No. 18-746

In the Supreme Court of the United States

LOS ANGELES COUNTY, CALIFORNIA, *et al.,*

Petitioners,

v.

ANGEL MENDEZ , *et al.,*

Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Ninth Circuit correctly applied the clear error standard when it concluded that the district court's gross negligence and recklessness findings "compel the conclusion that the officers were negligent under California law"? (App. 25a)

2. Whether the Ninth Circuit, in accordance with this Court's mandate, correctly ruled that the damages arising from the shooting were "proximately caused by the unconstitutional entry, and proximately caused by the failure to get a warrant"? (App. 27a-28)

3. Whether the Ninth Circuit correctly rejected Petitioners' superseding cause argument when it ruled that "[n]othing about Mr. Mendez's innocent actions warrants shifting responsibility for the subsequent shooting injuries away from the officers and to the injured victim"? (App. 23a)

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INTRODUCTION

Deputies Christopher Conley and Jennifer Pederson shot Respondents Angel and Jennifer Mendez after entering their home without a warrant, consent, or exigent circumstances. In its initial opinion, the Ninth Circuit applied its "provocation rule" and also held that the deputies' unlawful entry was a proximate cause of the Mendezes' injuries. This Court vacated that judgment, rejecting both the provocation rule and the Ninth Circuit's causation analysis, but recognized that the Mendezes would still be entitled to recover on remand damages for "injuries proximately caused *by the warrantless entry*." App. 49a (emphasis in original). On remand, consistent with this Court's opinion, the Ninth Circuit concluded that the warrantless entry was a proximate cause of the Mendezes' injuries. App. 8a.

In addition, because the district court had expressly found that the deputies' conduct "rose beyond even gross negligence" (App. 153a) and "the totality of Deputies Conley and Pederson's conduct was reckless as a matter of tort law" (App. 164a), the Ninth Circuit also directed the district court to enter judgment "in the Mendezes' favor on the California negligence claim for the same damages arising out of the shooting" (App. 28a). The Ninth Circuit on remand therefore did not need to reach—nor did it reach—the Mendezes' excessive force claim under *Graham v. Connor*, 490 U.S. 386 (1989).

Thus, even if this Court were to grant review and rule against the Mendezes on the causation issues regarding the unlawful entry claim, its

decision would not change any party's liability because the state-law negligence claim is sufficient to uphold the judgment. Therefore, unless the Court reviews the state-law negligence claim, its consideration of the federal claims will be, as far as the interests of the parties are concerned, purely a theoretical undertaking.

The Ninth Circuit correctly decided the state-law negligence claim, and its analysis does not raise any federal issues that merit this Court's review. Contrary to Petitioners' argument, there is no conflict among the circuits regarding the standard of review that applies to a district court's negligence findings: the circuits, including the Ninth Circuit, *uniformly* apply a *clear error* standard of review to such findings. The Ninth Circuit below did not depart from that precedent.

Even if the California negligence claim were not a sufficient basis to deny the Petition, the federal issues raised by Petitioners also do not warrant review in the first place. The Ninth Circuit did not "disregard" this Court's mandate as Petitioners claim. To the contrary, it correctly rejected Petitioners' attempt to improperly frame the proximate cause issue. But it then proceeded to hold "that on either framing of the issue the officers' unlawful behavior was a proximate cause of the Mendezes' injuries." App. 8a. Thus, the Ninth Circuit applied the very framing that Petitioners advocate and correctly concluded that the failure to obtain a warrant *was* a proximate cause of the Mendezes' injuries under the circumstances of this case.

Lastly, the Ninth Circuit's superseding cause ruling does not conflict with the decisions of other circuits. The Ninth Circuit *agreed* with Petitioners that "officers are free from liability if they can show that the behavior of a shooting victim was a superseding cause of the injury." App. 21a. It then rejected Petitioners' argument that Mr. Mendez's conduct was a superseding cause of the Mendezes' injuries based on the unique facts of this case. The cases cited by Petitioners are easily distinguishable, as the Ninth Circuit also held. This fact-bound issue, like the others, does not merit this Court's review.

STATEMENT

1. As this Court recognized, the events leading to the Mendezes' injuries occurred over eight years ago—on October 1, 2010—when Conley, Pederson, and several other officers were searching for a parolee-at-large named Ronnie O'Dell. App. 39a. One of the officers, Deputy Claudia Rissling, "received a tip from a confidential informant that a man he believed to be Mr. O'Dell was riding a bicycle in front of … a private residence owned by Paula Hughes." App. 90a. The officers proceeded to the Hughes residence and demanded entry. "As the officers prepared to open the door by force, Hughes opened the door and informed them that O'Dell was not in the house. She was placed under arrest, and the house was searched, but O'Dell was not found." App. 40a.

Conley and Pederson were tasked with searching the rear of the property and covering the back door of the residence. App. 39a. "Prior to

October 1, 2010, Deputies Conley and Pederson did not have any information regarding Mr. O'Dell." App. 90a. On the day of the search, Conley and Pederson were given no information indicating that O'Dell was armed or dangerous. Exh. 232-000052; Dkt. 300 at 85.[1]

During the briefing before the officers searched the Hughes residence "it was announced that a man named Angel Mendez lived in the backyard of the Hughes home with a pregnant woman named Jennifer Garcia (now Mrs. Jennifer Mendez)." App. 39a. The district court found that Conley and Pederson heard the announcement about the Mendezes' residence (App. 91a), and both deputies admitted as much when interviewed by an investigating officer shortly after the shooting (Ex. 232-000040, 000063-64).

The Ninth Circuit referred to the Mendezes' residence as a "modest home" (App. 2a), though it is described elsewhere as a "shack" or a "shed." Although the residence was windowless and had a single point of entry (App. 93a), there were "many apparent signs that the structure was a residence" (App. 3a). The residence had an outer screen door, an inner wooden door, and a blue blanket covering the doorway—clear indications that the structure was a home and not a storage shed. App. 40a, 93a. Also, "an air conditioner was mounted on the side, and an electrical cord ran into the shack," "[a] gym storage locker and clothes and other possessions

[1] "Dkt." refers to the district court docket, and "ER" refers to the Excerpts of Record filed in the Ninth Circuit.

were nearby" and "[t]here was a water hose running into the shack." App. 93a-94a; ER 199, 204.

