No. 24-570

IN THE

Supreme Court of the United States

MARY DAWES, INDIVIDUALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF DECEDENT GENEVIVE A. DAWES, ALFREDO SAUCEDO, AND VIRGILIO ROSALES,

Petitioners,

v.

CITY OF DALLAS, CHRISTOPHER HESS, AND JASON KIMPEL,

Respondents.

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

RESPONDENTS CHRISTOPHER HESS AND JASON KIMPEL'S BRIEF IN OPPOSITION

MARK E. GOLDSTUCKER
Counsel of Record
LAW OFFICE OF MARK E. GOLDSTUCKER
300 North Coit Road, Suite 1125
Richardson, TX 75080
(972) 479-1112
mgoldstucker@gmail.com

Attorney for Respondents Christopher Hess and Jason Kimpel

120310

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

The question presented is properly stated as follows:

In a qualified immunity determination on summary judgment, does an officer's reasonable belief that there was a danger justifying the use of deadly force entitle the officer to qualified immunity, despite the existence of video evidence showing that at the moment the officer acted, one of the circumstances for the officer's belief had changed?

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Cited Authorities

Constitutional Provisions

Statutes

Rules

STATEMENT OF THE BASIS FOR JURISDICTION

Respondents Hess and Kimpel do not dispute the time factors for jurisdiction presented by Petitioners in the first paragraph of their statement of jurisdiction.

Respondents Hess and Kimpel dispute and object to Petitioners' statement in the second paragraph of their statement of jurisdiction that the petition should be granted under Rule 10 of the Rules of the Supreme Court of the United States. Respondents Hess and Kimpel deny and object to Petitioners' assertion that the Fifth Circuit's decision is in conflict with relevant decisions of this Court and other United States courts of appeals, and further deny and object to Petitioners' assertion that the Fifth Circuit's decision so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

STATEMENT OF THE CASE

Respondents Christopher Hess ("Hess") and Jason Kimpel ("Kimpel") were certified peace officers in the State of Texas and were employed as police officers by the Dallas Police Department at all relevant times. (ROA.824, 829.)

On January 18, 2017, Respondents Hess and Kimpel and other Dallas police officers were dispatched to investigate a report of a stolen car in the parking lot of the apartment complex located at 4700 Eastside Avenue, Dallas, Texas. The report stated that the subject car was occupied by a male and a female. (ROA.827, 832, 833, 835, 837, 838.)

When Respondents Hess and Kimpel arrived, the subject car was parked in the back corner of the parking lot with a fence immediately in front of it. Four other officers were already present. All six officers were in police uniforms. They had arrived in three marked police cars. (ROA.827, 832, 833, 835, 837, 838; ROA.1112 at 0:33; ROA.1110 at 3:13.)

The officers approached the subject car on foot. They were all carrying flashlights. Despite the flashlights and the use of a police-car spotlight, however, they were unable to clearly see inside the subject car because of the darkness and condensation on the inside of the windows. (ROA.827, 832, 833, 835, 837, 838; ROA.1112 at 0:33, 1:47; ROA.1110 at 3:13, 4:06, 4:42; ROA.1111 at 1:52.)

The officers yelled to the occupants numerous times that they were police and for the occupants to put their hands outside the car windows. There was no response from inside the car. (ROA.827, 828, 832, 833, 835, 837, 838; ROA.1110 at 3:14, 3:28.)

The officers also activated one of the police-car sirens and air horn to further identify themselves as police and have the occupants comply with their commands. There was still no response from inside the subject car. (ROA.827, 832, 833, 835, 838; ROA.1112 at 1:31; ROA.1110 at 4:10.)

Respondent Hess moved one of the police cars closer to the subject car. The officers moved closer to the subject car. All of them had their guns drawn and were still shining their flashlights into the subject car. They continued to shout to the occupants to put their hands outside the windows, but there was still no response or

compliance. (ROA.827, 832, 833, 835, 837, 838; ROA.1110 at 4:10, 5:08, 5:12, 5:21; ROA.1112 at 2:38, 2:51; ROA.1113 at 3:08; ROA.1114 at 0:37.)

