground, fired two more shots, hitting the

suspect. *Id.* The suspect sued, alleging excessive force, and the officer moved for summary judgment on qualified immunity. *Id.* The district court denied the officer's motion, and the officer appealed. *Id.*

The Fifth Circuit reversed, notwithstanding the plaintiff's argument that the officer's use of deadly force was objectively unreasonable because the plaintiff "was unarmed and attempting to flee." *Id.* at 99. In holding that the use of deadly force was objectively reasonable "[i]n light of the totality of the circumstances," the court noted that the suspect had not answered the officers' questions, had disobeyed orders, had violently resisted the officers' attempts to gain physical control, and had overpowered the officers. *Id.* at 100.

In *Mendez v. Poitevent*, a suspect fled on foot after a vehicular pursuit. *Mendez*, 823 F.3d at 329. When the officer caught up with the suspect, the suspect violently resisted the officer's attempts to subdue him. *Id.* The suspect freed himself from the officer's grasp and struck the officer in the temple. *Id.* at 330. The officer saw black, felt weak, feared that he would lose consciousness, and feared that, if he did lose consciousness, the suspect would kill him. *Id.* The suspect ran off, and the officer fired two shots, killing him. *Id.* The suspect was about fifteen feet (15') away from the officer when the officer fired. *Id.* The suspect's estate sued, claiming excessive force. *Id.*

The Fifth Circuit held that the officer's use of force was objectively reasonable "[c]onsidering all of the circumstances" because, in the moment just before the officer shot the suspect,

> it was reasonable for Poitevent—concussed, disoriented, weakened, suffering a partial loss of vision, and fearing that he might lose consciousness in the presence of a violent suspected felon—to believe that Mendez might attempt to take advantage of his weakened or unconscious state to overpower and seriously injure or kill him. Mendez, an aggressive opponent who had proven his dangerousness, might—as Poitevent feared—have located the baton or another weapon, grabbed Poitevent's unsecured gun, or simply attacked Poitevent in an effort to secure his own escape or to conclude the fight.

Id. at 332.

In *Beckett-Crabtree ex rel. Estate of Crabtree v. Hair*, an initially peaceful encounter between a police officer and a citizen turned deadly. The officer stopped to assist a motorist on the side of the road, at which time he noticed that the vehicle did not have a license plate. *Beckett-Crabtree*, 298 Fed. Appx. at 718-19. When the officer encountered the driver of the vehicle, he noticed a syringe and knife on the passenger seat. *Id.* at 719. The officer had the driver step out and he performed a pat-down search. *Id.* The officer told the driver, who he believed was under the influence of methamphetamine, that he was going to place him in handcuffs, and the driver ran off. *Id.* The officer pursued, eventually catching up to the driver, and the two fought as the officer tried to place him into custody. *Id.* The driver wrestled the officer to the ground and tried to grab the officer's flashlight and

gun. *Id.* The driver grabbed the flashlight, and struck the officer in the head. *Id.* The officer was dazed and in fear for his life. *Id.* While still on the ground, the officer drew his gun and fired several shots, killing the suspect. *Id.*

The suspect's estate sued the officer, alleging excessive force. *Id.* at 720. Based upon a ballistics report, the plaintiff claimed that the decedent had ceased his aggression and distanced himself from the officer. *Id.* The Tenth Circuit held that the officer's use of deadly force was not excessive, even if the decedent was twenty-one feet (21') away from the officer at the time that the officer fired, as the estate claimed. *Id.* at 721. The court reasoned that the distance between officer and suspect was "but one factor of many," and, held, based upon the totality of the circumstances, that the officer had a reasonable belief that he needed to use deadly force in self-defense. *Id.*

This Court's opinion in *City and County of San Francisco v. Sheehan* is also analogous. There, this Court found that the officers did not use excessive force in shooting the plaintiff, even if, as the plaintiff claimed, she was already on the ground at the time of the last gunshot; the Court noted that, even if she was on the ground, the last shot was still objectively reasonable because she was not subdued. *Sheehan*, 135 S. Ct. at 1771 n.2.

