No. 23-327

In the Supreme Court of the United States

JOHN CANADA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals attached too much weight to police officers' inferences in finding that reasonable suspicion supported a protective sweep of petitioner's car based on the length of time it took him to come to a stop when he was pulled over and his furtive movement to reach under a seat as the officers arrived.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 76 F.4th 1304. The order of the district court (Pet. App. 21a-29a) is not published in the Federal Supplement but is available at 2021 WL 2290806.

JURISDICTION

The judgment of the court of appeals (Pet. App. 30a) was entered on August 9, 2023. The petition for a writ of certiorari was filed on September 25, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Kansas, petitioner was convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). 1 Record on Appeal (ROA) 77. The district court sentenced petitioner

to 15 months of imprisonment, to be followed by two years of supervised release. *Id.* at 78-79. The court of appeals affirmed. Pet. App. 1a-20a.

1. On the night of April 22, 2020, Wichita Police Department Officers Zachary Jensen and Trevor Sanders, both of whom were experienced members of the department's Violent Crime Community Response Team, were patrolling a high-crime area in Wichita, Kansas, where "repeated robberies, homicides, and drug crimes" had occurred. Pet. App. 21a-22a; see 3 ROA 10-11, 54. The officers were traveling southbound in a police vehicle with overhead lights but, because theirs was the only vehicle traveling in that direction, Officer Sanders made a U-turn in order to blend into the flow of northbound traffic. Pet. App. 22a; see 3 ROA 65. Both officers were wearing body cameras, which captured video and audio recordings of the ensuing events. 3 ROA 18, 63-64 (admitting videos into evidence); see Gov't Ex. 1 (Jensen Video); Gov't Ex. 2 (Sanders Video).

Shortly after starting northbound, the officers observed the driver of a Dodge Magnum—later identified as petitioner—make a right turn without activating his turn signal. Pet. App. 22a. Officer Sanders turned on his vehicle's emergency lights, and in response, petitioner began to brake. *Ibid.* Although "the roadway was free of debris or other obstructions that could have necessitated a slower stop time," petitioner' car continued to roll slowly for approximately 14 seconds before stopping, an "'amount of time'" that was sufficiently "'abnormal'" to raise the suspicion of the officers, whose training and experience had taught that such "'slow rolls'" often indicate that a driver or passenger is attempting to hide or retrieve something. *Ibid.*; see *id.* at 6a; 3 ROA 13, 56.

After petitioner's car came to a full stop, both officers exited the patrol vehicle. Pet. App. 22a. As he exited, Officer Jensen stated "a little bit of a slow roll here," *id.* at 2a, to communicate to Officer Sanders that he was "a little bit on alert" and to "be a little cautious." 3 ROA 14, 19; see Jensen Video 0:55-0:56. As a "safety precaution," Officer Sanders, who approached petitioner's car on the driver's side, briefly paused to allow Officer Jensen to begin his approach of petitioner's car on the passenger side so that Jensen would arrive first and be able to view the interior. 3 ROA 57-58; see *id.* at 14-15; Pet. App. 22a. The officers later testified that, in their experience, most drivers do not expect a passenger-side approach because most do not anticipate a two-officer unit to be on patrol. 3 ROA 14, 57. When Officer Sanders then approached the car from the driver's side, he noticed that petitioner had "eye-locked on [him]" through petitioner's driver's side mirror, which the officer testified was atypical because most drivers involved in traffic stops are performing other tasks, such as finding their driver's license. *Id.* at 58, 68.

The video evidence captures the rapid pace of the nighttime events that then followed. See Jensen Video; Sanders Video. As soon as Officer Jensen walked to the passenger-side door of petitioner's vehicle, he saw petitioner reaching with his right arm down back behind the driver's seat, far beyond the center console, while petitioner's head was turned back. Jensen Video 1:09-1:12; see Pet. App. 2a-3a, 8a, 22a-23a, 26a. Upon seeing petitioner with his "shoulders pinned up against the back of his seat," "strenuously arching his hips" off his seat to "reach[] his right arm" into the back, Pet. App. 2a-3a, 22a; 3 ROA 15, Officer Jensen immediately yelled the

command: "Hey, hey! Pull your hand up! Pull your hand up!" Jensen Video 1:09-1:12.