Based on this evidence, the district court repeatedly found that a reasonable officer would have recognized that the Mendezes' modest home was a dwelling. Dkt. 303 at 6 ("the most important issue in the case … was whether the failure of the deputies to recognize the shack as a dwelling was reasonable. And I have found and do now find that it was not."); App. 98a ("Having listened to the testimony and examined numerous photographs of the Hughes property, the Court finds that this perception of Deputies Conley and Pederson [that the structure was not habitable] was not reasonable."); App. 116a ("Conley and Pederson could not have reasonably assumed that the shack was another storage shed" (internal quotation marks omitted)); App. 127a ("unreasonable belief that the shack was not a dwelling").

Despite having been told that the Mendezes lived behind the Hughes residence, and without a warrant or consent to enter the Mendezes' home or any other verbal or visual notice to the Mendezes as the deputies approached the windowless home, Conley opened the door and pulled back the blanket. The Mendezes were inside napping on a futon. They kept a BB gun in the shack for use on rats and other pests. "When Deputy Conley opened the wooden door and pulled back the blanket, Mendez thought it was Ms. Hughes and rose from the bed, picking up the BB gun so he could stand up and place it on the floor." App. 41a. A split second later, "Conley yelled 'Gun!' and the deputies immediately opened fire, discharging a total of 15 rounds." *Id.* The Mendezes

"were shot multiple times and suffered severe injuries," and "[Mr.] Mendez's right leg was later amputated below the knee." *Id.* (internal quotation marks omitted). Badly injured, Mr. Mendez shouted to the deputies, "I didn't know it was you guys. It was a BB gun, I didn't know." Exh. 232-000080. "O'Dell was not in the shack or anywhere on the property." App. 41a.

2. The Mendezes brought this action against Petitioners alleging unreasonable search and excessive force claims under the Fourth Amendment and negligence under California law. Regarding the unreasonable search claim, the district court found that Conley's entrance into the Mendezes' home violated the Fourth Amendment. App. 106a-29a. The deputies did not have a warrant or consent to search the home, and the district court concluded that the search did not fall within any of the exceptional circumstances that would permit such an intrusion. App. 120a-28a. The court also held that the deputies had violated the Fourth Amendment's knock-and-announce requirement. App. 130a-36a. And applying the Ninth Circuit's provocation rule, the district court found the deputies liable for excessive force. App. 139a-57a. Additionally, the district court found that a violent confrontation was "foreseeable," that the deputies' actions were "the proximate cause of Mr. and Mrs. Mendez's injuries," and that "Mr. Mendez's 'normal efforts' in picking up the BB gun rifle to sit up on the

futon do not supersede Deputies Conley and Pederson's responsibility." App. 156a-57a.[2]

The court then determined the Mendezes' damages and awarded roughly $4 million, which includes $816,000 for past medical bills and $500,000 for future medical care for both Mr. and Mrs. Mendez and prosthesis upkeep and replacement for Mr. Mendez. App. 165a-66a. The district court entered judgment for that amount solely under federal law. App. 84a-86a. Although the district court found that the deputies' conduct "rose beyond even gross negligence" (App. 153a) and "the totality of Deputies Conley and Pederson's conduct was reckless as a matter of tort law" (App. 164a), it did not also enter judgment under California negligence law as the Mendezes had requested because, as discussed below, it misread state law. *See infra* at 16-18.

3. Petitioners appealed, the Mendezes cross-appealed, and the Ninth Circuit reversed in part and affirmed in part. *Mendez v. Cty. of Los Angeles*, 815 F.3d 1178, 1195 (9th Cir. 2016) (App. 53a-78a). While the Ninth Circuit ruled that the Mendezes' knock-and-announce claim was barred by qualified immunity, it upheld the district court's judgment based on deputies' use of excessive force and unlawful entry without a warrant or consent in

[2] Petitioners ignore the district court's written ruling regarding superseding cause and point instead to an *oral statement*. Pet. 7 (quoting App. 42a, which quotes Dkt. 303 at 5). The district judge explained prior to making that statement that he was merely summarizing his forthcoming findings and conclusions and, in the event of any contradiction, "the actual findings and conclusions will control." Dkt. 303 at 3-4.

violation of the Fourth Amendment. App. 60a-78a. Having so held, the Ninth Circuit did not address the Mendezes' cross-appeal arguments regarding their California negligence claim. App. 78a.

4. This Court granted certiorari. Addressing the excessive force claim based on the Ninth Circuit's provocation rule, the Court held "that the Fourth Amendment provides no basis for such a rule." App. 39a. While the Court vacated the Ninth Circuit's corresponding ruling, it held that "*Graham* commands that an officer's use of force be assessed for reasonableness under the 'totality of the circumstances'" and directed that "[a]ny argument regarding the District Court's application of *Graham* in this case should be addressed to the Ninth Circuit on remand." App. 46a n.* (quoting *Graham v. Connor,* 490 U.S. 386, 396 (1989)).

The Court then turned to the Ninth Circuit's analysis of whether the deputies' unlawful entry was a proximate cause of the Mendezes' injuries. Based on the Ninth Circuit's use of terms like "unannounced" and "startling," the Court concluded that the Ninth Circuit may have "conflated" the knock-and-announce claim, for which there was no liability because of qualified immunity, and "the *relevant* constitutional violation (the warrantless entry)," for which Conley and Pederson were liable. App. 49a-50a (emphasis in original). The Court therefore remanded for the Ninth Circuit to "revisit the question whether proximate cause permits respondents to recover damages for their shooting injuries based on the deputies' failure to secure a warrant at the outset." App. 50a.