As the cases discussed above demonstrate, whether the suspect has voiced a surrender or is otherwise not actively attacking the officer is not the end of the objective-reasonableness inquiry. Instead,

a court must weigh the totality of the circumstances then known to the officer, making allowances for the fact that these decisions are made in the heat of the moment without an opportunity to deliberate, in order to determine whether a reasonable officer in the officer-defendant's position could have believed that the force employed was justified. The panel, however, focused almost exclusively on the evidence of Plaintiff's gesture of surrender, ignoring and minimizing Plaintiff's violent actions, in holding that Officer Minchuk may have used excessive force. The panel's opinion thus conflicts with these other circuits in its near-total focus on evidence of a violent suspect's withdrawal from his assault of the officer-defendant, to the exclusion of the remaining totality of the circumstances, in determining whether that officer's use of deadly force was objectively reasonable. The Court should hear this case to resolve the conflict about what evidence may support the termination, as an objective matter, of a deadly threat created by a violent suspect.

II. The Panel Manifestly Erred in its Analysis of Clearly-Established Law, and Summary Reversal is Appropriate.

The panel departed so far from this Court's clear and oft-repeated instructions on the proper analysis of clearly-established law that it calls for an exercise of this Court's supervisory power. *See* S. Ct. R. 10(a). It was not clearly established that the use of deadly force under the circumstances confronting Officer Minchuk would be unconstitutional, particularly considering that the Seventh Circuit had, in *Johnson v. Scott*, held that officers are not necessarily required to take a

suspect's surrender at face value in tense and uncertain circumstances. The precedents upon which the panel relied in finding a potential violation of clearly-establish law were either issued subsequent to the events of this case or did not involve the use of deadly force in self-defense against a violent suspect within seconds of the violent suspect's attack of the officer, and so could not have provided fair notice to Officer Minchuk that the decision to use deadly force in the circumstances that confronted him would be unconstitutional.

A. The Seventh Circuit Defined the Right at Issue Generally, with No Regard for the Particular Circumstances that Confronted Officer Minchuk.

The clearly-established-law analysis under qualified immunity "operates to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful." *Pearson v. Callahan*, 555 U.S. 223, 244 (2009)(quoting *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)). The proper analysis is well-settled:

> Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Because the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct.

Although this Court's caselaw does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate. In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law. This Court has repeatedly told courts . . . not to define clearly established law at a high level of generality.

Specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. Use of excessive force is an area of the law in which the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent "squarely governs" the specific facts at issue. Precedent involving similar facts can help move a case beyond the otherwise "hazy border between excessive and acceptable force" and thereby provide an officer notice that a specific use of force is unlawful.

Of course, general statements of the law are not inherently incapable of giving fair and clear warning to officers. But the general rules set forth in *Garner* and *Graham* do not by themselves create clearly established law outside an "obvious case." Where

> constitutional guidelines seem inapplicable or too remote, it does not suffice for a court simply to state that an officer may not use unreasonable and excessive force, deny qualified immunity, and then remit the case for a trial on the question of reasonableness. An officer cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it. That is a necessary part of the qualified-immunity standard. . . .

Kisela v. Hughes, 138 S. Ct. 1148, at 1152-53 (2018)(citations, alterations, and some internal quotation marks omitted). In performing this analysis, "[i]t is not enough that the rule is *suggested by* then-existing precedent. The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Wesby*, 138 S. Ct. at 590 (emphasis added; citations omitted). This Court further recognizes that, where the officer has "mere seconds to assess the potential danger," the officer should be afforded the benefit of legal doubts. *Kisela*, 138 S. Ct. at 1153.

