

No. 24-152

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL PINA,

Petitioner,

v.

ESTATE OF JACOB DOMINGUEZ,

Respondent.

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

**RESPONDENT'S OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

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INTRODUCTION

Petitioner Sergeant Michael Pina (“Pina”) argues summary reversal is proper because qualified immunity should have applied, and both the District Court and a unanimous panel of the Court of Appeal were incorrect. Incredulously, petitioner yet again advances his argument there was no violation of a clearly established right despite the fact that a jury determined Pina used excessive force in shooting decedent Jacob Dominguez (“Dominguez”) while his hands were raised in compliance with the officer’s commands. A panel for the Court of Appeal, Ninth Circuit upheld the jury’s verdict in favor of respondents Jessica Dominguez, et al., in a 3-0 decision. The petitioner did not seek an *en banc* hearing after the Ninth Circuit issued its ruling. Both the District’s and Court of Appeal’s decisions are unpublished. In the realm of Supreme Court jurisprudence, there is “nothing to see here” with respect to the petition.

First, the petition is rife with mischaracterizations of the facts elicited at trial and false analogies, including that Pina was in a tense and rapid situation at the time of killing, and more of which are addressed later in this brief. The relief of summary reversal that the petitioner now seeks, after not calling his own ballistics expert witness to testify at trial because it was too damning (as foretold by the expert’s deposition testimony that would have confirmed Dominguez’ arm was above the door when he was shot by Pina), and not petitioning the Ninth Circuit for rehearing after a unanimous decision, is incredulous and violates the protections afforded by both the Fourth and Fourteenth Amendments to the U.S. Constitution, in addition to those pursuant to state law. When distilled to its essence, the relief petitioner actually requests from this Court is to establish precedent that hearsay evidence (provided by an anonymous informant) regarding a suspect being armed, standing alone, is a justifiable ground

to kill an unarmed citizen during an arrest, and thus, qualified immunity should apply.

Simply, the guidance on the issue of qualified immunity is ample and it is understood, since the inception of the Fourth Amendment, that a police officer cannot use deadly force on a surrendering suspect. It is axiomatic, and the cases cited by petitioner do not suggest otherwise (including *Peck v. Montoya* (9th Cir. 2022) 751 F.4th 877 and *Cruz v. City of Anaheim* (9th Cir. 2014) 765 F.3d 1076), that more indicia of reliability of an imminent threat are required than the hearsay statement of a confidential informant that the decedent possessed a firearm, in combination with losing sight of the decedent's hands at some point during the encounter, in order to justify defendant Pina's killing of Dominguez. Importantly, and distinguishable from all of the authorities cited by petitioner, no officer ever observed Dominguez with a firearm, or anything that resembled a firearm to officers, at any point in time prior to the killing. And in none of petitioner's supporting authorities, unlike in this case, was it proven that a bullet-hole in the underside of the suspect's sweatshirt arm was present so as to indicate they were shot with their hands in a raised position. The writ should be denied on these grounds alone.

Still, petitioner persists and points to a special interrogatory as an elixir for the lower courts' alleged error. However, both the District and Appellate Courts did not miss the incantation of the special interrogatory at trial. While Pina claims the special interrogatory is outcome determinative for reversal, the jury's response does not articulate any necessary fact that a reasonable police officer would constitute as justification for the use of lethal force. In essence, the special interrogatory offered nothing of value to the jury's determination of the issue of reasonableness at the point Pina twice pulled the trigger as mandated by Section

1983, and this fact was twice confirmed by the decisions of the preceding Courts.

In sum, the petition must be denied because Pina points to no reversible error for which summary reversal is required. The guideposts on the use of lethal force are clear now, and they were clear at the time Pina executed Dominguez. The Courts correctly denied the application of qualified immunity because it was proven that Pina shot and killed an unarmed suspect, who had surrendered and complied with the officer's commands, and who was not an imminent threat to Pina, or anybody else. It is, and has long been, clearly established that an officer may not use lethal force under such circumstances and the petition must be denied.