One of the officers attempted to open a back door and the hatchback of the subject car, but both were locked. The officers then saw an individual moving inside the subject car. They moved back from the subject car but continued to shout at the occupants. Several minutes had elapsed since the officers first approached the subject car. (ROA.833, 837, 838; ROA.1110 at 4:48, 4:52, 4:58; ROA.1112 at 2:10.)

The driver of the subject car then started the engine. Respondent Hess moved his police car so that it was behind the rear corner of the subject car. When Respondent Hess did this, the driver of the subject car put it in reverse and backed into the police car, with Respondent Hess still inside it. (ROA.827-828, 832, 833, 835, 837, 838; ROA.1110 at 5:55, 6:02; ROA.1112 at 3:11, 3:18; ROA.1114 at 0:50.)

The driver of the subject car then put it in drive and drove forward into the fence in front of it. The fence remained standing. The driver then put the subject car in reverse again. Respondent Hess had gotten out of his police car, and all the officers were standing in close proximity to the rear or side of the subject car. (ROA.828, 832, 833, 835, 837, 838; ROA.1110 at 6:08; ROA.1112 at 3:24; ROA.1114 at 1:06.)

When the subject car began moving in reverse the second time, Respondents Hess and Kimpel, fearing for their and the other officers' safety, fired into the subject vehicle. The subject car continued accelerating backwards and additional shots were fired. The subject car then

stopped. (ROA.828, 832, 833, 835, 837, 838; ROA.1110 at 6:20, 6:24; ROA.1112 at 3:36, 3:40; ROA.1114 at 1:14, 1:18.)

Several of the shots struck Genevive Dawes, who had been driving the subject car. She was taken by ambulance to a hospital and later pronounced dead. Petitioner Virgilio Rosales, the passenger in the subject car, was not struck by any of the shots and was arrested. (ROA.828, 832, 837; ROA.1114 at 2:48, 2:54, 3:03.)

Respondents Hess and Kimpel asserted that, based upon the information known to them at the time, they reasonably believed that the manner in which Genevive Dawes was driving the subject car presented a threat of imminent serious bodily injury or death to Respondents Hess and Kimpel and the other officers. (ROA.828, 832.)

Respondents Hess and Kimpel further asserted that they used only that amount of force that was reasonably necessary under the circumstances then existing. As described above, the officers were investigating a report that the subject car had been stolen. Genevive Dawes and Virgilio Rosales, the occupants of the subject car, refused to comply with the numerous commands over several minutes from the officers to show their hands, and, in fact, responded to those commands by twice backing the subject car toward the officers in a manner that was reasonably perceived by Respondents Hess and Kimpel as a threat of imminent serious bodily injury or death to themselves and the other officers. The force Respondents Hess and Kimpel used was objectively reasonable under the circumstances known to them at the time.

At all times relevant to the events giving rise to Petitioners' claim, Respondents Hess and Kimpel were acting with a reasonable belief that their actions were proper and legal and did not violate any clearly established statutory or constitutional right of which a reasonable person would have known. (ROA.825, 830.) Respondents Hess and Kimpel reasonably believed that the force they used, firing their handguns at the driver, Genevive Dawes, became immediately necessary to protect themselves and others against Genevive Dawes's use or attempted use of deadly force, and that there was a substantial risk that Genevive Dawes would cause death or serious bodily injury to Respondents Hess or Kimpel, or to another officer, if Respondents Hess and Kimpel did not use that force. (ROA.825, 830.)

Any and all actions Respondents Hess and Kimpel took in their dealings with Genevive Dawes and Virgilio Rosales were objectively reasonable and taken in objective good faith, and did not violate clearly established law of which a reasonable person would have known. (ROA.826-831.) A reasonable officer could have believed that Respondents Hess's and Kimpel's actions were lawful in light of clearly established law and the information Respondents Hess and Kimpel possessed at the time. (ROA.826-831.)