5. On remand, the Ninth Circuit recognized that, under this Court's opinion, "we must address whether the officers' unlawful entry, as distinct from the unlawful mode of entry—that is, the failure to knock and announce—was the proximate cause of the Mendezes injuries." App. 7a. On that point, Petitioners argued that the failure to get a warrant before entering the Mendezes' home "did not cause the Mendezes injuries because, had the officers first gotten a warrant, the same sort of confrontation and shooting still could have occurred." App. 8a. While the Mendezes properly focused on "the *relevant* constitutional violation (the warrantless *entry*)"—as this Court had directed (App. 50a (second emphasis added))—the Ninth Circuit held "that on either framing of the issue the officers' unlawful behavior was a proximate cause of the Mendezes' injuries." App. 8a. The Ninth Circuit therefore affirmed "the district court's holding that officers Conley and Pederson are liable for violations of the Mendezes' Fourth Amendment rights" and instructed the district court "to award all damages arising from the shooting in the Mendezes' favor as proximately caused by the unconstitutional entry, and proximately caused by the failure to get a warrant." App. 27a-28a.

The Ninth Circuit also addressed the Mendezes' cross-appeal arguments regarding their California negligence claim. The Ninth Circuit recognized that the district court had "specifically found" both gross negligence and recklessness and held, based on the California Supreme Court's subsequent opinion in *Hayes v. County of San Diego*, 305 P.3d 252 (Cal. 2013), that these "findings compel

the conclusion that the officers were negligent under California law." App. 25a. The Ninth Circuit further noted that "[u]nder California law, the failure to knock and announce can be a basis of liability." *Id.* It then directed the district court on remand to enter judgment "in the Mendezes' favor on the California negligence claim for the same damages arising out of the shooting." App. 28a. Thus, the damages that the district court awarded are *independently recoverable* under both federal and state law.

Having directed entry of judgment on both the unreasonable search claim and the California negligence claim, the Ninth Circuit did not need to reach—nor did it reach—the Mendezes' excessive force claim under *Graham*. Petitioners then filed a petition for panel rehearing and rehearing en banc, which the Ninth Circuit denied.

REASONS FOR DENYING THE PETITION

I. THE STATE-LAW NEGLIGENCE CLAIM PROVIDES INDEPENDENT GROUNDS FOR THE JUDGMENT, AND THE NINTH CIRCUIT'S APPLICATION OF STATE LAW DOES NOT WARRANT REVIEW.

Perhaps because they recognize that the California negligence claim is sufficient—by itself—to uphold the district court's judgment and that the Petition is therefore ill-suited for a grant of certiorari unless the Court reviews that claim, Petitioners attempt to dress up the state-law claim in federal garb. Petitioners assert that there is a circuit split on the standard of review for such a

claim, but there is no such conflict. And even if there were, the Ninth Circuit employs the clearly erroneous standard—the very standard Petitioners advocate—and it did not depart from that standard here. Moreover, the unique facts and procedural history of this case also make it a poor vehicle for addressing any question related to the appellate standard of review.

A. There Is No Circuit Split On The Appellate Standard Of Review For A District Court's Finding Of Negligence.

Contrary to Petitioners' assertion, there is no intercircuit conflict regarding the standard of review for a district court's negligence findings. Rather, review for clear error is the uniform rule. The Ninth Circuit, too, has repeatedly made clear that it applies the clearly erroneous standard to a negligence finding. *E.g., Liebsack v. United States*, 731 F.3d 850, 854 (9th Cir. 2013) ("A district court's finding of negligence is reviewed for clear error."); *Vollendorff v. United States.*, 951 F.2d 215, 217 (9th Cir. 1991) ("We review a district court's finding of negligence under the clearly erroneous standard."). The Ninth Circuit below similarly stated in its 2016 opinion that the district court's findings "are reviewed for clear error." App. 59a.

Petitioners wrongly argue that the Second and Fourth Circuits do not follow this rule that a district court's negligence finding is reviewed for clear error. As for the Second Circuit, Petitioners' argument is premised on *Payne v. U.S.*, 359 F.3d 132 (2d Cir. 2004). Pet. 16, 30. But *Payne* did *not* hold that the applicable standard of review "is an issue ripe for

review by the Supreme Court" as Petitioners claim. Pet. 16. Instead, the Second Circuit recognized that it had "severely undercut [its] rule over the years" and that the issue was ripe for *en banc review*. *Payne*, 359 F.3d at 137 ("we would, in the appropriate case and after full briefings, welcome the opportunity to have *our whole Court* reconsider the rule") (emphasis added). Moreover, the Second Circuit has since clarified that "the practice in our Circuit is not so different from that of the other circuits." *In re City of New York*, 522 F.3d 279, 282 (2d Cir. 2008). Like other circuits, the Second Circuit reviews legal issues (like the existence and scope of a duty in tort) *de novo* but defers to factual findings including negligence. *Id.* at 282-83 ("We have stated on more than one occasion that the trial court's finding should ordinarily stand unless the court manifests an incorrect conception of the applicable law." (internal quotation marks omitted)). As Petitioners acknowledge, other circuits are in accord. Pet. 31 (citing cases).

Regarding the Fourth Circuit, Petitioners' argument is premised on *Hicks v. U.S.*, 368 F.2d 626 (4th Cir. 1966) (Pet. 30), a fifty-year-old opinion that states that "when a judge sitting without a jury makes a determination of negligence, his conclusion, as distinguished from the evidentiary findings leading to it, is freely reviewable on appeal." *Id.* at 631. But as even Petitioners acknowledge, the Fourth Circuit has since abandoned that rule, holding that "more recent decisions in our Circuit indicate that the ruling in *Hicks* on this point has to a large degree been abandoned, and indicate that a district court's findings of negligence are generally

treated as findings of fact reviewable under Fed.R.Civ.P. 52(a)." *Bonds v. Mortensen & Lange*, 717 F.2d 123, 125 (4th Cir. 1983). Rule 52(a)(6), in turn, specifically states that "[f]indings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous." The Fourth Circuit in *Bonds* ultimately *rejected* the defendant's argument that the district court's negligence findings should be subject to "full review." 717 F.2d at 125. Thus, contrary to Petitioners' argument, there is currently no conflict among the circuits regarding the standard of review that applies to a district court's negligence findings.