Petitioner turned to Officer Jensen and promptly retracted his empty right hand, at which point Officer Jensen immediately instructed his partner, "Hey, pull him out, man." Jensen Video 1:10-1:14. Officer Sanders later testified that Officer Jensen's commands gave him "another level of concern" because Officer Jensen does not "do anything with[out] reason * * * , and whenever he begins giving commands like that, I know something is going on." 3 ROA 59; *id.* at 80 (orders indicated a "potential safety issue"); see *id.* at 79 (Officer Sanders's testimony that vehicle stops are inherently dangerous and more so during night). Video evidence shows that petitioner's rear-seat reach was not necessary to retrieve his wallet, because his wallet was already lying on his lap, and he already had a white credit-card-sized card in his left hand. Jensen Video 1:14-1:20; see Pet. App. 3a.

After petitioner exited his car, Officer Sanders frisked petitioner and then escorted him toward the back of the car. Pet. App. 3a, 23a; 3 ROA 59; Jensen Video 1:30-1:40. Officer Jensen walked to the driver's side of petitioner' car, looked back to petitioner and Officer Sanders, and stated "keep stepping all the way to the back of the car." Jensen Video 1:40-1:42. Once Officer Sanders had moved petitioner farther back, Officer Jensen returned to the driver's door and, within the span of ten seconds, conducted a visual inspection with a flashlight of both the driver's seat area and, leaning over the center console, the back-seat area where he had seen petitioner reaching. *Id.* at 1:48-1:58; see 3 ROA 17. Officer Jensen located a revolver on the floorboard beneath petitioner's seat where petitioner had been reaching.

3 ROA 17, 20-21. After petitioner later received *Miranda* warnings, he admitted to possessing the firearm. 1 ROA 71.

2. A federal grand jury indicted petitioner for possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). 1 ROA 11. After an evidentiary hearing, the district court denied petitioner's motion to suppress the revolver. Pet. App. 21a-29a; see 3 ROA 5-127 (hearing transcript). The court determined that the limited protective sweep of petitioner's car that revealed the revolver was lawful because it was supported by a reasonable articulable suspicion that petitioner was dangerous and could have access to a weapon. Pet. App. 24a-28a.

The district court explained that an officer may conduct a protective sweep if he "reasonably" suspects that "the suspect poses a danger and may gain immediate access to a weapon." Pet. App. 25a. The court determined that to be the case here. *Id.* at 26a-28a. The court found that petitioner "took an abnormal amount of time to stop his vehicle, despite a clear roadway with no obstructions," and credited the officers' testimony that, "in their training and experience, a slow stop can indicate that the driver is attempting to retrieve or conceal a weapon." *Id.* at 26a. And it observed that, as the officers approached petitioner's vehicle, "Officer Jensen immediately became concerned that [petitioner] was attempting to conceal or reach for a weapon" based on his observation that petitioner was straining to "reach[] his right arm behind his seat." *Ibid.*

The district court accordingly reasoned that petitioner's "slow stop combined with his furtive gesture to the area beneath his seat as the officers approached gave rise to the reasonable, articulable suspicion that

[petitioner] had access to [a] weapon and may have posed a danger to the officers." Pet. App. 27a. The court added that "multiple courts have concluded that a protective sweep was lawful in similar circumstances." *Id.* at 28a.

Petitioner subsequently entered a conditional guilty plea, 1 ROA 70-76, that reserved his right to appeal the denial of his suppression motion, *id.* at 70. The district court found petitioner guilty based on his guilty plea and sentenced petitioner to 15 months of imprisonment to be followed by two years of supervised release. *Id.* at 77-79.