STATEMENT

A. Factual Background

1. The Situation Was Neither Rapid Nor Tense Prior To The Killing

Petitioners cast the underlying facts as a manic situation, in which Pina must make a split-second decision on whether to fire his weapon. It is undisputed that Dominguez did not possess a weapon at the time he was killed and it is further undisputed that neither Pina, nor any of the other officers involved, witnessed Pina in possession of a weapon at any point prior to or during the encounter. Pet. App. 43a-46a. After the Vehicle Containment Technique ("VCT") was completed by the officers, it took about 10 seconds for the officers to get in position, begin to yell commands and have Dominguez comply with their commands of 'hands up'. Pet. App. 43a. Once Dominguez' Kia vehicle was stopped by the VCT, Pina exited his vehicle and ran to a position 10-12 feet

directly in front of Dominguez' driver's side door. Pet. App. 45a. Thereby, Pina voluntarily placed himself in an open position outside of the decedent's car, pointed his rifle and yelled obscenity-laced commands at Dominguez. Pet. App. 43a-45a. Post-shooting, Pina's first statement to the investigation team was Dominguez leaned back with his hands and that's when he shot, and at the time Pina provided the statement he did not know the second shot had gone through the sweatshirt's sleeve. Pet. App. 43a-44a.

Despite Pina's rapidly executed acts to the contrary, the officers' goal after the VCT is complete, is to slow things down at the scene and let backup arrive. *Id.* Meanwhile, Dominguez raised his hands in compliance with the officers' commands until he allegedly lowered them by some indescribable distance and was executed for it. Pet. App. 44a-45a. It was a poor tactical decision for Pina to position himself in the open, at a close distance from the suspect without any cover between himself and Dominguez' vehicle. Pet. App. 44a-45a.

Even if the Court assumes that Dominguez had his hands up and then dropped them and leaned forward, that movement does not convert the encounter into a rapid, tense and uncertain situation. Here, the only rapid, uncertain and tense action inherent in this situation was that of Pina's decision to pull the trigger and execute Dominguez in his car after he was surrounded by multiple officers and a K9 unit. Pet. App. 45a.

2. Uncontroverted Ballistics Evidence Demonstrated That Decedent's Arms Were Raised At The Time Of The Killing

At trial, the respondents called David Balash ("Balash"), an expert witness in ballistics. Pet. App. 44a. The petitioner did not call his expert witness on ballistics at trial,

but the expert was previously disclosed and deposed by the respondent prior to trial. Balash testified that the first shot from Pina was the bullet that was fatal to Mr. Dominguez, and Pina's second shot ended up in the passenger side B-pillar. Pet. App. 44a. To that end, the first bullet struck the driver side window which was partially down, and then a portion of that fired bullet struck and caused the death of Mr. Dominguez. *Id.*

Pina fired his second bullet at Dominguez 0.33 seconds after the first bullet was discharged. Pet. App. 44a. The path of the second bullet saw it encounter residue of the glass that remained in the window and proceed through the lower portion of the left sleeve of Dominguez' sweatshirt and eventually strike and penetrate the B pillar, and exit inside the passenger side rear door. *Id.* These scientific realities of the path of the second bullet showed that Dominguez' arm in the hanging left sleeve of the sweatshirt had to be above the metal part of the door at the base of the window because the second bullet that went through the sweatshirt had to be lined up in the B pillar, and thus, Dominguez left-arm sleeve was positioned at least five or six inches above the metal part of the driver's side door. *Id.* If the second bullet was discharged while the victim was leaning forward, as claimed by the defendant, the second bullet would have gone through the metal portion of the door and it would never have ended up in the passenger side B pillar - the bullet would have been located in the transmission hump off the passenger side floor. *Id.*

Accordingly, Pina's allegation that Dominguez quickly dropped his hands out of sight and low enough for Pina to no longer see them when he fired, in a direction towards his seat or towards the floor where he was sitting, does not match up to the physical evidence. Pet. App. 44a. It is physically impossible for the bullet that caused the hole in his sweatshirt

to have not gone through the side of the car before it struck the sweatshirt - and the bullet did not enter the vehicle's side door. *Id.*

The statement that Pina gave to investigators after the shooting, wherein he describes that Dominguez "just looks at me, leans back with his hands, looks back at me and then I fire my weapon," is consistent with the ballistics evidence because, in this version of defendant's multiple proffered narratives on the shooting, Dominguez has his arms up which allows for the shot to come through the hanging left sleeve of the sweatshirt and impact the B pillar - the only way that scenario can occur is if Dominguez' arm and the hanging left sweatshirt sleeve is positioned above the frame of the driver's side door window. Pet. App. 43a-44a.