B. The Ninth Circuit Below Did Not Depart From Its Precedent Establishing Clear-Error Review Of A District Court's Negligence Finding.

Because it is clear that Ninth Circuit case law requires that a district court's negligence findings be reviewed for clear error, Petitioners' argument—at most—is that the Ninth Circuit below failed to apply controlling Ninth Circuit precedent and instead implicitly conducted *de novo* review. But the Ninth Circuit did no such thing. In its 2016 opinion, the Ninth Circuit stated that the district court's findings "are reviewed for clear error." App. 59a. The court thus recognized the very standard of review that Petitioners claim it ignored. Moreover, Petitioners did not challenge any of the district court's findings as clearly erroneous, including its findings that the deputies' conduct "rose beyond even gross negligence" (App. 153a) and that "the totality of Deputies Conley and Pederson's conduct was

reckless as a matter of tort law" (App. 164a). The Ninth Circuit therefore *upheld* the district court's findings, stating: "the record here bears out Conley and Pederson's recklessness …." App. 75a.

Petitioners also did not challenge the gross negligence and recklessness findings in the subsequent proceedings before this Court, nor did they do so on remand before the Ninth Circuit. The Ninth Circuit's analysis on remand was therefore simple and straightforward: the Ninth Circuit quoted the district court's unchallenged recklessness and gross negligence findings and its previous discussion of the recklessness finding and continued to uphold the district court's findings in ruling that "the district court's findings compel the conclusion that the officers were negligent under California law." App. 25a.

Petitioners wrongly claim that the Ninth Circuit implicitly conducted *de novo* review because the district court decided the negligence claim "in favor of the Deputies." Pet. 32. That assertion does not accurately reflect the record as a whole. In the ruling cited by Petitioners, the district court stated that it "does not view the overall conduct of either Defendants or the Sheriffs Department as negligent, *apart from the unconstitutional search and their unjustified failure to realize that the [Mendezes' home] was not another storage shed*." App. 82a (emphasis added). Petitioners overlook the significance of the italicized text, which confirms the district court's previous recklessness and gross negligence findings as quoted above. The Ninth Circuit below correctly concluded that such findings compel the conclusion that the officers were

negligent under California law. App. 25a; California Civil Jury Instruction 401 ("Negligence is the failure to use reasonable care to prevent harm to oneself or to others."); California Civil Jury Instruction 3113 ("'Recklessness' is more than just the failure to use reasonable care.").

On this record—where the district court found both gross negligence and recklessness but misread controlling state law in deciding the negligence claim (*see infra* at 16-18)—it would be extraordinary to presume that the Ninth Circuit below departed *sub silentio* from its own precedent and created a split with the uniform rule of other circuits by refusing to apply clear error review. But even indulging Petitioners' extraordinary assumption that the Ninth Circuit silently broke with its own precedent and applied *de novo* review, still there would be no reason to review the Ninth Circuit's ruling regarding the state-law negligence claim. Not only is there no reasoned opinion in this case regarding the applicable standard of review, but an *intracircuit* conflict, even if one existed here, is not one of the considerations warranting a grant of certiorari under Supreme Court Rule 10.

C. This Case Is A Poor Vehicle To Resolve Any Question Regarding The Appellate Standard Of Review For A District Court's Finding Of Negligence.

Two principal factors idiosyncratic to this case make it unlikely that an opinion of this Court would provide a rule of general applicability regarding the appellate standard of review for a district court's negligence findings.

First, this case presents the rare circumstance of a district court having made factual findings of recklessness and gross negligence but then refusing to enter judgment against the defendants on the negligence claim. As the Ninth Circuit stated, "[t]he district court specifically found that the 'totality of Deputies Conley and Pederson's conduct was reckless as a matter of tort law,' and that 'the conduct rose beyond even gross negligence.'" App. 25a (quoting App. 153a and 164a). Petitioners do not even attempt to argue that federal appellate courts commonly confront state-law negligence claims in which the district court's findings—recklessness and gross negligence by defendants—are at odds with its judgment that the plaintiff does not prevail.

Second, as noted previously, the Ninth Circuit's reversal of the district court's entry of judgment against the Mendezes on the state-law negligence claim is legal in nature and reflected a change in state law after the district court entered its findings of fact and conclusions of law. The district court did not enter judgment in favor of the Mendezes under state law because, despite having found both gross negligence and recklessness, *it misread state law* regarding negligence claims. The Ninth Circuit identified this error as follows:

> The district court did not grant relief under California negligence law because the court believed that under then existing California law, negligence is assessed based only on the state of affairs at the moment of the shooting, and not in light of pre-shooting conduct. But after the district court entered

> judgment the California Supreme Court clarified that "law enforcement personnel's tactical conduct and decisions preceding the use of deadly force are relevant considerations under California law in determining whether the use of deadly force gives rise to negligence liability."