3. The court of appeals affirmed. Pet. App. 1a-20a.

a. The court of appeals stated that it reviews the denial of a suppression motion by "view[ing] the evidence in the light most favorable to the government" and "accept[ing] the district court's finding of fact unless clearly erroneous." Pet. App. 4a (citation omitted). The court further explained that it "review[s] de novo the ultimate determination of reasonableness under the Fourth Amendment," but added that it must also afford "defer[ence] to the ability of a trained law enforcement officer to distinguish between innocent and suspicious actions." *Ibid.* (citations omitted).

The court of appeals agreed with the district court that "the totality of the circumstances" were sufficient to justify the protective sweep in this case based on a "reasonable suspicion that [petitioner] pose[d] a danger and may [have] gain[ed] immediate access to a weapon." Pet. App. 5a, 7a; see *id.* at 3a, 6a-9a. The court of appeals observed that petitioner's delay in pulling his car over was longer than normal and "piqued the[] concern" of "trained officer[s]," at least one of whom contemporaneously "recognized the slow roll in this case as

suspicious." *Id.* at 6a-7a. The court then stated that it "defer[s] to the ability of a trained law enforcement officer to distinguish between innocent and suspicious actions," noting that "similar actions" had been found to "contribut[e] to reasonable suspicion" in prior cases. *Id.* at 7a. (citation and internal quotation marks omitted).

The court of appeals further determined that petitioner's "furtive gesture" of reaching behind his seat, "when combined with the slow roll[,] was enough to establish reasonable suspicion to conduct the protective sweep in this case." Pet. App. 7a. The court explained that petitioner's reach behind his seat as officers approached "raise[d] just as much concern, if not more," that a weapon was being concealed as in a prior appellate decision upholding a protective search as based on "reasonable suspicion." *Id.* at 8a. The court recognized that protective "sweeps exist for officer safety" and "do not require officers to take unnecessary risks." *Id.* at 8a-9a. And the court observed that the officers here were "clearly concern[ed]" by petitioner's actions, which "evoke[d] a reasonable reaction from [the] officers to protect themselves by sweeping [petitioner's vehicle]." *Ibid.* The court accordingly determined that the circumstances provided a sufficient basis for "the officers to reasonably suspect" that petitioner would be dangerous and had access to a weapon. *Ibid.*

b. Judge Rossman dissented. Pet. App. 12a-20a. In a footnote, Judge Rossman noted that the Tenth Circuit's articulation of the "clear error component" for review involves appellate review of the evidence in the light most favorable to the suppression ruling (or the party that prevailed on the motion), which she opined "does not abide the standard formulation of clear error

review and is incompatible with a principled *de novo* analysis." *Id.* at 14a-15a n.2. But as petitioner notes, Judge Rossman did not "purport[] to apply a different standard of review," Pet. 12, when she "disagree[d]" with the court's determination that "'reasonable suspicion [existed] under the circumstances of this case.'" Pet. App. 13a (citation omitted); see *id.* at 13a-20a.

ARGUMENT

Petitioner contends (Pet. 5) that the court of appeals erred by "assess[ing] the reasonableness of the officers' inferences—and the weight they are due"—by "seeing the facts through a 'light most favorable to the government' lens." In petitioner's view (Pet. 20), the court's standard of review "required [it] to defer to * * * inferences drawn by the officers" that petitioner's actions suggested the presence of a weapon in the car, and thereby conflicted with this Court's decision in *Ornelas* v. *United States*, 517 U.S. 690 (1996), and decisions of other courts of appeals. But the premise of petitioner's contention is misplaced, as the court of appeals' articulation of the standard of review here separated out the deference due to police officers' inferences from the standard of review that it applies to the underlying facts. And because petitioner acknowledges that "[t]he historical facts are not in dispute," Pet. 7, the decision of the court of appeals does not implicate any relevant division of authority about how clear-error review of factual findings should be conducted in the suppression context. The petition for a writ of certiorari should be denied.