3. The Facts Demonstrate That Pina Used Excessive Force

First, the weapon used by Pina to kill Dominguez was an M4 Colt assault rifle; the rifle contains a sighting mechanism that allows the officer to utilize the weapon from a distance of 25 yards and further, and thus Pina did not have to position himself 10-12 feet away from Dominguez. Pet. App. 44a-45a. As Pina observed Dominguez through the sighting mechanism on the barrel of the weapon, he was not able to see what Dominguez was actually doing, where his hands were and what things he may have been doing. Pet. App. 45a. In this situation, Pina should have deployed his M4 weapon at a 45-degree angle towards the ground while he observed Dominguez and not through the sighting apparatus, which limited his vision. *Id.*

With respect to Pina's physical position at the time of the shooting, there was no reason for Pina to stop in the position that he did, adjacent to Dominguez' driver's door, in open air, approximately 10-12 feet away from the vehicle

because there was no cover in that position. Pet. App. 45a. Police are trained to seek cover, as cover is required to stop ballistics. *Id.* In this situation, Pina should have continued to move all the way to the rear of Lopez' vehicle located directly behind Dominguez' vehicle in order to create time and distance between himself and Dominguez. *Id.* Also, there were 7 to 9 additional officers and a K-9 unit responding to the situation. *Id.*

In addition, if an officer possesses a reasonable belief that a suspect is armed, such as Dominguez, then Pina should not have stood adjacent to the suspect's driver's side window and shout profanity-laced commands because that position offers no cover, and little time in which to react to any actions that Dominguez may have taken, and is violative of standard police practices. Pet. App. 45a. Finally, and as a general proposition, people drop their hands all the time during vehicle stops, and specifically in Pina's case, he stated that he encountered people who did not initially have their hands up, or put them down and then back up again. Pet. App. 45a.

B. District Court Proceedings

Respondents filed their action in 2018 in the United States District Court, Northern District of California. Petitioner moved for summary judgment based upon qualified immunity and the Court denied the motion. Thereafter, trial took place before the Honorable Beth Labson Freeman. Pina moved for judgment as matter of law at the conclusion of the respondents' case and which was denied. The jury returned a verdict on behalf of the respondents for their Fourth Amendment cause of action, but also found for the petitioner with respect to respondents' claims for punitive damages, California's Bane Act (Cal. Civ. Code §52.1.) and the Fourteenth Amendment violation. Pet. App. 67a. Both parties filed motions for new trial, and both of which were denied. Pet

App. 9a.

1. The Special Interrogatory Provides Nothing On The Issue Of Qualified Immunity

Despite the petitioner's insistence that the special interrogatory is the key to unlock qualified immunity, the jury's response to the question provided no fact that would somehow make qualified immunity available, and both the district and appellate courts recognized this truth. Pina submitted a special interrogatory for the jury that asked, "Did decedent Jacob Dominguez drop his hands and lean forward before Michael Pina fired his weapon?" (Question No. 12). Pet. App. 13a. The special interrogatory does not ask the jury to quantify a distance of how far the hands dropped, from which position did they drop, did they drop out of sight, or how far Dominguez leaned forward, or when during the encounter before being shot did the hands drop and posture lean forward. *Id.*

Moreover, during deliberations the jurors indicated their confusion with the special interrogatory via their submission to the Court of two separate notes on Question No. 12. Pet. App. 13a-14a. After instructing the jury on Question No. 12, the Court ultimately instructed the jury to disregard the question from the verdict form and to not consider the question further until they have completed their deliberations. *Id.* Moreover, the jury issued a third note during deliberations related to whether Pina would face further legal action if they found for the plaintiffs. Pet. App. 14a.