App. 24a (*quoting Hayes*, 305 P.3d at 263 (internal citation omitted)).[3] This unique circumstance makes this case a poor vehicle to consider the standard of review regarding a district court's negligence findings because it makes it unlikely that this Court's review would produce a generally applicable rule. The basis for the Ninth Circuit's reversal was legal in nature and resulted from a major change in state law, unique factors that both make this case unusual and also bear on the

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[3] In *Hayes*, the California Supreme Court held that "state negligence law, which considers the totality of the circumstances surrounding any use of deadly force, is *broader than federal Fourth Amendment law*, which tends to focus more narrowly on the moment when deadly force is used." 305 P.3d at 263 (emphasis added, internal citation omitted). The California Supreme Court has also adopted a "relatively broad" standard for determining proximate cause, "requiring only that the contribution of the individual cause be more than negligible or theoretical." *Bockrath v. Aldrich Chem. Co., Inc.*, 980 P.2d 398, 403 (Cal. 1999) (internal quotation marks omitted). Thus, Conley and Pederson can be liable on the state-law negligence claim even if there were no liability for excessive force under *Graham* (an issue that the Ninth Circuit below did not reach). Petitioners' third question presented (regarding the negligence claim) does not raise any issues regarding the Ninth Circuit's determination and application of California negligence law and proximate cause principles.

appropriate standard of review articulated by this Court. *See Salve Regina Coll. v. Russell*, 499 U.S. 225, 231 (1991) ("court of appeals should review *de novo* a district court's determination of state law").[4]

* * *

In sum, the district court specifically found both gross negligence and recklessness, and the Ninth Circuit appropriately *upheld* those findings in ruling that "the district court's findings compel the conclusion that the officers were negligent under California law." App. 25a. Its analysis of the state-law claim does not raise any issues that merit this Court's review.

II. THE NINTH CIRCUIT DID NOT DISREGARD THE COURT'S MANDATE, NOR DOES ITS PROXIMATE CAUSE ANALYSIS WARRANT THIS COURT'S REVIEW.

As shown above, all issues related to the federal claims in this case are of only theoretical interest from the standpoint of the parties' liability because the Ninth Circuit's disposition of the state-law claim

[4] The district court also did not enter judgment under state law because it concluded that such a judgment "would not have given Plaintiffs anything more than they already have." App. 82a. That, too, is legally incorrect because the County itself (in addition to Conley and Pederson) is liable under state law. See Cal. Gov't Code § 815.2 ("A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment…."). This judgment against the County under state law is in addition to, and separate from, the judgment against Conley and Pederson under federal law for the same damages.

is sufficient to sustain the district court's judgment. That alone renders this Court's review of any federal claim in this case unnecessary. But even if the California negligence claim were not a sufficient basis to deny the Petition, the federal issues raised by Petitioners also do not warrant review in the first place.

A. The Ninth Circuit Followed The Court's Mandate.

Petitioners do not identify any intercircuit conflict regarding proximate cause principles. Instead, their lead argument is that in analyzing the proximate cause issue under federal law the Ninth Circuit "disregarded this Court's instructions on remand" and "stated the issue, as framed by this Court, was not the correct issue to be decided." Pet. 13, 18 (emphasis omitted). The Ninth Circuit did no such thing. Instead, Petitioners' real complaint is that the Ninth Circuit rejected their *restricted framing* of the proximate cause issue on remand. Petitioners argued in the Ninth Circuit that the officers' failure to get a warrant before entering the Mendezes' home "did not cause the Mendezes' injuries because, had the officers first gotten a warrant, the same sort of confrontation and shooting still could have occurred." App. 8a. The Ninth Circuit rejected this framing of the issue because it "conflates one of several acts that would have discharged [the officers'] duties under the Fourth Amendment—getting a warrant—with an act performed in violation of that duty—entering the residence." *Id.*

The Ninth Circuit's focus on "entering the residence" when the Fourth Amendment forbade the officers to do so is consistent with this Court's directive to "identify the foreseeable risks associated with the *relevant* constitutional violation (the warrantless *entry*)." App. 50a (second emphasis added). In *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014), the Court similarly explained that the "[p]roximate-cause analysis is controlled by the nature of the statutory cause of action. The question it presents is whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." Here, as the Ninth Circuit correctly ruled, the prohibited conduct is entry without a warrant, consent, or exigent circumstances. App. 8a. To put it in the words of the Court's mandate in this case, "based on the deputies' failure to secure a warrant at the outset" (App. 50a), the deputies had a duty not to enter without consent or exigent circumstances, and they breached that duty by entering. The Ninth Circuit correctly stated and analyzed this issue in accordance with the Court's mandate

Regardless, the Ninth Circuit also held that "[e]ven if we were to accept the officers' framing of the issue and treat the failure to get a warrant rather than the entry as the basis of the breach of duty, we would reach the same conclusion regarding proximate cause." App. 18a. In other words, the Ninth Circuit also approached the issue *precisely as Petitioners argue the mandate directed* and still

reached the same conclusion.[5] Given this thorough approach, Petitioners cannot credibly complain that the Ninth Circuit "disregarded" this Court's mandate. Pet. 13.

B. The Ninth Circuit Did Not Improperly Conflate The Foreseeable Risks Stemming From Other Constitutional Violations.

Nor did the Ninth Circuit improperly conflate the risks foreseeably associated with the knock-and-

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[5] As the Ninth Circuit explained, if the deputies had attempted to secure a warrant at the outset, they would have determined that they "most likely lacked probable cause to believe that O'Dell was in a shed that was known, or reasonably should have been known, to belong to the Mendezes." App. 18a. Absent probable cause for a warrant, the deputies would have been required to either remain outside the Mendezes' home or ask them to consent to the search, either of which would have avoided the shooting. And even if Conley and Pederson could have secured a warrant describing the place to be searched—the Mendezes' home—doing so also would have avoided the shooting. If Conley and Pederson "had gone through the constitutionally required warrant procedures before entering, they would have remembered that the Mendezes lived in the building behind the Hughes' house, and taken account of the risks of armed entry into an inhabited building." App. 20a-21a. As the Ninth Circuit correctly concluded, "the failure to engage in this deliberative process foreseeably led to the Mendezes' injuries." App. 21a. Thus, contrary to Petitioners' argument, the court of appeals set forth a clear link between the lack of a warrant and the deputies' decision to enter the Mendezes' home with weapons drawn, a tactic that *increased* the risk of a shooting caused by the unlawful entry. The Ninth Circuit's acknowledgement of this link properly addresses the foreseeable risks of the relevant constitutional violation (the warrantless entry).

announce violation as Petitioners also claim. Pet. 20. To the contrary, the Ninth Circuit recognized that, under this Court's opinion, "we must address whether the officers' unlawful entry, as distinct from the unlawful mode of entry—that is, the failure to knock and announce—was the proximate cause of the Mendezes injuries." App. 7a. It also explained that "[e]ntry poses a foreseeable and severe risk *only partly mitigated by knocking and announcing*." App. 18a (emphasis added).[6] In other words, the Ninth Circuit recognized that even where officers knock and announce (or are excused from doing so), an entry into the home creates a foreseeable risk of harm. Acknowledging this fact properly identifies a risk associated with the relevant constitutional violation.

