No. 25-1015

IN THE

Supreme Court of the United States

NICHOLAS ROBLES, OFFICER NO. 451, *et al.*,

Petitioners,

v.

RONNIE PARHAM,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(1) Whether the court of appeals properly held that petitioners are not entitled to qualified immunity where the reasonableness of their actions in beating, arresting, and filing false reports about an unarmed and compliant individual turned on disputed facts.

(2) Whether, as a rule, a court must automatically award an officer qualified immunity where a single judge disagrees that there was a constitutional violation.

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INTRODUCTION

Respondent Ronnie Parham was driving to his grandparents' house when two police officers pulled him over for a missing front license plate and tinted windows. He slowed his car and continued driving for less than a minute before pulling over safely in front of his grandparents' house—where he complied with the officers' instructions and did not attempt to flee or resist. Nonetheless, the officers threw him to the ground and brutally assaulted him while he lay on the asphalt, handcuffed and helpless. After the vicious assault, the officers denied him medical care, arrested and charged him—falsely asserting he had resisted arrest—and seized his property.

Mr. Parham brought suit under section 1983, alleging five claims against the officers. The officers moved for summary judgment, arguing that they had qualified immunity as to each claim. As required in resolving the motion, the district court credited Mr. Parham's version of disputed facts. Although the officers sought to rely on video evidence, that evidence was unclear and, therefore, could not serve as a basis for disregarding Mr. Parham's version of events. The court of appeals affirmed.

Petitioners do not dispute that it is clearly established that beating an unarmed, compliant individual who poses no threat—and that arresting and prosecuting someone with knowledge that they did not commit a crime—is unconstitutional. As a result, there is nothing remarkable about the lower courts' refusal to grant qualified immunity here, where the record would support a jury finding that, based on the totality of the circumstances, it was unreasonable for the officers to believe that Mr.

Parham had an intent to evade the police or that he had resisted arrest when they detained, beat, arrested, and filed false reports about Mr. Parham.

In seeking review, Petitioners do not suggest any basis for disturbing the lower courts' holdings as to Mr. Parham's claims of excessive force and deliberate indifference to medical needs. This case, therefore, will proceed to trial regardless of the outcome of the petition.

The sole argument that Petitioners do raise is directed at Mr. Parham's wrongful arrest, malicious prosecution, and illegal search and seizure claims. That argument, though, distorts the lower courts' analysis and conflates distinct questions that apply to each of those claims. Moreover, Petitioners ask this Court to accept their view of the factual record, and to draw inferences in their favor based on video evidence that all four judges to review this case have recognized is unclear, while making irrelevant attacks on Mr. Parham's character. Well-established precedent and the basic rules applicable to motions for summary judgment, however, firmly support the decisions below.

Petitioners lean on the partial dissent of one judge—who expressly agreed that Petitioners are not entitled to qualified immunity on four of the five claims at issue—to argue that qualified immunity is mandatory if the judges hearing the case do not reach a unanimous decision. This argument ignores that the dissenting judge's sole disagreement did not go to a legal issue, but to the application of the law to the disputed facts here. Furthermore, this Court has already rejected the proposition "that entitlement to qualified immunity is the guaranteed product of

disuniform views of the law." *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 378 (2009). Because Congress has not expressed any intent to make qualified immunity disputes subject to such an exception from the ordinary rules of judicial decisionmaking, which do not allow a dissenting voice to veto the majority, there is no basis for this Court to adopt a different rule now.

The petition should be denied.

STATEMENT OF THE CASE

Factual Background

On the evening of August 18, 2018, as Respondent Ronnie Parham was driving to his grandparents' home to check in on his grandfather, two officers with the West Covina Police Department (WCPD) initiated a traffic stop of his car. Pet. 13a; 9th Cir. ER 380. As the officers later explained, the asserted basis for the stop was the lack of a front license plate and tinted windows on Mr. Parham's car. Pet. 13a. Mr. Parham pulled over briefly, but then continued driving slowly about fifteen houses down the street to what he viewed as a safer location, pulling over less than one minute later in front of his grandparents' house. *Id.*; 9th Cir. ER 381–82.