ARGUMENT

Respondents Hess and Kimpel Are Entitled to Qualified Immunity on Petitioners' Claim

1. Legal Standards Applicable to Qualified Immunity

"Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as his conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *see also Pearson v. Callahan*, 555 U.S. 223, 231 (2009). A public official sued in his individual capacity is entitled to the defense of qualified immunity if he can establish that his conduct was lawful in light of clearly established law and the information possessed by him at the time. *See Anderson v. Creighton*, 483 U.S. 635, 641 (1987).

In *Harlow v. Fitzgerald*, this Court adopted the "objective reasonableness" test for determining whether a public official is entitled to qualified immunity. The Court explained that in those instances where there are only bare conclusory allegations, government officials should not be subjected "either to the costs of trial or to the burdens of broad-reaching discovery." *Harlow*, 457 U.S. at 818. The Court reaffirmed this holding in *Mitchell v. Forsyth*, 472 U.S. 511 (1985), wherein the Court held that denials of immunity are interlocutorily appealable in order to shield government officials from costs and risks of trial, including "such pretrial matters as discovery." *Id.* at 526. Furthermore, immunity questions should be resolved at

the earliest possible stage of the litigation. *See id.* at 526; *Harlow*, 457 U.S. at 818; *see also Hunter v. Bryant*, 501 U.S. 224, 227, 228 (1991).

As a matter of pleading in a suit filed under 42 U.S.C. § 1983 against a public official in his or her individual capacity, a complaint that fails to allege sufficiently that the defendant public official reasonably should have known that his or her particular actions violated clearly established law should be dismissed. *See Brown v. Glossip*, 878 F.2d 871, 874 (5th Cir. 1989). A plaintiff must provide the trial court with sufficient material facts to allow the court to determine whether "no reasonable police officer could have misunderstood that [his or her] particular actions . . . violated federal law." *Id.* at 874-75.

Building on the framework established in *Harlow* and *Mitchell*, the Fifth Circuit in 1995 decided how § 1983 cases are to be handled where qualified immunity has been asserted. The procedure for handling such cases is set forth in *Schultea v. Wood*, which holds that the district court must insist that a plaintiff suing a public official under § 1983 file more than a short and plain statement of his or her complaint, a statement that rests upon more than mere conclusions alone. *See Schultea v. Wood*, 47 F.3d 1427 (5th Cir. 1995).

This Court's decision in *Saucier v. Katz* mandated that the threshold inquiry a court must undertake in a qualified-immunity analysis is whether the plaintiff's allegations, if true, establish a constitutional violation. *See Saucier v. Katz*, 533 U.S. 194, 201 (2001). In *Pearson v. Callahan*, however, the Court modified the procedure for analyzing qualified-immunity claims by holding that

threshold inquiry under *Saucier* is no longer mandatory. *Pearson*, 555 U.S. at 236. Although the *Saucier* procedure is often beneficial, courts are no longer required to adhere to it. *Id.* If, under the *Saucier* analysis, such a right is shown, the court must determine whether the right was clearly established at the time of the events in question. *See Saucier*, 533 U.S. at 201.

When the defense of qualified is pleaded, the plaintiff has the burden of demonstrating that qualified immunity does not apply. *See Ramirez v. Martinez*, 716 F.3d 369, 375 (5th Cir. 2013); *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009).

If the court determines that the complaint sufficiently pleads the violation of a clearly established constitutional right, the court must nonetheless determine whether a reasonable public official could have decided that the alleged conduct was lawful, because a public official is entitled to qualified immunity if a "reasonable official would be left uncertain of the application of the standard to the facts confronting him." *Hopkins v. Stice*, 916 F.2d 1029, 1031 (5th Cir. 1990). And "if officers of reasonable competence could disagree on this issue, immunity should be recognized." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

2. Petitioners Have Failed to Show That Respondents Hess's and Kimpel's Actions Were Objectively Unreasonable in Light of the Information Respondents Hess and Kimpel Possessed and Clearly Established Law

At the time of the incident, Respondents Hess and Kimpel had knowledge of the facts and circumstances set

forth above. Thus, in addition to Petitioners' failure to plead sufficiently to overcome Respondents Hess's and Kimpel's entitlement to qualified immunity, Petitioners have failed to show that, in light of the information possessed by Respondents Hess and Kimpel, no reasonable police officer could have believed that Respondents Hess's and Kimpel's actions violated clearly established law. *See Brown v. Glossip*, 878 F.2d at 874-75.