For similar reasons, the fact that the knock-and-announce claim was subject to qualified immunity does not preclude liability on the unlawful entry claim. The unlawful entry is not prevented from being a proximate cause of the Mendezes' injuries by the fact that the knock-and-announce violation was also a proximate cause, as this Court has recognized that "it is common for injuries to have multiple proximate causes." *Staub v. Proctor Hosp.*, 562 U.S. 411, 420 (2011). *Both* the unlawful entry *and* the knock-and-announce violation can be proximate causes of the Mendezes' damages. As the Ninth Circuit noted, any other rule "would lead to

[6] Petitioners argue that "the Fourth Amendment does not require officers to present a warrant *before* commencing a search" (Pet. 25 (emphasis in original)), but the Ninth Circuit's analysis does not rely on Conley and Pederson presenting the warrant to the Mendezes.

the absurd result that an officer who breaches only one duty is liable, but that an officer who breaches multiple duties is not." App. 16a.

C. The Ninth Circuit Correctly Rejected Petitioners' Scope-Of-The-Risk Argument.

Next, Petitioners largely abandon the established foreseeability standard for proximate causation and argue that the scope of the risk protected by the warrant requirement is limited to privacy interests and that all other harms—such as property damage, physical harm, or death—are not compensable. Pet. 19-20. Petitioners made this same argument in their previous briefing before this Court. The Court did not adopt their novel framework. Instead, the Court reiterated the traditional foreseeability standard, citing the same passages in *Paroline v. United States*, 134 S. Ct. 1710 (2014), on which the Ninth Circuit relied. App. 12a, 49a. Petitioners have not identified any reason to depart from that settled foreseeability standard. And under that standard, both the district court and the Ninth Circuit found that a violent confrontation was a "foreseeable" consequence of the deputies' actions. App. 13a, 15a-16a, 18a, 21a, 25a, 156a-57a.

But even if Petitioners' scope-of-the-risk framework were applicable here, *the Ninth Circuit applied that test and reached the same result*. App. 13a-14a. In response to Petitioners' argument, the Ninth Circuit identified substantial precedent, as well as historical evidence, recognizing that "the point of the Fourth Amendment's prohibition against trespass into homes was in part to prevent damage done by the trespassers." App. 13a. More

recently, Justice Jackson recognized that "unlawful entries can invite precisely the sort of violence that occurred here, where 'an officer seeing a gun being drawn on him might shoot first.'" App. 13a-14a (quoting *McDonald v. United States*, 335 U.S. 451, 460-61 (1948) (Jackson, J., concurring). What happened here was not only foreseeable, it was foreseen. Based on these and other authorities, the Ninth Circuit concluded: "Whether understood in terms of the scope of the risk or in terms of foreseeability, the findings of the district court make clear that the officers' entry into the structure was here the proximate cause of the Mendezes' injuries." App. 13a.

Petitioners attack the Ninth Circuit's reliance on *McDonald*, asserting that "Justice Jackson was clearly referencing a scenario where a resident does not know it is a police officer who is entering." Pet. 21 (emphasis omitted). But that is precisely what happened here when Petitioners unlawfully entered the Mendezes' windowless home. App. 100a ("When Mr. Mendez perceived the wooden door being opened, he thought it was Ms. Hughes playing a joke."). Moreover, Justice Jackson did not rely on the knock-and-announce rule as Petitioners imply. Pet. 21. His analysis was premised instead on the officers' entry "without either a search warrant or an arrest warrant to justify it." 335 U.S. at 459.

Also relevant here, Justice Jackson explained that "the method of enforcing the law exemplified by this search is one which not only violates legal rights of defendant but is certain to involve the police in grave troubles if continued." 335 U.S. at 460. That was so, he explained, because "[m]any home-owners

in this crime-beset city doubtless are armed" and may threaten a police officer who enters without notice. *Id.* at 461. The district court made similar findings. Dkt. 300 at 97-98 ("The Second Amendment gives Americans the right to have firearms in their own home for their protection. And this is particularly true out in the Antelope Valley where there's obviously a lot of ex military and a lot of ex law enforcement. But any American can sleep with a firearm, many Americans do."). On this record, the Ninth Circuit appropriately bolstered its foreseeability analysis of the officers' trespass into the home by "[l]ooking to other cases involving unlawful entry … including burglary." App. 14a. As the Ninth Circuit noted, this Court has recognized that such an entry "can end in confrontation leading to violence." *Sykes v. United States*, 564 U.S. 1, 9 (2011), *overruled on other grounds by Johnson v. United States*, 135 S. Ct. 2551 (2015). As this Court's precedent confirms, it was foreseeable that the deputies' reckless conduct could lead to a violent confrontation.