Once stopped in front of his grandparents' house, Mr. Parham fully complied with a series of commands from the officers. First, the officers ordered him to roll down his windows and stick his hands outside the car, which he did. Next, an officer ordered Mr. Parham to exit the car, which he did—raising his empty hands above his head as he exited. Finally, the officers ordered him to walk backwards towards the officers and to then kneel with his hands behind his head, which he did. Pet. 13a–14a.

As Mr. Parham knelt unarmed, compliant, and with his hands behind his head, Officer Abel Hernandez, one of the Petitioners here, grabbed and handcuffed Mr. Parham's right wrist. 9th Cir. ER 383. Despite Mr. Parham telling Officer Hernandez that his left shoulder was injured, Officer Hernandez violently grabbed Mr. Parham's left arm and yanked him upwards. *Id.* at 48–49, 383. Officer Hernandez then slammed Mr. Parham to the ground. *Id.* at 383. Additional WCPD officers—including Petitioners Nicholas Robles, Carlos Gonzalez, and Matthew Muñoz—swarmed Mr. Parham. *Id.* at 384. As Mr. Parham lay helpless and prone on the street with his hands behind his back, Petitioners brutally beat him. *Id.* at 50, 384–85. They kicked Mr. Parham ten to fifteen times on his head, side, and stomach; slammed his face into the concrete five to ten times; punched him in his face and upper torso; struck him with a baton on his side; and kneed him in the side of his head. *Id.* at 384–85. During the assault, Petitioner Hernandez pinned Mr. Parham to the ground, kneeling on his back. *Id.* at 385.

Mr. Parham's sister witnessed the beating and corroborated his version of events. Pet. 14a–15a; 9th Cir. ER 385. While dash camera video captured some of the encounter, including Mr. Parham's repeated compliance with officers' instructions and his lack of any violent behavior, the video of the assault is not clear. Pet. 14a. And while the officers' belt audio recorders would have been expected to have captured audio evidence of the encounter, that evidence was missing. 9th Cir. ER 389–90. It is undisputed, though, that Mr. Parham never threatened—let alone assaulted—any officers. Pet. 14a. And it is undisputed that Mr. Parham was unarmed, that the officers had

no reason to believe otherwise, and that Mr. Parham never reached toward any officers' weapons or waistbands. *Id.* In short, Mr. Parham posed no threat, and Petitioners knew it.

After the beating, Petitioners arrested Mr. Parham, searched him, and searched and impounded his car. Pet. 15a; 9th Cir. ER 386. The officers have provided competing justifications for and descriptions of this search and seizure, with one officer testifying that they conducted an inventory search and impounded the car to avoid theft, and another testifying that the purpose of the search was to look for contraband. 9th Cir. ER 386. Given his obvious injuries, officers initially brought Mr. Parham to the hospital, but then took him to the police station before he was treated. Pet. 7a–8a.

Officers Hernandez and Muñoz later filed police reports falsely stating that Mr. Parham attempted to flee during handcuffing and resisted arrest. 9th Cir. ER 388–89. As a result of their reports, the District Attorney charged Mr. Parham with one count of evading a pursuing officer's vehicle and two counts of resisting arrest. Pet. 15a. Later, the District Attorney dismissed the evasion charge, and a jury found Plaintiff not guilty on both counts of resisting arrest. *Id.*

Petitioners severely injured Mr. Parham. *Id.* They broke his nose, left hand, and little finger; concussed him; and caused blurry vision, nerve damage in his fingers, and abrasions and lasting bruises on his face, head, and back. 9th Cir. ER 388.