The panel departed from these standards when it defined the right at issue generally, as "a subdued suspect['s] right not to be seized by deadly or significant force," App. 16, but failed to identify any pre-existing precedent clearly establishing that this general proposition of law was applicable to the particular facts that confronted Officer Minchuk. The

precedent upon which the panel relied in finding a potential violation of clearly-established law would not provide fair notice to a reasonable officer that Plaintiff must have been considered "subdued" in the circumstances that confronted Officer Minchuk.

While recognizing that "[f]acts matter" when applying clearly-established law, App. 15, the panel does not identify a single factually-similar case from which it must have been clear to a reasonable officer that Plaintiff was in fact "subdued." Neither *Abbott v. Sangamon County* nor *Ellis v. Wynalda*, cited by the panel in support of this general proposition of law, App. 16, involved a violent assault on a police officer or the use of significant or deadly force in self-defense within seconds of a violent suspect's last blow to a police officer's head. In neither *Abbott* nor *Ellis* was significant or deadly force used when the suspect was in a position to inflict serious harm on the officer or others. *Abbott* and the precedents cited therein involved suspects who were handcuffed and not resisting, were laying on their stomach and handcuffed behind their back, or were handcuffed and secured in a police car with a partition separating them from the officer. *Id.* at 727-28. No controlling precedent had found a suspect "subdued" where the suspect remained unrestrained, had not been taken into custody, and was still in a position to potentially harm the officer or others. Thus, controlling law would not have communicated to a reasonable officer that Plaintiff must have been considered "subdued" in the circumstances that confronted Officer Minchuk, and he is therefore immune.

The inapplicability of *Abbot* and *Ellis* is evident from their facts, which share no similarities to the circumstances that confronted Officer Minchuk.

The *Abbott* plaintiff[2] shares no similarities with Plaintiff here. The *Abbott* plaintiff had not committed a serious or violent crime and there was "absolutely no evidence that Cindy posed a threat to [the officer], herself, or anyone else." *Id.* at 730. At the time of the challenged, second tasing, she was "lying on her back on the ground and not moving." *Id.* Here, by contrast, Plaintiff had indeed committed a serious and violent crime against Officer Minchuk, and there was abundant evidence of Plaintiff's dangerousness and disregard for police authority. Far from being "rendered helpless," *id.*, Plaintiff was standing just a few feet away from Officer Minchuk, from where he could have resumed his attack just as suddenly and unexpectedly as he had stopped; rather than the suspect lying on the ground on their back, here it was the *officer* who was in a vulnerable position on the ground. A reasonable officer could be forgiven for believing that a case where an officer had employed his Taser on a nonviolent suspect who was lying on the ground, not moving, and who was in no position to inflict harm on anyone, would not be controlling in the tense and uncertain circumstances that confronted Officer Minchuk. *Abbott* does not provide fair notice

[2] There were two plaintiffs in *Abbott*, the son, Travis, and the mother, Cindy. The Seventh Circuit granted summary judgment in favor of the officers on all of Travis's Fourth Amendment claims. *Id.* at 728-29. This paragraph pertains to Cindy Abbott's claims, upon which the panel relied in finding a violation of clearly-established law.

that Officer Minchuk's decision to use deadly force in self-defense would be unconstitutional.

The same is true of *Ellis v. Wynalda*. In *Ellis*, the most dangerous thing that the plaintiff did, under the record as it existed at summary judgment, was toss a bag and his jacket at the officer as he turned and ran away. *Ellis*, 999 F.2d at 245. The lightweight bag struck the officer's shoulder before falling harmlessly to the ground; the officer shouted at the plaintiff to stop, and then shot him in the back. *Id.* The Seventh Circuit held that the officer, upright and unaffected by the bag toss, had no reason to fear the fleeing plaintiff, who had not committed a violent felony and who had given no indication that he was dangerous. *Id.* at 247. One judge dissented from the denial of qualified immunity. *Id.* at 247-48 ("Having given these officers the training, the weapons and the mandate to protect us, I do not think it is appropriate to have their actions reviewed by a jury when a fleeing felon, who has already assaulted an officer, presents a potential danger to other officers and the public at large." (Bauer, C.J.)).