D. The Ninth Circuit's Causation Analysis Is Consistent With This Court's Decisions.

Petitioners also claim that the Ninth Circuit's analysis "conflicts with precedent by this Court regarding the foreseeable risks meant to be protected against by the warrant requirement, as set forth in *Hudson v. Michigan*, 547 U.S. 586, 594 (2006)." Pet. 13. But *Hudson* does not hold that avoiding confrontations with innocent homeowners is an interest wholly and exclusively protected by the knock-and-announce doctrine. To the contrary,

the Court recognized in *Hudson* that "[u]ntil a valid warrant has issued, citizens are entitled to shield their persons, houses, papers, and effects from the government's scrutiny." 547 U.S. at 593 (citation omitted). The Ninth Circuit's analysis is consistent with *Hudson*.[7]

As the Ninth Circuit further explained, other decisions of this Court also recognize that "[t]he Fourth Amendment protects not only a person's broad interests in privacy, but also, and specifically, a person's interest in being shielded from physical governmental intrusions." App. 9a (citing *United States v. Jones*, 565 U.S. 400, 406 (2012) ("[F]or most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas ('persons, houses, papers, and effects') it enumerates."), and *Florida v. Jardines*, 569 U.S. 1, 5 (2013) (noting that in addition to privacy interests, the Fourth Amendment protects citizens' interests in being free from physical intrusions). The Court similarly held in *Payton v. New York*, 445 U.S. 573 (1980), that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. And we have long adhered to the view that t*he warrant procedure minimizes the danger of needless intrusions* of that sort." *Id.* at 585-86 (citation omitted; emphasis added); *see also Wolf v.*

[7] For the same reason, the Ninth Circuit's analysis is also consistent with *United States v. Smith*, 526 F.3d 306 (6th Cir. 2008), which relies on the same portion of *Hudson* emphasized by Petitioners in their argument. Pet. 20.

Colorado, 338 U.S. 25, 30 n.1 (1949) (noting common-law rule that "[o]ne may … without liability use force to resist an unlawful search."). The Ninth Circuit's analysis is thus consistent with this Court's decisions and does not warrant further review.[8]

Lastly, the Ninth Circuit's causation analysis is also consistent with this Court's Fourth Amendment and Second Amendment jurisprudence. When police unlawfully enter a home, property damage is often minimal or non-existent. The paramount risk, foreseen in *McDonald*, is that the resident, not yet realizing that the intruder is a police officer, may grab a weapon or household item to defend herself against the trespasser. In these circumstances, police officers should be liable for the direct and foreseeable consequences of their unlawful actions *including physical injuries to innocent occupants like the Mendezes*. Any other holding would undermine both 42 U.S.C. § 1983 and the Fourth Amendment by imposing only nominal damages when officers unlawfully (and in this case recklessly)

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[8] The Ninth Circuit also noted that its causation ruling is consistent with *Attocknie v. Smith*, 798 F.3d 1252, 1258 (10th Cir. 2015), which holds in similar circumstances that "a reasonable jury could determine that the unlawful entry was the proximate cause of the fatal shooting of Aaron." App. 14a. Petitioners attempt to attribute the holding in *Attocknie* to a knock-and-announce violation. Pet. 22 n.2. But contrary to Petitioners' assertion, there was no knock-and-announce claim in *Attocknie*. The plaintiff in *Attocknie* asserted only two claims against the officer who entered her home and then shot and killed her husband: unlawful entry and excessive force. 798 F.3d at 1254-55. Moreover, because the court found liability and causation for the unlawful entry claim, it did "not address whether the force used by [the officer] upon his entry was in itself unreasonable and excessive." *Id.* at 1255.

enter a residence. And by shifting all responsibility to an innocent homeowner whenever an unidentified trespasser turns out to be a police officer, Petitioners' argument would also eviscerate the Second Amendment right "to keep and bear arms for lawful purposes, most notably for self-defense within the home." *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010).

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In summary, the Ninth Circuit properly applied this Court's mandate and correctly analyzed the proximate cause issue in accordance with this Court's precedent. Its causation ruling is correct, does not conflict with any decision of another court of appeals, and does not merit this Court's review.

III. THE NINTH CIRCUIT'S SUPERSEDING CAUSE RULING DOES NOT CONFLICT WITH THE DECISIONS OF OTHER CIRCUITS.

Petitioners next argue that "Mr. Mendez's unintentional act of pointing what appeared to be real rifle directly at the Deputies was a superseding cause of the Plaintiffs' shooting injuries." Pet. 26-27. Petitioners claim that the district court accepted their superseding cause analysis, but they rely on an oral comment that was rejected by the district court's subsequent written ruling that "Mr. Mendez's 'normal efforts' in picking up the BB gun rifle to sit up on the futon do not supersede Deputies Conley and Pederson's responsibility." App. 157a; *see supra* at 7 n.2. The Ninth Circuit correctly identified and reviewed that written ruling and affirmed for similar reasons: "Nothing about Mr.

Mendez's innocent actions warrants shifting responsibility for the subsequent shooting injuries away from the officers and to the injured victim." App. 23a.

Petitioners claim that the Ninth Circuit's ruling conflicts with case law from other circuits, which hold *in appropriate cases* that a suspect's actions can be a superseding cause. Pet. 27-28. The Ninth Circuit below *agreed* with that legal proposition, stating: "To be sure, officers are free from liability if they can show that the behavior of a shooting victim was a superseding cause of the injury." App. 21a. Citing *Bodine v. Warwick*, 72 F.3d 393, 400 (3d Cir. 1995), the Ninth Circuit added: "If a resident sees that an officer has entered and intentionally tries to harm the officer, who in turn draws his weapon and shoots, the resident's intentional action would be a superseding cause of the injury." App. 21a. There is no intercircuit conflict on this point.