District Court Proceedings

Mr. Parham filed suit under 42 U.S.C. § 1983, alleging that the officers' use of excessive force, false

arrest, unlawful search, malicious prosecution, and deliberate indifference to his serious medical needs violated his constitutional rights.[1]

Petitioners moved for summary judgment, arguing both that their actions were constitutional and that they were entitled to qualified immunity on each of Mr. Parham's claims. Dist. Ct. Dkt. 45 at 22–24. As to qualified immunity, they argued that no relevant case authority put them on notice that "applying brief physical force to obtain compliance to a suspect who was actively resisting and attempting to flee would be unconstitutional." *Id.* at 24. And asserting that Mr. Parham had refused medical care, they asserted that the law did not clearly establish that "honoring a suspect's wish to forego treatment" was unconstitutional. *Id.* Finally, they argued that the dashcam evidence and their testimony established that "any mistakes which arguably may have been made were reasonable." *Id.*

The district court denied the motion for summary judgment. Pet. 13a. In so doing, the court identified numerous disputed facts that remained given the unclear dashcam recording and the parties' other evidence. *See*, *e.g.*, Pet. 14a, 26a, 30a.

As to Mr. Parham's excessive force claim, the court held that, construing the evidence in Mr. Parham's favor, Mr. Parham "did not resist arrest." *Id.* at 26a. As a result, "every reasonable officer would understand the Officer Defendants' use of non-trivial force was unlawful, because non-trivial force cannot

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[1] Mr. Parham also brought a *Monell* municipal liability claim against the City of West Covina, which the district court dismissed and is not at issue here.

be used on a person who is not resisting." *Id.* Furthermore, the court ruled, a reasonable jury could conclude that the other officer defendants could have intervened to stop the use of force and that, by failing to stop the beating, they had violated the clearly established duty to intercede. *Id.* at 25a–26a.

As to the false arrest claim, the court held that, given the disputed facts, "a reasonable jury could find the Officer Defendants did not reasonably suspect Plaintiff was evading or resisting arrest where he merely decelerated and then drove in a controlled manner a few blocks to his grandparents' house, calmly and fully complied with all instructions for several minutes before the disputed scuffle, and, if the jury so found, did not flee or resist arrest during the scuffle." *Id.* at 28a. For these same reasons, the court held that the evidence precluded summary judgment on Mr. Parham's malicious prosecution claim. *Id.* at 31a.

The court similarly found that disputed facts precluded summary judgment against Mr. Parham's unlawful search claim, because "a reasonable jury could conclude no community caretaking function existed because Plaintiff's car was parked legally at the curb of a residential street near his grandparents' home, was not blocking a driveway or crosswalk, and did not pose a hazard or impediment to other traffic." *Id.* at 29a–30a. Thus, the good cause exception for a warrantless search did not apply. *Id.* at 30a.

Finally, as to Mr. Parham's deliberate indifference claim, the court noted a dispute of fact "as to whether Officers Hernandez, Robles, and Gonzalez interfered with Plaintiff's medical treatment." *Id.* at 33a. The court explained that "every reasonable officer would

understand" that interfering with medical treatment was unconstitutional. *Id.* at 33a–34a.

Court of Appeals Proceedings

Petitioners appealed, and the Ninth Circuit affirmed in a nonprecedential memorandum opinion. Pet. 2a.

First, the court of appeals addressed Petitioners' request that it use dashcam evidence to "overturn the district court's determination that there are genuine issues of fact as to whether Parham evaded or resisted arrest and as to the level of force used by the WCPD Officers." *Id.* at 3a. The court noted that, on an interlocutory appeal from the denial of qualified immunity, it "generally 'lack[s] jurisdiction' over arguments that 'the evidence is insufficient to raise a genuine issue of material fact.'" *Id.* at 2a. (quoting *Est. of Anderson v. Marsh*, 985 F.3d 726, 731 (9th Cir. 2021)). Nonetheless, citing this Court's decision in *Scott v. Harris*, 550 U.S. 372 (2007), the court acknowledged that courts may "'view[] the facts in the light depicted by' video evidence for purposes of qualified immunity if the plaintiff's version of the event is 'blatantly contradicted' or 'utterly discredited' by the video evidence." *Id.* at 2a (quoting *Scott*, 550 U.S. at 380–81). In this case, however, the court concluded that the video evidence did not meet this high bar—as it was "unclear as to the evasion and force issues." *Id.* at 3a. Thus, the Court was required to "view the facts in the light most favorable" to Mr. Parham notwithstanding the video evidence. *Id.* (quoting *Rosenbaum v. City of San Jose*, 107 F.4th 919, 922 (9th Cir. 2024)).