1. The court of appeals' decision is consistent with *Ornelas*. In *Ornelas*, this Court recognized that there are two "principal components of a determination of reasonable suspicion or probable cause": (1) "the events

which occurred leading up to the stop or search," *i.e.*, the relevant "historical facts," and (2) "the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause." 517 U.S. at 696. The Court determined that an appellate court should "review findings of historical fact only for clear error" but that that "the ultimate questions of reasonable suspicion and probable cause" "should be reviewed *de novo* on appeal." *Id.* at 691, 699.

At the same time, *Ornelas* emphasized that "a reviewing court should take care * * * to give due weight to inferences drawn from [the historical] facts by resident judges and local law enforcement officers." *Ornelas*, 517 U.S. at 699. The Court explained that a local judge has knowledge of "background facts" such as "the distinctive features and events of the community" that, "though rarely the subject of explicit findings," "provide a context for," and "inform the judge's assessment of[,] the historical facts" when the judge draws "inferences" from them in deciding whether they give rise to "reasonable suspicion" or probable cause. *Id.* at 699-700.

Ornelas instructed that not only the inferences of a "trial judge," but also those of "a police officer," "deserve deference" on appeal. 517 U.S. at 699. The Court explained that "a police officer may draw inferences based on his own experience"—which may not be apparent "[t]o a layman"—when "deciding whether [reasonable suspicion or] probable cause exists." *Id.* at 700. And the Court accordingly instructed that "[a]n appeals court should give due weight to a trial court's finding that the officer was credible and the inference [drawn by the officer] was reasonable." *Ibid.*

The court of appeals' decision in this case is correct and consistent with that framework. The court stated that, when reviewing the denial of a motion to suppress, it "view[s] the evidence in the light most favorable to the government" and "accept[s] the district court's finding of fact unless clearly erroneous." Pet. App. 4a (citation omitted). The court also made clear that it "review[s] de novo the ultimate determination of reasonableness under the Fourth Amendment," a review in which the reviewing court "must * * * defer to the ability of a trained law enforcement officer to distinguish between innocent and suspicious actions." *Ibid.* (citations omitted).

The court of appeals then considered "whether [petitioner's] furtive gesture [as officers approached his car] when combined with the slow roll [that preceded it] was enough to establish reasonable suspicion to conduct the protective sweep in this case" given the "totality of the circumstances." Pet. App. 7a. And after analyzing the circumstances, the court ultimately determined that, although "[t]he officers here could not have been sure that [petitioner] was dangerous or had a weapon present," petitioner's actions "provided enough for the officers to *reasonably* suspect that [he] was both dangerous and had access to a weapon." *Id.* at 9a (emphasis added).

2. Petitioner asserts (Pet. 4-5, 15-18) that the court of appeals erred in evaluating the reasonableness of an officer's inferential conclusions about the situation confronting the officer by viewing the historical "facts through a 'light most favorable to the government' lens," Pet. 5. But the court indicated that the standard of review that applies when deciding whether a "district court's finding of fact" is "clearly erroneous" re-

quires that a court "view the *evidence*"—not an officer's inferences—"in the light most favorable to the government." Pet. App. 4a (emphasis added; citation omitted). The court specifically stated that it "review[s] de novo" the "ultimate determination of reasonableness." *Ibid.* (citation omitted). And while the court added that "[r]eviewing courts must also defer to the ability of a trained law enforcement officer to distinguish between innocent and suspicious actions," *ibid.* (citation omitted), petitioner fails to show that the court's statement was anything other than an acknowledgment of *Ornelas*, or was otherwise affected by the "light most favorable" language on which he focuses.