The cases cited by Petitioners to purportedly show that an intercircuit conflict exists involve markedly different facts. *Bodine*, for example, involved police officers who "encounter the suspect, identify themselves, [and] show him the warrant." Here, in contrast, "Mr. Mendez had no idea that the persons entering his home were police officers" and "did not deliberately aim [the BB gun] at the officers." App. 22a. Given these obvious distinctions, the Ninth Circuit concluded (correctly) that "the hypothetical situation imagined in *Bodine* has no purchase here." *Id.* Not surprisingly, the other cases cited by Petitioners—most of which are unpublished—similarly involve individuals who

knew that the person entering their home or confronting them was a police officer. Pet. 27-28.[9]

Petitioners wrongly claim that the Ninth Circuit "misconstrued *Bodine*." Pet. 28. First, they state that the resident in the *Bodine* hypothetical "intentionally shot at a police officer, whereas in this case, Mr. Mendez inadvertently aimed the BB gun rifle at officers." *Id.* The Ninth Circuit was aware of that distinction, but explained that "if an officer has a duty not to enter in part because he or she might misperceive a victim's innocent acts as a threat and respond with deadly force, then the victim's innocent acts cannot be a superseding cause." App. 22a. This is entirely consistent with the principles of superseding cause. "A cause can be thought

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[9] *See Kane v. Lewis*, 604 F. App'x. 229, 230, 237 (4th Cir. 2015) (officers repeatedly yelled "police" and Fourth Circuit reasoned that resident's deliberate attack was a superseding cause precisely "[*b*]*ecause* [he] must have known that the men in his apartment were police officers, yet advanced toward them with a knife") (emphasis added); *James v. Chavez*, 511 F. App'x. 742, 747 (10th Cir. 2013) (stating it was "apparent from the numerous interactions between [the decedent] and the people outside his home that he knew they were police officers," adding that a homeowner is not entitled under state law to "resist[] an unlawful arrest or entry into his home, simply because of its unlawfulness, *by individuals he recognizes to be the police*") (emphasis added); *Lamont v. New Jersey*, 637 F.3d 177, 179-80 (3d Cir. 2011) (police chase on freeway followed by pursuit by foot by officers); *Estate of Sowards v. City of Trenton*, No. 02-CV-71899-DT, Dkt. 19 at 3 (E.D. Mich. Mar. 14, 2003) (officer "identified himself as a Trenton Policeman and requested that Sowards exit his apartment to speak with the officers"), *aff'd by Estate of Sowards v. City of Trenton*, 125 F. App'x 31, 34 (6th Cir. 2005).

'superseding' only if it is a 'cause of independent origin that was not foreseeable.'" *Staub*, 562 U.S. at 420 (internal quotation marks and citation omitted); *see also* Restatement (Second) of Torts § 449 (subsequent events that explain why the act was negligent in the first place are not superseding causes). In other words, consistent with the *Bodine* hypothetical, Mr. Mendez's conduct is not a superseding cause of the Mendezes' injuries precisely because the risk of the officers' misperceiving a resident's conduct in his home is one of the risks against which the Fourth Amendment guards by forbidding unreasonable intrusions into the home.[10] For these reasons, the innocent nature of Mr. Mendez's conduct does not assist Petitioners in avoiding liability.

Second, Petitioners argue that the Ninth Circuit's decision conflicts with *Bodine* by "finding that conduct which precipitates an officer's *reasonable* use of force" is not a superseding cause. Pet. 27. Petitioners misrepresent the Ninth Circuit's decision. The Ninth Circuit *did not* find

[10] Even if intentionally defensive actions by homeowners were more common than Mr. Mendez's innocent reaction, the Restatement squarely addresses the issue of a foreseeable harm—police use of force in response to a perceived threat—being brought about in an atypical manner—an occupant innocently moving a BB gun—as follows: "If the actor's conduct has created or increased the risk that a particular harm to the plaintiff will occur, and has been a substantial factor in causing that harm, it is immaterial to the actor's liability that the harm is brought about in a manner which no one in his position could possibly have been expected to foresee or anticipate." Restatement (Second) of Torts § 442B cmt. b.

that the deputies' use of force was reasonable. As noted above, this Court remanded the excessive force claim for proper application of the *Graham* standard, and the Ninth Circuit did not reach that question on remand.[11] Thus, the question presented regarding superseding cause that Petitioners propose is not ripe, which may be why this Court previously declined to reach it. *See* App. 50a. Moreover, the occurrence of a foreseeable event—the need to use reasonable force—that is among the reasons why officers should not have entered in the first place would not be a superseding cause of the injuries resulting from their unlawful entry. *Staub*, 562 U.S. at 420; *see also* Restatement (Second) of Torts §§ 442B cmt. b, 449; Restatement (Third) of Torts § 34 cmt. e.

Finally, because a *foreseeable* event cannot be a superseding cause, Petitioners claim that "[i]t was not foreseeable to the Deputies that someone in the shed would attempt to shoot them simply for opening the door without a search warrant." Pet. 26. Petitioners assert a similar argument in their discussion of proximate cause. Pet. 23-24. Here again, what is or is not foreseeable necessarily depends on the facts and circumstances of each particular case. On this fact-bound question, the

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[11] The Ninth Circuit did not need to—nor did it—address the Mendezes' excessive force claim under *Graham* because it upheld the district court's judgment on the unlawful entry and California negligence claims. App. 27a-28a. The Mendezes do not waive, and expressly reserve, their right to continue to pursue the excessive force claim if and as necessary to obtain relief for their injuries as this Court directed. App. 46a n.* (quoted *supra* at 8).

district court found foreseeability and the Ninth Circuit upheld that finding. App. 13a, 15a-16a, 18a, 21a, 25a, 156a-57a. As noted previously (*supra* at 29-30), the cases cited by Petitioners concern individuals who knew that the person confronting them was a police officer. The California statute cited by Petitioners is to the same effect: it creates a duty to refrain from resistance "[i]f a person *has knowledge, or by the exercise of reasonable care, should have knowledge*, that he is being arrested by a peace officer." Cal. Penal Code § 834a (emphasis added) (cited at Pet. 24). That did not happen here because Conley and Pederson walked up to what a reasonable officer would have known was the Mendezes' home and entered that windowless home without giving the occupants any opportunity to recognize that they were police.

In summary, the Ninth Circuit's superseding cause analysis does not create an intercircuit conflict, is a fact-bound issue, was correctly decided, and does not in any event alter the outcome of this case. Given the multi-pronged nature of the Ninth Circuit's analysis, including its ruling upholding the district court's judgment on state-law grounds, the Petition should be denied so that the Mendezes—eight years after being shot by Petitioners while napping on a futon in their home—can finally recover their proven damages.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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JANUARY 24, 2019