Petitioners' claims and arguments in support of those claims are based almost exclusively on (1) an after-the-fact review, using "20/20 hindsight," of the body-worn-camera video recordings submitted as summary-judgment evidence; and (2) the internal actions taken against Respondents Hess and Kimpel by the Dallas Police Department ("DPD"). Those arguments fail and refuse to acknowledge the information known to or perceived by Respondents Hess and Kimpel at the time of the incident at issue, and instead want to paint a picture that by looking at the video recordings, everyone can see that no imminent danger existed and the use of deadly force was therefore objectively unreasonable and excessive. Such a picture, however, does not accurately paint the doctrine of qualified immunity.

On October 26, 2021, the Fifth Circuit issued an opinion regarding the use of deadly force and qualified immunity that parallels and applies to this case in a number of ways. *See Harmon v. City of Arlington, Tex.*, 16 F.4th 1159 (5th Cir. 2021). *Harmon* arose out of the use of deadly force by a police officer against the driver of a vehicle who had been stopped by two officers for driving with an expired vehicle registration. *Id.* at 1162. While the contacting officer was checking the driver's and

passenger's identification information, the second officer waited beside the vehicle on the passenger's side. *Id.*

Before the contacting officer returned to the driver, the driver started raising the windows and reached for the vehicle's ignition. *Id.* The second officer, while shouting at the driver, jumped onto the vehicle's running board. *Id.* The driver ignored the officer's shouts and command to stop what he was doing, started the engine, and shifted into drive. *Id.* Just after the vehicle lurched forward, the officer drew his weapon and fired five times at the driver, striking him four times. *Id.* The driver later died of the gunshot injuries. *Id.*

The driver's estate and the passenger sued the officer under 42 U.S.C. § 1983 for use of excessive force in violation of the Fourth Amendment. *Id.* The officer moved to dismiss the claims against him based on qualified immunity. *Id.* After the district court granted the officer's motion and dismissed the claims, the plaintiffs appealed to the Fifth Circuit. *Id.* The Fifth Circuit's opinion states that the officer's "defense hinges on whether he reasonably perceived an imminent threat or personal physical harm in the short interval between [the driver's] starting the engine and when [the officer] began shooting." *Id.* at 1161-62. The Fifth Circuit concluded, based on the law and the facts, that the district court ruled correctly and affirmed the judgment. *Id.* at 1162, 1168.

Respondents Hess and Kimpel have shown that both the factual circumstances and the Fifth Circuit's legal analysis in *Harmon* apply to Petitioners' claims against Respondents Hess and Kimpel in this action.

Throughout this litigation, Petitioners have ignored Respondents Hess's and Kimpel's and the other on-scene officers' perceptions of the speed of the vehicle and the locations of the various officers as they observed those things at the time. Instead, Petitioners have focused entirely on the vehicle speed and officer locations with 20/20 hindsight—that is, the speed and locations as shown on the body camera videos—as the only relevant factors for determining qualified immunity. Respondents Hess and Kimpel have acknowledged all along that the body-cam videos show that the vehicle was traveling slower and the officers were at different locations than Respondents Hess and Kimpel and the other officers believed at the time.

In *Harmon*, the Fifth Circuit stated:

> Because [the officer] used deadly force . . . the relevant Fourth Amendment questions are whether the force was "excessive" and "unreasonable" as "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872 (1989) (citation omitted). That calculus "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396-97.

Harmon at 1163.

