

No. 24-473

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IN THE  
**Supreme Court of the United States**

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KAREN JIMERSON, *et al.*,  
*Petitioners,*

v.

MIKE LEWIS,  
*Respondent.*

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

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**BRIEF IN OPPOSITION TO  
PETITION FOR A WRIT OF CERTIORARI**

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D. Randall Montgomery  
*Counsel of Record*  
D. RANDALL MONTGOMERY  
& ASSOCIATES, PLLC  
12400 Coit Road  
Suite 560  
Dallas, Texas 75251  
(214) 292-2600  
(469) 568-9323 (facsimile)  
rmontgomery@drmlawyers.com

*Counsel for Respondent Mike Lewis*

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**QUESTION PRESENTED**

Whether the Fifth Circuit correctly applied *Maryland v. Garrison* in addressing the reasonableness of Respondent Mike Lewis' actions.

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Respondent, Mike Lewis, files this Brief in Opposition to the Petition for a Writ of Certiorari (“Petition”) and respectfully requests that this Court deny the Petition.

## STATEMENT OF THE CASE

### I. Factual Background

At 7:15 p.m. in March 2019, Waxahachie Police Department (“WPD”) SWAT Team Commander Mike Lewis received a call from the DEA requesting assistance executing a search warrant that night on a suspected methamphetamine stash house located at 573 8th Street in Lancaster, Texas. Lewis requested additional information, including pictures of the target house, whether “the location was fortified,” whether “it appeared to have surveillance equipment,” and whether “there were any exterior indicators on the property that children may be present.” Lewis also received pictures showing the front of the target house and was told there was “surveillance established at the location.” Pet. App. 3a-4a.

After Lewis completed his WPD SWAT’s risk analysis assessment worksheet and received approval from the WPD Chief to activate the SWAT team, Lewis gathered additional information on the target house from the Dallas Central Appraisal District, including that the house was 744 square feet, was built in 1952, and had a “large, deeply extending backyard.” Pet. App. 4a.

Lewis then briefed his SWAT officers, and the group decided to have a six-member team enter the target house with a three-member team entering the detached garage and backyard. Lewis then received “real-time intelligence that surveillance officers at the scene reported a truck pulling a white box trailer [had]

pulled up in front of the target house.” This information later proved inaccurate as the trailer was sitting in front of 583 8th Street. Pet. App. 4a.

Lancaster Police Department Officer Zachary Beauchamp<sup>1</sup> then led the WPD SWAT team to the target house followed by Lewis in his marked patrol unit, then Waxahachie K-9, and several unmarked DEA vehicles. Beauchamp was instructed “to stop about a house before the target location, so SWAT officers could make an approach on foot.” Pet. App. 4a-5a.

When they arrived to the area, Beauchamp abruptly stopped his vehicle. As the officers exited their vehicles, Beauchamp pointed to the house with the truck and white trailer in front of it, and officers began their approach. However, as the SWAT team began to gather on the front porch, Lewis realized that the house did not match the one in the intel photos. Pet. App. 5a.

When Lewis looked one house to the left, he decided the layout of the front of that house matched the one in the intel photos. He also believed the front of the house read “573,” though the porch light obscured his view. Lewis told the SWAT team they were at the wrong house and instructed them to “go to the house just to the left of the house where they were.” Unfortunately, this was also the incorrect

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<sup>1</sup> Petitioners initially sued Beauchamp but dismissed him from the underlying suit after he filed a motion to dismiss. See *Jimerson v. Lewis*, No. 3:20-CV-2826-L-BH, 2021 WL 1561431, \*1 n. 1 (N.D. Tex.—April 21, 2021).

house; the house identified by Lewis was not “573” but “593” – Petitioners’ house. Pet. App. 5a-6a.

SWAT officers ran to the front of Petitioner’s house, deployed a flashbang, broke the front windows and breached the door. After the officers began a protective sweep and encountered the inhabitants, SWAT team members yelled out “Wrong house!” and the SWAT officers immediately left the Petitioners’ house and proceeded to the target house. Pet. App. 6a.

## **II. Procedural History**

Petitioners brought suit under 42 U.S.C. § 1983 against Lewis and the other SWAT officers involved, alleging a violation of the Fourth Amendment along with several state law claims. After Lewis and the officers moved for summary judgment based on the affirmative defense of qualified immunity, the magistrate judge recommended granting summary judgment as to all defendants. The magistrate judge also concluded that Petitioners failed to show that Lewis did not make reasonable efforts to identify the target house. The district court agreed with the recommendation as to the other defendants and granted dismissal. However, as to Lewis, the district court found a genuine dispute of material fact as to whether Lewis had made necessary reasonable efforts to identify the target house under *Maryland v. Garrison*, 480 U.S. 79, 88 (1987). Pet. App. 6a-7a.

Lewis appealed to the Fifth Circuit Court of Appeals which reversed the district court’s summary judgment order in a 2-1 published decision. *Jimerson v. Lewis*, 94 F.4th 423 (5th Cir. 2024). The Fifth Circuit’s analysis focused on the reasonableness of

Lewis' actions and applied this Court's, as well as its own, precedent in determining whether Lewis' actions violated clearly established law. Pet. App. 9a-10a. Specifically, the Fifth Circuit found that, while Lewis had erred, he made significant efforts to identify the correct residence. Pet. App. 13a. Further, the Fifth Circuit stated, "Lewis was far more careful than the officers in the two opinions cited to us [by Petitioners] as showing he violated clearly established law." Pet. App. 14a.

Petitioners sought rehearing *en banc*, which was denied as no member of the panel or judge in regular active service requested that the court be polled on rehearing *en banc*. Pet. App. 94a-95a.