The court of appeals drew its description of deference to officers' abilities from its post-*Ornelas* decision in *United States* v. *Santos*, 403 F.3d 1120, 1125 (10th Cir. 2005); see Pet. App. 4a. And although *Santos* stated that "[i]n practice," the *Ornelas* standard "looks more like deference—indeed, double deference—than de novo review," it bookended that characterization with consideration of how this Court carried out its own post-*Ornelas* reasonable-suspicion analysis in *United States* v. *Arvizu*, 534 U.S. 266 (2002). See *Santos*, 403 F.3d at 1124-1125. *Santos* observed that review of the factual findings underlying a suppression motion requires clear-error review, with a "view [of] the evidence in the light most favorable to the determination of the district court." *Ibid.* But it then separated out the consideration of officer inferences, stating that "[r]eviewing courts must *also* defer to the ability of a trained law enforcement officer to distinguish between innocent and suspicious actions." *Ibid.* (emphasis added; citation and internal quotation marks omitted).

Subsequent Tenth Circuit precedent reinforces the separateness the court's light-most-favorable language, which the court applies to the evidence when reviewing factual findings on clear-error review, from the de novo legal standard that the court applies to the ultimate question of reasonableness. In *United States* v. *Gaines*, 918 F.3d 793 (2019), for example, the Tenth Circuit explained that it "appl[ies] a dual standard of review, using the clear-error standard for the district court's findings of historical fact and de novo review for the court's legal conclusions." *Id.* at 796; see *id.* at 796 n.3 (noting that "[w]hen considering whether the district court clearly erred" with respect to findings of historical fact, "we have often said that we view the evidence in the light most favorable to the district court's ruling or to the prevailing party."). Similarly, in *United States* v. *Valenzuela*, 365 F.3d 892 (10th Cir. 2004), the court noted "we review the district court's factual findings for clear error, considering the evidence in the light most favorable to the district court's determination," before separately stating that "[t]he ultimate determination of whether probable cause to arrest existed is a legal issue that we review de novo." *Id.* at 896.

Indeed, in his appellate brief below, petitioner observed that the Tenth Circuit's decision in *United States* v. *Torres*, 987 F.3d 893 (2021), had "recently commented that *Ornelas* 'is consistent with' the light-most-favorable standard." Pet. C.A. Br. 20 (quoting *Torres*, 987 F.3d at 900-901). "As we understand it," petitioner continued, "this Court now equates viewing the evidence in a light most favorable to the government (or the district court's determination) with giving due weight to reasonable inferences drawn by judges and law enforcement officers." *Ibid.* (citing *Torres*, 987 F.3d

at 900-901). "If that is true," petitioner recognized, "then this Court does not really credit the government's view of the evidence, but instead gives due weight to reasonable inferences, *as Ornelas instructs*." *Ibid.* (emphasis added).[1] Petitioner then addressed the merits of the case on that "understanding." *Ibid.*

The petition for a writ of certiorari does not address *Torres*, which considered the court's "precedent direct[ing] [the court] to view the evidence in the light most favorable to the prevailing party," and viewed it as "consistent with" this Court's decision in *Ornelas* in its "instruct[ing] "federal appellate courts to give 'deference' and 'due weight' to 'inferences drawn . . . by resident judges and local law enforcement officers' because of their expertise in their communities." 987 F.3d at 900-901 (quoting *Ornelas*, 517 U.S. at 699). The petition instead relies (Pet. 16) on six Tenth Circuit decisions predating *Torres* that, like the decision in this case, simply reflect that the "evidence" is viewed in a "light most favorable" to the district court's suppression ruling when the court of appeals reviews findings of historical fact for clear error. Petitioner, for instance, relies (*ibid.*) on *United States* v. *Gaines*, *supra*, and *United States* v. *Valenzuela*, *supra*. But those decisions, dis-