The law regarding qualified immunity does not deal with whether perceptions are objectively right or wrong, but rather whether those perceptions are objectively reasonable. *See Harmon* at 1161-62 ("[The officer's] defense hinges on whether he reasonably perceived an imminent threat of personal physical harm in the short interval between [the driver's] starting the engine and when [the officer] began shooting."). That reasonableness standard is what keeps a defendant from being granted qualified immunity simply by testifying to whatever subjective perceptions the officer believes are necessary in a particular case. But, contrary to Petitioners' argument, qualified immunity does include a defendant officer's objectively reasonable perception of the facts and circumstances confronting the officer at the time the officer acts. *See id.*

Perceptions can be judged by others to be reasonable or unreasonable, but, like feelings, perceptions can be, and often are, determined in hindsight to be different than reality. A person might be holding a realistic-looking toy gun, but an officer confronting the person might reasonably perceive and believe at the time that the gun is real. "[T]he threat of harm inquiry does not ask whether the officer *was* harmed, only whether he could reasonably perceive a threat of serious physical harm." *Harmon* at 1164, n.3.

Whether an officer's actions are objectively reasonable must take into account whether the circumstances, including the officer's perceptions, are reasonable:

> In evaluating whether the officer used "excessive" force, courts consider the "severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." The threat-of-harm factor typically predominates the analysis when deadly force has been deployed. Accordingly, this court's cases hold that "[a]n officer's use of deadly force is not excessive, and thus no constitutional violation occurs, when the officer reasonably believes that the suspect poses a threat of serious harm to the officer or to others." A court must "be cautious about second-guessing [the] police officer's assessment" of the threat level. The question for this court is whether [the officer] could reasonably believe that [the driver] posed a serious threat of harm.

Harmon at 1163 (citations omitted).

Whether a reasonable, alternative course of action was available to Respondents Hess and Kimpel is not the issue for qualified immunity. The issue is whether the actions they actually took were objectively reasonable, which is based on whether they had reason to believe, at the moment they acted, that there was a sufficient threat of physical harm. *See Thompson v. Mercer*, 762 F.3d 433, 439-40 (5th Cir. 2014). Furthermore, according to the Fifth Circuit:

> [Q]ualified immunity precedent forbids that sort of Monday morning quarterbacking; the threat of harm must be "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396, 109 S. Ct. at 1872. Heeding the Supreme Court's admonition, this court consistently rejects such arguments. *See Thompson v. Mercer*, 762 F.3d 433, 439-40 (5th Cir. 2014) (rejecting hindsight argument that officers would not have faced threat of harm if they had acted differently); *Fraire v. City of Arlington*, 957 F.2d 1268, 1275-76 (5th Cir. 1992) (similar). Moreover, the plaintiffs' reliance on *Lytle v. Bexar County*, 560 F.3d 404 (5th Cir. 2009), to support their hindsight argument is misplaced. In that case, this court looked at the weak logical nexus between the officer's conduct and the threat of harm to the officer as part of its inquiry into the reasonableness of the officer's use of deadly force. *See id.* at 412 (concluding that "[i]t is unclear how firing at the back of a fleeing vehicle some distance away was a reasonable method of addressing the threat" to the officer). This court did not, however, condone an open-ended inquiry into every alternative course of action—such an inquiry is inimical to established qualified immunity doctrine. *See id.* at 412-13.

Harmon at 1165.

For purposes of qualified immunity, a clearly established right is one that is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012). Qualified immunity applies unless the plaintiff shows that all reasonable officers would have understood, based on the circumstances known to the defendant at the time, that the defendant's conduct was unconstitutional. *See Wright v. City of Garland*, No. 3:10-CV-1852-D, 2014 WL 5878940, at *6 (N.D. Tex. Nov. 13, 2014). And in *Harmon*, the Fifth Circuit stated:

> The burden [to establish a clearly established right] is heavy: A right is "clearly established" only if preexisting precedent "ha[s] placed the . . . constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 2083 (2011). And, as the Supreme Court has repeatedly admonished lower courts, we must define that constitutional question with specificity. Indeed, "[t]he dispositive question is 'whether the violative nature of *particular* conduct is clearly established.'" *Mullenix v. Luna*, 577 U.S. 7, 12, 136 S. Ct. 305, 308 (2015) (per curiam) (emphasis in original) (quoting *al-Kidd*, 563 U.S. at 742, 101 S. Ct. at 2084).
>
> The specificity requirement assumes special significance in excessive force cases, where officers must make split-second decisions to use force. The results depend "'very much on the facts of each case,' and thus police officers are entitled to qualified immunity unless existing