C. Appellate Proceedings

Pina appealed the District Court's denial of qualified immunity and respondents cross-appealed the denial of their

motion for a new trial and the claims for punitive damages, Bane Act and Fourteenth Amendment. Pet App. 2a. After briefing, the Panel unanimously concluded the case is suitable for decision without oral argument. *Id.* The Panel upheld the jury's verdict and the decision of Judge Freeman 3-0. *Id.*

REASONS FOR DENYING THE WRIT

A. Both The District Court And Ninth Circuit Correctly Analyzed The Issue Of Qualified Immunity

Petitioner asks this Court to review the Ninth Circuit's straightforward application of qualified immunity to well-established law on the use of excessive force by police officers. Petitioner does not claim a conflict among the Circuits, and they do not claim that the court of appeals overlooked the relevant law of this Court. Indeed, the District Court's opinion contains a lengthy discussion on the application of both *Peck* and *Cruz*, which they now however assert were incorrectly applied to Pina's situation. Pina now asserts that the prior decisions were incorrect when they held Pina was not entitled to qualified immunity.

Petitioner argues that the Ninth Circuit overlooked its own precedent in *Peck* and *Cruz*, or was required to cite precedent that more closely matched the specific factual situation faced by the officers here in order to meet the "clearly established" standard. Although this Court has counseled against findings at too high a level of generality, it has also made clear that "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though the very action in question has not previously been held unlawful." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)

(quoting *United States v. Lanier*, 520 U.S. 259, 270-71 (1997)). Here, aside from a putative dispute conjured from petitioner's brief, the law was clearly established that Pina was not justified in shooting Dominguez and the Ninth Circuit properly concluded likewise.

1. Qualified Immunity Is Unavailable To Pina As The Right To Not Be Killed During A Detention Is Clearly Established

In *Graham v. Connor*, 490 U.S. 386 (1989), the Court held that the Fourth Amendment standard was one of objective reasonableness and set forth a number of factors which should be considered when evaluating the reasonableness of the use of force, including whether the suspect posed an imminent threat to the life or safety of the police, the severity of the crime for which he was being arrested and whether he was attempting to flee or actively resist arrest. Applying the *Graham* factors here, the courts properly found that the shooting was unreasonable pursuant to the Fourth Amendment. Dominguez had not committed a violent crime, had surrendered unarmed, and did not pose an imminent threat, the most important factor. *Smith v. City of Hemet*, 394 F.3d 689, 702 (9th Cir. 2005); *Deorle* at 1281 (subjective fear is insufficient). And under the totality of the circumstances, respondents' expert witness testimony outlined the Fourth Amendment violation that occurred because of the absence of an imminent threat posed by Dominguez. *Bryan v. MacPherson*, 630 F.3d 805, 826, 831 (9th Cir. 2010).

The undisputed facts in support of the Fourth Amendment violation and inapplicability of qualified immunity, and which were analyzed by the courts, include: 1. Dominguez possessed no weapon at the time he was killed. 2. Defendants lacked reasonable information that Dominguez

could have been armed at the time he was killed. 3. Defendants found no weapon in the Kia, or anywhere else. 4. Defendants never observed Dominguez with a weapon, or anything that resembled a weapon. 5. The SJPD Officers were protected by bullet proof vests, vehicles which provided cover and armed with high-powered, military-style rifles; they were not in danger, nor did they possess an “imminent” objective fear for their lives. 6. No officer other than Pina fired their weapon, despite all claiming to have seen the hands drop, an act which they putatively considered to be an imminent threat (In actuality his hands and arms did drop, but only after he was shot in the head). 7. No legitimate law enforcement objective is advanced by the use of force in this case: the killing of an unarmed man in his vehicle. 8. Pina’s contradictory statements to the investigation team. 9. No threats from Dominguez. 10. Dominguez did not attempt to flee or smash his way out of the VCT with his Kia. Pet. App. 42a-46a; see *Graham*, 490 U.S. at 395; *Willis v. City of Fresno*, 2014 WL 1419239 (E.D. Cal.); cf. *Pace v. Capobianco*, 283 F.3d 1275, 1282 (11th Cir. 2002) (proper use of deadly force because a suspect’s act of flight put officers or other persons in danger of injury is inapplicable to Dominguez).