The dissimilarities between *Ellis* and the case at bar are patent. Whereas the *Ellis* plaintiff had chosen the "flight" option in his fight-or-flight response, Plaintiff went the other direction. Plaintiff, unlike in *Ellis*, had unmistakably proven his dangerousness. A reasonable officer, feeling the effects of repeated blows to the head and looking up from the ground at Plaintiff standing just a few feet away, could miss the connection between the circumstances that confronted Officer Minchuk and the shooting of a nonviolent suspect in the back. *Ellis* does not provide fair notice

that Officer Minchuk's decision to use deadly force in self-defense would be unconstitutional, particularly where even the judges on that panel could not agree about the reasonableness of the use of force.

The panel defined clearly-established law as a general proposition of law, with no regard for the particular facts that confronted Officer Minchuk. The precedents upon which the panel relied in support of its definition of clearly-established law fall far short of providing a reasonable officer fair notice that the use of deadly force in self-defense, just a moment after a violent, dangerous, and unpredictable suspect's last blow to the officer's head, would be unconstitutional. The fact that the panel failed in two separate attempts to identify any pre-existing precedent that squarely governs the particular facts of this case demonstrates convincingly that Officer Minchuk did not violate clearly-established law. In defining clearly-established law generally and relying on precedent that is so factually dissimilar from the particular facts of this case, the panel grossly deviated from this Court's well-settled instructions on the proper clearly-established-law analysis.

B. The Panel Relied Upon Post-Seizure Precedent in Support of Clearly-Established Law.

The panel departed from this Court's well-settled clearly-established-law analysis by relying on post-seizure precedent. While the panel added citations to two pre-existing precedents in its Amended Opinion, it continues to rely on two post-seizure cases. As this Court reiterated in *Kisela*, post-seizure precedent is

"'of no use in the clearly established inquiry.'" *Kisela*, 138 S. Ct. at 1154 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 200 n.4 (2004)). In relying on post-seizure precedent in support of clearly-established law, the panel committed the same error committed by the Ninth Circuit in *Kisela*, even though this Court's opinion in that case was issued just months earlier.

C. A Reasonable Officer Considering the Entire Legal Landscape Could Have Believed that the Use of Deadly Force Would Be Lawful.

A police officer is entitled to rely on the "entire legal landscape" when making use-of-force decisions. *Wesby*, 138 S. Ct. at 591-93 & nn.8-11. The panel, however, failed to consider the entire legal landscape in determining whether a reasonable officer could have believed that the use of deadly force would be lawful. This case is analogous to the Fifth and Tenth Circuit cases that Officer Minchuk presented in support of qualified immunity, *Colston v. Barhnart* and *Beckett-Crabtree ex rel. Estate of Crabtree v. Hair*. Both of these cases involved the use of deadly force against dangerous and violent suspects; in both, the use of deadly force was held reasonable, notwithstanding evidence that the suspect had attempted to terminate his assault of the officer-defendant. *See Colston*, 130 F.3d at 97-100; *Beckett-Crabtree*, 298 Fed. Appx. at 718-21. In each of these cases, deadly force was used shortly after the suspect's last blow to the officer. *Id.* A reasonable officer could have believed, based upon the entire legal landscape, that it would not be unreasonable to use deadly force in the analogous circumstances that confronted

Officer Minchuk, and he is therefore entitled to qualified immunity.

D. *Johnson v. Scott*, Distinguished by the Panel, is the Most Closely-Analogous Pre-Seizure Precedent, and Supports Officer Minchuk.

The panel distinguished its own most closely-analogous precedent, *Johnson v. Scott*, from which a reasonable officer could have concluded that it would not violate Plaintiff's constitutional rights to use significant force despite Plaintiff's sudden and unexpected gesture of surrender. The *Johnson* opinion is the only pre-existing Seventh Circuit precedent identified by the parties involving the use of significant force after a violent suspect's sudden and unexpected surrender, and that opinion decidedly favors Officer Minchuk.