The court then proceeded through each of Mr. Parham's five claims, agreeing with the district court

that, viewing the record in the light most favorable to Mr. Parham, a reasonable juror could find that Petitioners had acted unreasonably in violation of clearly established law as to each claim. *Id.* at 3a–8a.

First, as to the excessive force claim, the court concluded that Petitioners' concession that Mr. Parham "complied with all commands up until being handcuffed and did not threaten the arresting officers," combined with Mr. Parham and his sister's testimony that he was "slammed … to the ground, where he was then kicked, punched, kneed, and struck with a baton violently for a minute and a half" would allow a reasonable jury to find "that the use of force was excessive." *Id.* at 3a–4a. The court further concluded that the law was "clearly established at the time," pointing to cases holding that "similar conduct, when applied to an individual who is 'unarmed, posed no threat to anyone, and w[as] not engaged in any criminal activity,'" constitutes excessive force. *Id.* at 4a (quoting *Nicholson v. City of Los Angeles*, 935 F.3d 685, 691 (9th Cir. 2019), and citing *Blankenhorn v. City of Orange*, 485 F.3d 463, 479–80 (9th Cir. 2007)).

Second, as to the unlawful arrest claim, the court of appeals agreed with the district court's conclusion that, resolving factual disputes in Mr. Parham's favor, a reasonable jury could conclude that, at the time of the arrest, Petitioners did not reasonably suspect that Mr. Parham had been evading or resisting arrest, and thus lacked probable cause. *Id.* at 5a (citing *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004)). The court explained that "[Mr. Parham] pulled over briefly and then drove in a controlled manner to his nearby grandfather's house. Once there, over a period of four minutes, he fully complied wi[th] all officer commands." *Id.* at 5a–6a. Accepting these facts as

true, as the court was required to do, the court concluded that the officers "could not reasonably conclude that they had probable cause to believe" that Mr. Parham "acted at any point with an 'intent to evade' arrest, as required by Cal. Vehicle Code Section 2800.1(a)." *Id.* at 6a.

Third, turning to Mr. Parham's malicious prosecution claim, the court held that, accepting Mr. Parham's "version of events," Officers Hernandez and Munoz's reports indicating that he had "attempted to flee when abruptly standing up during handcuffing and thereafter resisted arrest" were false. *Id.* Given that it was clearly established that an officer may not "cite a suspect based on a knowingly false report while aware that a prosecutor would rely on the report to file charges," the court held that qualified immunity was appropriately denied. *Id.* (citing *Blankenhorn*, 485 F.3d at 480–84).

Fourth, as to the illegal search claim, the court agreed that factual disputes would allow a jury to conclude that the officers had failed to comply "with any standard permitting a warrantless search," because the officers (1) lacked any basis to believe there was evidence of a crime in Mr. Parham's vehicle, (2) lacked any basis for a search incident to arrest because Mr. Parham—who was handcuffed outside the car—had no access to anything in the car, and (3) did not comply with the necessary protocols to conduct an inventory search. *Id.* at 7a. A search in such circumstances, the court explained, "is a constitutional violation clearly established by Ninth Circuit and Supreme Court precedent." *Id.* (citing *United States v. Rodgers*, 656 F.3d 1023, 1028 (9th Cir. 2011) (citing *Carroll v. United States*, 267 U.S.

132, 160–62 (1925); *California v. Carney*, 471 U.S. 386, 390 (1985))).