As evidenced in their decisions, the courts properly applied the qualified immunity analysis to Pina’s killing of Dominguez. “Qualified immunity asks two questions: (1) was there a violation of Constitutional rights, and, if so, then (2) was the right “clearly established” such that it would have been clear to a reasonable officer that his conduct was unlawful in that situation?” *Saucier v. Katz*, 533 U.S. 194, 201-202 overruled on other grounds by *Pearson v. Callahan*, 555 U.S. 223 (2009). An officer is not entitled to qualified immunity if the law provided him with “fair warning” that his use of force would violate the Constitution. *Hope v. Pelzer*, 530 U.S. 730, 741-42 (2002). The courts properly decided that qualified immunity did not apply because it is long-

established that a suspect possesses the right to be free from deadly force when the suspect does not present an imminent threat of death or great harm, in combination with Pina's unreasonable belief that Dominguez was armed.

In myriad situations akin to the factual scenario presented in this case, and as did the Ninth Circuit here, courts have properly denied the application of qualified immunity where a suspect was shot because an officer lost sight of their hands, did not have or brandish a weapon, or the officer unreasonably perceived an imminent threat, and even when the suspect was actually armed and allegedly fired at officers. *Willis v. City of Fresno*, 2014 WL 1419239 *7-8 (E.D. Cal.); *Estate of Lopez v. Gelhaus*, 871 F.3d 998, 1020 (9th Cir. 2017); see *Harris v. Roderick*, 126 F.3d 1189, 1203 (9th Cir. 1997); *Curnow v. Ridgecrest Police*, 952 F.2d 321 (9th Cir. 2005); *Banks v. Mortimer*, 2022 WL 3216401 *15-16 (N.D. Cal. 2022); *Glenn v. Washington County*, 673 F.3d 864, 871 (9th Cir. 2011); *Craig v. County of Orange*, 2019 WL 12379088 *7-8 (C.D. Cal.); *Figueroa v. Gates*, 207 F.Supp.2d 1085, 1092 (C.D. Cal. 2002); *Smith v. Ray*, 781 F.3d 95, 105 (4th Cir. 2015); *Ougel v. McComb Police Dept.*, 2009 WL 10679991 *3 (E.D. La.); *Southworth v. Jones*, 529 F.Supp.3d 454, 464 (E.D. Va. 2021); *Shipman v. Carrasco*, 2016 WL 10100732 *9-10 (D. N.M.); *McKissic v. Miller*, 37 F.Supp.3d 907, 915 (N.D. Ohio 2014); *Blackhawk v. City of Chubbuck*, 488 F.Supp.2d 1097, 1104–05 (D. Idaho 2006); *Mackey v. County of San Bernardino*, 2012 WL 5471061, *10–11 (C.D. Cal. 2012).

Again, the pertinent inquiry conducted by the courts was whether an imminent threat of death or great bodily harm was reasonably present such that the use of force was “objectively reasonable in light of the facts and circumstances confronting the [the officers] without regard to their underlying intent or motivation.” *Graham* at 397; *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2010). As the

aforementioned authorities make clear, the court's decision is more than adequately buttressed by the facts elucidated at trial, and that the jury's response to the special interrogatory is meaningless as to this inquiry. *Newmaker v. City of Fortuna*, 842 F.3d 1108, 1116 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 2217 (2017) ("Qualified immunity should not be granted when other evidence in the record, such as medical reports, contemporaneous statements by the officer [,] the available physical evidence, [and] any expert testimony proffered by the plaintiff is inconsistent with material evidence proffered by the defendant.") The Ninth Circuit agreed that the bullet hole in the sweatshirt indicated that a Constitutional violation occurred.

2. The Courts Correctly Distinguished Petitioner's Legal Authorities In Support Of Qualified Immunity.

In addition, the petition should be denied because the legal authorities cited in support of summary reversal do not square with the facts in this case, and the Ninth Circuit recognized the same. Regardless, a common theme runs through the authorities cited by Pina in which qualified immunity was applied: the officers involved in those shootings were able to point to some further evidence of an imminent threat than merely the officer's belief, based solely upon hearsay, that the suspect was armed, whether that belief was mistaken or not. Here, the authorities cited by the petitioner are not in conflict with the decision in this case, however, the facts upon which those decisions rest are easily distinguishable from the Fourth Amendment violation at issue here.