> precedent 'squarely governs' the specific facts at issue." *Kisela v. Hughes*,—– U.S.—-, 138 S. Ct. 1148, 1153 (2018) (per curiam) (quoting *Mullenix*, 577 U.S. at 13, 136 S. Ct. at 309). To overcome qualified immunity, the law must be so clearly established that *every* reasonable officer in th[e] factual context . . . would have known he could not use deadly force.

Harmon at 1165-66. The court continued:

> The clearly established inquiry is demanding, especially in claims for excessive force. *Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019). Because the plaintiff must point to a case almost squarely on point, qualified immunity will protect "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 1096 (1986).

Harmon at 1167.

The competent summary-judgment evidence establishes that each officer at the scene perceived that the vehicle driven by Genevive Dawes was traveling faster than it actually was, that the vehicle was being used as a weapon, and that the vehicle was an immediate threat to the officers.

The use of deadly force is not unreasonable when an officer would have reason to believe a suspect poses a threat of serious harm to the officer or others. *Thompson*, 762 F.3d at 437; *Wright*, 2014 WL 5878940, at *8.

If a person is holding a handgun and, when a police officer commands the person to drop it, the person ignores the officer and instead raises and points it at the officer or another person, an imminent threat of death or serious bodily injury exists that justifies the use of deadly force against the person by the officer. The officer, before using deadly force, does not have to first determine what the person is thinking or determine whether the gun is loaded or wait until the person fires the gun.

In this case, the weapon was the vehicle driven by Genevive Dawes. Despite the officers' notifying the occupants of the vehicle that they were police officers and commanding the occupants to show their hands numerous times, the occupants failed and refused to comply with the commands. Instead, the driver put the vehicle in reverse and backed up, then shifted into drive and drove forward, and then again shifted into reverse and backed up once more, all while the officers were in the immediate vicinity. Respondents Hess and Kimpel (and the other officers) did not have to wait until the vehicle was about to hit one or more of them before using deadly force. The actions of Genevive Dawes was no different in presenting an imminent threat than ignoring a command to drop a gun and instead pointing it at an officer or another person.

"The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. It is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." *Saucier*, 533 U.S. at 205. Even if an officer uses excessive force or makes an arrest without probable cause in violation of the Fourth Amendment, qualified immunity

applies if the mistaken belief was reasonable based upon the information the officer had when the conduct occurred. *See id.* at 206, 207. It is possible for a jury to find that actual circumstances did not justify an officer's behavior, while also finding that the circumstances that reasonably appeared to the officer did justify the behavior. In other words, an officer could make a constitutionally reasonable judgment based upon a factual misperception. *Snyder*, 142 F.3d at 800. Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. *Malley*, 475 U.S. at 341; *Thompson*, 762 F.3d at 437.

The summary-judgment evidence shows that any mistake that Respondents Hess and Kimpel might have made in acting as they did was reasonable based upon the information and perceptions they had at the time they acted.

CONCLUSION

The district court and the court of appeals correctly applied the law regarding entitlement to qualified immunity in this case, and properly found that Respondents Hess and Kimpel were entitled to qualified immunity on Petitioners' claims. Petitioners' assertion that the Fifth Circuit's consideration of the facts and circumstances reasonably known to Respondents Hess and Kimpel at the time they acted, as part of the qualified immunity analysis, is in conflict with relevant decisions of this Court and other United States courts of appeals, and that the Fifth Circuit's decision so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power, are without merit. Petitioners' petition for writ of certiorari should be denied.

Respectfully submitted,

MARK E. GOLDSTUCKER
Counsel of Record
LAW OFFICE OF MARK E. GOLDSTUCKER
300 North Coit Road, Suite 1125
Richardson, TX 75080
(972) 479-1112
mgoldstucker@gmail.com

Attorney for Respondents Christopher Hess and Jason Kimpel

February 24, 2025