The Seventh Circuit in *Johnson v. Scott* held unequivocally that "[n]ot all surrenders . . . are genuine, and the police are entitled to err on the side of caution when faced with an uncertain or threatening situation." *Johnson*, 576 F.3d at 659. In *Johnson*, as here, a police officer attempted to apprehend a dangerous suspect. *Id.* Unlike in this case, the *Johnson* plaintiff fled, first in a vehicle and then on foot. *Id.* After the plaintiff abandoned his vehicle, the police officer chased him on foot with his police canine. *Id.* When the plaintiff came to a fence blocking his continued flight, "he turned around, put his arms in the air, and said 'I give up.'" *Id.* The officer and canine were six to eight feet behind him when he surrendered; the canine grabbed the

plaintiff's arm and the officer knocked the plaintiff to the ground and struck him several times as the plaintiff struggled against the canine. *Id.* The Seventh Circuit held that the use of force was reasonable, despite the plaintiff's "'surprising, last-second surrender.'" *Id.* at 660-61 (quoting district court).

The panel attempted to distinguished *Johnson*, describing the facts in *Johnson* as "quite different," App. 15, but the case is undeniably analogous to the circumstances that confronted Officer Minchuk, and a reasonable officer could have considered its holding applicable here.

The panel described the crimes at issue in *Johnson* as severe, implying that Plaintiff's crimes were not. How Plaintiff's crimes, which included beating a police officer as he pinned the officer to the ground by the throat, are less severe than the *Johnson* plaintiff's crimes is left unexplained. However, a reasonable officer, being beaten about the face and head while pinned to the ground by the throat and fearing for their life as they cry out for help, could certainly disagree with the panel's belief that Plaintiff's crimes were less severe than those at issue in *Johnson*. This attempt to distinguish *Johnson* simply does not pass the "'straight-face test,'" *Kisela*, 138 S. Ct. at 1154.

The panel next notes that the *Johnson* plaintiff "had 'used every method at his disposal to flee'" before being cornered by a fence. App. 15. How a suspect's flight may be more cause for concern than a suspect's active and violent resistance to an officer's attempts to arrest him is left unexplained. However, a

reasonable officer on the receiving end of Plaintiff's attack could find the situation just as, if not more, concerning than the *Johnson* plaintiff's flight. This attempt to distinguish *Johnson* fails the straight-face test, as well.

The panel also attempts to distinguish *Johnson* by stating that "[c]ritical to the [*Johnson*] court's decision . . . was that 'it could not have been more than one second between the suspect's surrender and the use of force by the officer.'" App. 15-16 (alterations omitted). In the panel's view, Plaintiff could have been standing with his hands in the air for up to fifteen seconds before Officer Minchuk fired. However, in its zeal to deny qualified immunity, the panel disregarded the undisputed facts as determined by the District Court. Even though suggesting that Officer Minchuk's use of deadly force would be objectively reasonable if it came quickly on the heels of Plaintiff's sudden and unexpected gesture of surrender, App. 12-13, the court simply ignores the undisputed evidence that there was no pause or delay before Officer Minchuk employed deadly force—evidence that the District Court found to be undisputed by Plaintiff. Unable to deny qualified immunity in the face of this undisputed timing evidence, the court sweeps this evidence under the rug and engages in its own rank speculation about what the timing of the altercation and gunshot *could have been*. The undisputed evidence as determined by the District Court establishes that this was a "rapidly-evolving" event, and that there was no pause or delay—not of fifteen seconds, not of ten seconds, not of five seconds—before Officer Minchuk employed deadly force. Rather than being a distinguishing factor, this in fact supports the constitutionality of

Officer Minchuk's decision under *Johnson*, as a reasonable officer could have believed.