### **REASONS FOR DENYING THE WRIT**

Nothing in the Fifth Circuit's disposition of this case warrants review by this Court. As shown below, the Fifth Circuit's holding is consistent with this Court's decision in *Maryland v. Garrison* in addressing the reasonableness of Lewis' actions. There is no circuit split on the precise holding of the Fifth Circuit.

#### **I. The Fifth Circuit's Holding is Consistent with *Maryland v. Garrison* and Does Not Create a Circuit Split.**

Petitioners assert that the Fifth Circuit's opinion creates a circuit split as to whether *Maryland v. Garrison* clearly established the law. Pet. 11. However, the Fifth Circuit's decision is consistent with this Court's opinion in *Garrison*.

In *Garrison*, this Court focused on whether "the officers' conduct was consistent with a reasonable



effort to ascertain and identify the place intended to be searched within the meaning of the Fourth Amendment.” *Garrison*, 480 U.S. at 88. The Fifth Circuit followed this precedent in its own analysis regarding Lewis:

The Supreme Court has held that officers must make “reasonable effort[s] to ascertain and identify the place intended to be searched” in order to comply with the Fourth Amendment....

We evaluate the reasonableness of Lewis’s actions because the plaintiffs’ claims arise under the Fourth Amendment.

Pet. App. 9a (quoting *Garrison*, 480 U.S. at 88). In doing so, the Fifth Circuit found that while “Lewis erred, ...he made significant efforts to identify the correct residence.” Pet. App. 13a. That is, Lewis:

(1) reviewed the search warrant; (2) conducted additional searches on the target residence through the Dallas Central Appraisal District website; (3) ran a computerized criminal history search of the occupant of the target residence; (4) debriefed with DEA agents twice; (5) was provided with “real-time intelligence that surveillance officers at the scene reported a truck pulling a white box trailer just pulled up in front of the target location and stopped;” and (6) observed the home and took note of the front windows, driveway, and the numbers on the front of the home in an attempt to confirm the residence as being the target location.

Pet. App. 13a-14a.

Regarding Lewis' efforts to ascertain and identify the target house, the Fifth Circuit noted that "Lewis was careful to confirm the house had the proper arrangement and size of windows, but only later became aware that those window features were shared by the plaintiffs' home." Pet. App. 14a. Further, the Fifth Circuit pointed out that "Lewis' confusion was compounded by misleading intelligence." *Id.* When the SWAT team arrived, the white box trailer was not parked in front of the target house, which Lewis realized but then erred in re-directing the officers. *Id.*

While Petitioners argue that Lewis is not entitled to qualified immunity because he had "reason to know he [was] executing a search warrant at the wrong house" but did so anyway, Pet. 10-11, this assertion is not supported by the record. As shown above, the Fifth Circuit clearly outlined Lewis' efforts to ascertain the correct target house. Pet. App. 13a-14a. Nowhere in the record does it reflect that Lewis knew he had the wrong house but ordered entry anyway. Instead, the record clearly reflects reasonable efforts undertaken by Lewis in the limited time that he had to do so. See Pet. App. 3a ("In March 2019, at approximately **7:15 p.m.** . . . Lewis received a call from a Drug Enforcement Administration ("DEA") officer. The DEA officer needed assistance executing a search warrant **that night...**").(emphasis added).

Under *Garrison*, the question is simple – whether Lewis made reasonable efforts to ascertain and identify the target house for the search warrant. *Garrison*, 480 U.S. at 88. This question was answered in the affirmative by the Fifth Circuit. Pet. App. 13a-14a. While Petitioners take issue with the

outcome, there simply is no Circuit split. The Fifth Circuit identified the principal reasoning of *Garrison* and applied it to the facts of this case.

## **II. The Fifth Circuit Did Not Hold that *Garrison* Wasn't Controlling Law.**

Petitioners further argue that this case presents a “good vehicle” to determine whether *Garrison* clearly established the law. Pet. 22-24. To be clear, the Fifth Circuit did not hold that *Garrison* was not controlling law. Instead, the Fifth Circuit stated that the two cases cited by Petitioners, *Rogers v. Hooper*, 271 F. App'x 431 (5th Cir. 2008), and *Hartsfield v. Lemacks*, 50 F.3d 950 (11th Cir. 1995), did not demonstrate that Lewis' conduct violated clearly established law. Pet. App. 11a-14a. While the dissent argued that these two cases constitute clearly established law, the majority stated, “[e]ven if these two nonprecedential opinions were indicative of clearly established law, they would not support that Lewis violated that law. Lewis erred, but he made significant efforts to identify the correct residence.” Pet. App. 13a. The Fifth Circuit further noted that “[a] nonprecedential opinion ‘cannot be the source of clearly established law for qualified immunity analysis.’” Pet. 11a, n.2 (quoting *Marks v. Hudson*, 933 F.3d 481, 486 (5th Cir. 2019)). In any event, after the Fifth Circuit summarized *Rogers* and *Hartsfield*, the court noted that Lewis was “far more careful than the officers in the two opinions cited to us as showing he violated clearly established law.” Pet. App. 14a.

Petitioners claim that this case rises or falls on the application of *Maryland v. Garrison*. Pet. 24. The problem is – the Fifth Circuit did apply such case to its

analysis. Petitioners are just not happy with the outcome.

**CONCLUSION**

For the reasons stated herein, a writ of certiorari should be denied in this case.

Respectfully submitted,

D. Randall Montgomery

*Counsel of Record*

D. RANDALL MONTGOMERY  
& ASSOCIATES, PLLC

12400 Coit Road

Suite 560

Dallas, Texas 75251

(214) 292-2600

(469) 568-9323 (facsimile)

rmontgomery@drmlawyers.com

*Counsel for Respondent Mike Lewis*