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[1] Petitioner also "ask[ed] [the Tenth Circuit] to jettison [its] approach" to "view[ing] 'the evidence in the light most favorable to the government'" but acknowledged that the court had previously "refuse[d] to reconsider this rule." Pet. C.A. Br. 18-20 (citation omitted). The government opposed that distinct request governing the sufficiency of evidence for factual findings, arguing that—"as [petitioner] acknowledge[d]"—the Tenth Circuit in *Torres* had already "rejected [petitioner's] argument" that "*Ornelas* forbids appellate courts from viewing the evidence in the light most favorable to the government when the district court rules in its favor." Gov't C.A. Br. 13 n.6 (citing *Torres*, 987 F.3d at 901-902).

cussed above, apply a light-most-favorable test when deciding on clear-error review whether the evidence is sufficient to support a district court's disputed findings of historical fact. See p. 12, *supra*.

The remaining decisions that petitioner cites reflect a similar approach.[2] None establishes that the court treats officer inferences more deferentially than this Court instructed in *Ornelas*. Indeed, the Tenth Circuit continues to cite directly to *Ornelas* for the proposition that courts should give "due weight to a trial court's finding that the officer was credible and the inference was reasonable." *United States* v. *Johnson*, 43 F.4th 1100, 1108 (10th Cir. 2022) (quoting *Ornelas*, 517 U.S. at 700).[3]

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[2] See *United States* v. *Windom*, 863 F.3d 1322, 1326 (10th Cir. 2017) (stating that "we view the evidence in the light most favorable to the government" and "accept the district court's findings of fact unless clearly erroneous"), cert. denied, 138 S. Ct. 1987 (2018); *United States* v. *Mosley*, 743 F.3d 1317, 1322 (10th Cir.) (same), cert. denied, 574 U.S. 877 (2014); *United States* v. *Davis*, 94 F.3d 1465, 1467 (10th Cir. 1996) (similar); *United States* v. *Lambert*, 46 F.3d 1064, 1067 (10th Cir. 1995) (similar in decision predating *Ornelas*). The Tenth Circuit has infrequently described the standard of review as having a reviewing court "view th[e] *facts* in the light most favorable to the Government." *United States* v. *Doss*, 275 Fed. Appx. 755, 757 (10th Cir. 2008) (unpublished) (emphasis added). For reasons explained in the text, such statements do not require an overly deferential approach to officer inferences.

[3] See, *e.g.*, *United States* v. *Sanchez*, 13 F.4th 1063, 1071-1072 (10th Cir. 2021) (discussing facts and concluding that they support "rational inferences" supporting reasonable suspicion; separately stating that "[w]e review a district court's determination of probable cause de novo and factual determinations for clear error, giving 'due weight to inferences drawn from those facts by resident judges and local law enforcement officers.'") (quoting *Ornelas*, 517 U.S. at 699),

3. At all events, however the court of appeals might have evaluated other cases, petitioner does not identify any way in which the decision below in this case—which explained that "[u]nder our body of authority, the recognition of a slow roll by a trained officer, *although not dispositive of this case*, contributes to the totality of the circumstances," Pet. App. 7a (emphasis added)—was inconsistent with his own "understanding," Pet. C.A. Br. 20, of circuit precedent as reconcilable with *Ornelas*. See Pet. 11 (describing decision below). Nor does the decision reflect any impermissible degree of deference to the officers' inferences. In addition to its consideration of the slow roll, the court's totality-of-the-circumstances analysis observed that petitioner's right-hand reach behind his seat as officers approached "raises just as much concern, if not more," that petitioner was concealing a weapon than analogous circumstances giving rise to reasonable suspicion under the precedent of a sister circuit. Pet. App. 8a.