Finally, the panel attempts to distinguish *Johnson* by declaring that Officer Minchuk had "no reason to believe an offender was armed." App. 16. Plaintiff, however, had needed no weapon to overpower Officer Minchuk and place him in reasonable fear for his life. Even ignoring that fact, it is undisputed that Officer Minchuk *did not know* whether Plaintiff was armed, and it is undisputed that, if Plaintiff did have a weapon, he could have pulled it any time, surrender or no surrender. R. 1648. Furthermore, the Seventh Circuit in *Johnson* recognized that the plaintiff's surrender "did not establish that [he] was unarmed." *Johnson*, 576 F.3d at 660. Rather than being a distinguishing factor, this supports Officer Minchuk, as well.

Neither Plaintiff nor the panel could identify any pre-existing precedent more closely analogous to this case than *Johnson v. Scott*. No other Seventh Circuit case identified by Plaintiff or the panel involved the use of significant force in defense of self or others shortly after a dangerous and violent suspect's sudden and unexpected surrender. The panel's attempts to distinguish this closely-analogous precedent are inexplicable and directly contrary to the evidence found by the District Court to be undisputed. A reasonable officer in Officer Minchuk's position could have believed that the Seventh Circuit's holding in *Johnson*, that officers are not necessarily obligated to take a suspect's surrender at face value in tense and uncertain circumstances, would apply here. This result is inescapable and supports summary reversal.

E. Summary Reversal is Appropriate.

The Seventh Circuit set off down the wrong path from the beginning of its clearly-established-law analysis by defining the right at issue as a general proposition of law. This Court has "'repeatedly told courts . . . not to define clearly established law at a high level of generality,'" and has reminded the lower courts of this obligation numerous times over the past several Terms. *Kisela*, 138 S. Ct. at 1152; *see also City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019). The panel, however, defined the right at issue as "a subdued suspect['s] right not to be seized by deadly or significant force. . . ." App. 16. While no one could reasonably dispute this as a general proposition of law, this shines no light whatsoever on the particular circumstances that confronted Officer Minchuk.

The panel did not and cannot identify any pre-existing precedent from which it must have been clear beyond reasonable disagreement that Plaintiff was indeed "subdued" as he loomed over Officer Minchuk just a few feet away, in a position from which he could have resumed his attack just as suddenly and unexpectedly as he had stopped. The panel did not and cannot identify any pre-existing precedent in which a police officer's use of deadly force in self-defense a moment after the suspect had been in mid-assault of that officer was objectively unreasonable. To the contrary, a reasonable officer could have interpreted the Circuit's opinion in *Johnson v. Scott* as permitting the use of significant force in these tense and uncertain circumstances, notwithstanding Plaintiff's sudden and unexpected surrender. Officer Minchuk therefore had no fair notice that this decision

would be unconstitutional, and he is entitled to qualified immunity.

Officer Minchuk had to make his use-of-force decision in the heat of the moment, while suffering the effects of repeated blows to the head. The panel, by contrast, had the benefit of briefing by counsel, the assistance of law clerks, and months to review this case with "the 20/20 vision of hindsight" from "the peace of a judge's chambers," *Graham v. Connor*, 490 U.S. 386, 396 (1989), to determine whether Officer Minchuk's use-of-force decision violated clearly-established law. Despite these resources, the panel failed on two occasions to identify any pre-existing precedent squarely governing the specific facts of this case. Because qualified immunity is important to society as a whole, this Court "often corrects lower courts when they wrongly subject individual officers to liability." *Sheehan*, 135 S. Ct. at 1774 n.3. The panel opinion wrongly subjects Officer Minchuk to liability for his decision to employ deadly force in self-defense against a violent assailant, and the Court should therefore summarily reverse.

CONCLUSION

For the above and foregoing reasons, This Honorable Court should grant the Petition on both questions presented, or, alternatively, summarily reverse because Officer Minchuk did not violate clearly-established law.

Respectfully Submitted,

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