In *Anderson v. Russell*, 247 F.3d 125 (4th Cir. 2001) (Pet. 15), the officer had received a report that Anderson was armed, but in addition, the officer observed a bulge in the

suspect's waistband that he believed to be a gun, and when Anderson reached towards his waistband, he was shot by the officer and the appellate court applied qualified immunity. *Id.* at 130. Next, in *Cruz v. City of Anaheim*, 765 F.3d 1076 (9th Cir. 2014) (Pet. 8), the officers shot Cruz after they allegedly observed him reach for his waistband upon exiting his vehicle, and they had been informed specifically that Cruz carried a 9mm pistol in his waistband, and he was carrying a loaded pistol in the passenger seat. *Cruz* at 1077-78. Regardless, *Cruz* did not address the issue of deciding qualified immunity after a jury verdict finding excessive force in violation of the Fourth Amendment. Accordingly, sorely lacking in the *Cruz* court's analysis of the qualified immunity issue is a predicate finding by a jury that the officer's conduct was unreasonable and unconstitutional, and thereby any deference to be accorded to a jury's verdict is absent in *Cruz*. The deficiencies inherent in the procedural posture of *Cruz* are likewise present in *Thompson v. Hubbard*, 257 F.3d 896 (8th Cir. 2001), *Lamont v. New Jersey*, 637 F.3d 177 (3rd Cir. 2011) and *Reese v. Anderson*, 926 F.2d 494, (5th Cir. 1991), and which were also previously considered by the courts in affirming the verdict and denial of qualified immunity.

The *Thompson* case also involved an unarmed suspect, but the similarities start and stop there. *Thompson* is distinguishable from the present case in that the officer shot the suspect after a brief physical altercation, followed by a pursuit on foot, and when the suspect refused to stop fleeing, and appeared to be reaching for a weapon, the officer opened fire. *Thompson* at 898. *Lamont* involved the pursuit of a car thief, first by vehicle then on foot through the woods at night. After being confronted by the officers, the suspect reached into his waistband and pulled out an object that the officer's believed to be a gun, and he was shot and killed by the officers. *Lamont* at 180. The object was later revealed to be a crack pipe. *Id.* When *Lamont* and *Thompson* are compared to

this case, no similar fact pattern exists here that would present a situation wherein either *Lamont* or *Thompson* is instructive on the issue of qualified immunity.

Likewise, *Reese v. Anderson*, 926 F.2d 494 (5th Cir. 1991) (Pet. 13) is dissimilar to *Dominguez* in numerous ways, most importantly, in that in this case plaintiffs produced evidence that satisfied their burden to prove a constitutional violation, and which was not present in *Reese*. Moreover, the *Reese* plaintiff failed to oppose defendants' motion for summary judgment - in contrast, the respondents actually moved for summary judgment in this case. *Reese* at 499. In *Reese*, the decedent was shot immediately after a robbery and a subsequent high-speed chase that ended when decedent's car spun out of control. However, in the present case the petitioner had the opportunity to observe Dominguez over a period of days prior to killing him, and neither he nor his fellow officers ever observed a weapon in decedent's possession. And when *Dominguez* was finally apprehended by the VCT, his last immediate crime was vehicular related, and not a violent crime as in *Reese*.

Further, *Dominguez* submitted evidence of the hole in the sweatshirt, absence of hole in door, decedent's arms raised in compliance with commands, Pina's conduct breached accepted police practices, no other officers fired at *Dominguez* and un rebutted ballistics evidence to demonstrate that *Dominguez*' hands were raised when he was shot by Pina. No analogous scenario is present in *Reese*, and accordingly, it has little to no probative value on the issues presented by the petition.

And finally, a recent decision referenced by petitioner, *Peck v. Montoya*, 51 F.4th 877 (9th Cir. 2022), likewise provides no assistance to Pina. This is because the officers observed a pistol in the suspect's presence prior to shooting

and killing the suspect. *Id.* at 888. Accordingly, the officers in *Peck* actually saw a weapon, and did not rely solely on hearsay information before utilizing lethal force. Moreover, and similar to Pina's situation, in *Peck*, the officers that shot the suspect, after observing the loaded pistol in the suspect's vicinity, were properly denied qualified immunity. *Id.* Thus, *Peck*, as with the litany of cases cited by respondents, placed Pina on notice that he was not permitted to kill a suspect without recognizing an imminent threat first.

Consistent with the jury verdict and long-established precedent, the Ninth Circuit correctly denied qualified immunity.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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