The court of appeals emphasized that protective "sweeps exist for officer safety" and "do not require officers to take unnecessary risks," noted that the officers here were "clearly concern[ed]" by petitioner's actions, and determined that the officers' concern "evoke[d] a reasonable reaction from officers to protect themselves by sweeping [petitioner's vehicle]." Pet. App. 8a-9a. And the court rejected petitioner's contention that the

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cert. denied, 142 S. Ct. 842 (2022)); *United States* v. *Reese*, 846 Fed. Appx. 699, 702 (10th Cir. 2021) (unpublished) (stating that "we review [the district court's] findings of historical fact for clear error," "giv[e] 'due weight to inferences drawn from those facts by resident judges and local law enforcement officers,'" and "review the existence of reasonable suspicion or probable cause de novo") (quoting *Ornelas*, 517 U.S. at 699); *United States* v. *Spence*, 840 Fed. Appx. 344, 346 (10th Cir. 2021) (unpublished) (similar).

fact that petitioner was ready to provide his driver's license and cooperated eliminated "any reason for suspicion" not because the court viewed the historical facts in a light most favorable to the government, but because similar compliance did not counsel against the reasonableness of protective sweeps "in other cases." *Id.* at 9a. The court thus determined for itself that the circumstances here provided a sufficient basis for "the officers to *reasonably* suspect" that petitioner would be dangerous and had access to a weapon. *Ibid.* (emphasis added).

Judge Rossman's dissenting opinion reinforces the adherence of the decision below to the limits established in *Ornelas*. Her footnote described the "evidence in the light most favorable" language as a manner of evaulating "the clear error component" of the court's "two-part clear error/*de novo* standard of review." Pet. App. 14a n.2 (emphasis omitted). While the footnote added that "a light-most-favorable bias does not abide the standard formulation of clear error review" of factual findings and, for that reason, undermines "principled" de novo review, *id.* at 15a n.2, she did not appear to embrace petitioner's distinct contention here—namely, that the court of appeals is overly deferential to officer inferences. Indeed, her own petitioner-favorable evaluation of the case, which petitioner agrees did not "purport[] to apply a different standard of review" from the majority, Pet. 12, emphasized—citing recent circuit precedent—that "whether an observed action is *actually* suspicious as a matter of law, and whether it rightly contributes to the legal conclusion of reasonable suspicion, are issues ultimately left to this court's judgment, not Officer Jensen's," Pet. App. 15a (citing, *inter alia*, *United States* v. *Frazier*, 30 F.4th 1165, 1174 (10th Cir. 2022));

see *id.* at 14a-15a (citing *Ornelas*'s "due weight" standard).

4. Because the decision below does not apply the overly deferential standard of review that petitioner ascribes to it, the issue that petitioner purports to present is not, in fact, presented in this case. Petitioner's assertion (Pet. 21-27) of a circuit conflict on whether a court of appeals should review "*evidence* in the 'light most favorable' to the prevailing party," Pet. 21 (emphasis added), is therefore inapposite. Any such division of authority about how to conduct clear-error review of disputed findings of historical fact is not implicated by this case, in which petitioner acknowledges that "[t]he historical facts are not in dispute." Pet. 7.[4] As a result, petitioner identifies no sound basis for further review in this case.

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[4] The government has previously explained that the assertion of an intractable division of authority on the question whether appellate "review [of] findings of historical fact only for clear error," *Ornelas*, 517 U.S. at 699, should require a reviewing court to view "the evidence in the light most favorable to the trial court's suppression ruling" overstated both the extent and significance of any disagreement. Br. in Opp. at 9-12, *Juszczyk* v. *United States*, 583 U.S. 907 (2017) (No. 16-9240). This Court has since repeatedly denied certiorari on that question. See *Ballance* v. *United States*, 142 S. Ct. 2778 (2022) (No. 21-1347); *Berg* v. *United States*, 141 S. Ct. 605 (2020) (No. 20-5706); *Juszczyk* v. *United States*, 583 U.S. 907 (2017) (No. 16-9240). In any event, as explained above, the existence of any significant disagreement about the proper scope of clear-error review of factfinding, if it were to exist, would be irrelevant to the proper disposition of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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