Finally, as to Mr. Parham's deliberate indifference claim, the court explained that it is "clearly established that a government official cannot deny, delay, or intentionally interfere with medical treatment." *Id.* at 8a (citing *Sandoval v. Cty. of San Diego*, 985 F.3d 657, 679 (9th Cir. 2021); *Clement v. Gomez*, 298 F.3d 898, 906 (9th Cir. 2002)). The court held that the factual dispute as to whether the officers interfered with Mr. Parham's receipt of medical treatment precluded summary judgment. *Id.*

Judge Miller wrote separately. He expressly "agree[d] that the defendant officers are not entitled to qualified immunity on the claims for excessive force, unlawful search, malicious prosecution, and deliberate indifference." *Id.* at 8a–9a. He dissented only with respect to the unlawful arrest claim. As to that claim, he would have held that there was sufficient "circumstantial evidence" for the officers to infer that Mr. Parham had the intent to evade arrest. *Id.* at 9a. In his view, the lack of a specific case establishing that the officers lacked probable cause "in these circumstances" weighed in favor of qualified immunity. *Id.* at 11a.

REASONS FOR DENYING THE WRIT

I. The court of appeals correctly recognized that the availability of qualified immunity here turned on disputed facts.

As to each of Mr. Parham's claims, the court of appeals correctly stated the relevant clearly established constitutional law. The court identified precedent supplying the standard for excessive force, Pet. 4a (citing *Nicholson*, 935 F.3d at 691; *Rice v.*

Morehouse, 989 F.3d 1112, 1125–26 (9th Cir. 2021)), unlawful arrest, *id.* at 5a–6a (citing *Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1076 (9th Cir. 2011); *Devenpeck*, 543 U.S. at 152), malicious prosecution, *id.* at 6a (citing *Blankenhorn*, 485 F.3d at 480–84), illegal search, *id.* at 7a (citing *Rodgers*, 656 F.3d at 1024), and deliberate indifference claims, *id.* at 8a (citing *Sandoval*, 985 F.3d at 679; *Clement*, 298 F.3d at 906). Petitioners do not identify any error in these statements. Rather, their request for certiorari rests on a disagreement as to what happened on August 18, 2018, and their assertion that the lower courts erred by not accepting their preferred version of events. As the courts below recognized, however, summary judgment is not the vehicle to resolve disputed facts. Nor is review by this Court on certiorari.

A. The lower courts properly declined to resolve disputed facts.

The court of appeals correctly viewed the disputed facts in the light most favorable to the non-moving party, Mr. Parham. As this Court has stated clearly, its "qualified-immunity cases illustrate the importance of drawing inferences in favor of the nonmovant." *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (vacating grant of qualified immunity where the court of appeals improperly credited the officers' version of events, rather than viewing the evidence in the light most favorable to the plaintiff). Here, though, Petitioners ignore the evidence supporting Mr. Parham and, largely without citation, insist that their version of the events is "undisputed" or "uncontroverted." Pet. 10–12. As the lower courts recognized, their narrative is not an accurate view of the evidentiary record.

While Petitioners rely heavily on the dashcam video, that footage is irrelevant here. As this Court has explained, when considering summary judgment motions, courts may disregard the nonmovant's version of events only where it is "blatantly contradicted" or "utterly discredited" by a video or other record evidence. *Scott*, 550 U.S. at 380. Here, though, the lower courts viewed the dashcam footage and found it "unclear" as to the relevant events, much of which occurred out of frame. Pet. 3a, 14a. Thus, whereas the video evidence in *Scott* "quite clearly contradict[ed] the version of the story" offered by the nonmovant, 550 U.S. at 378, the video here did not rebut Mr. Parham's testimony and the testimony of his sister, who witnessed the beating.

B. The application of the correct legal standard to the disputed facts does not warrant review.

Based on their view of the facts, Petitioners argue that the court below erred in holding that the district court properly denied their summary judgment motion because the undisputed facts did not establish probable cause to "stop, search, arrest, and prosecute" Mr. Parham. Pet. 10. Notably, they offer no argument relevant to the lower courts' unanimous rejection of their qualified immunity arguments as to Mr. Parham's excessive force and deliberate indifference claims. As a result, the case will proceed to trial regardless of the outcome in this Court. That alone makes this case a poor candidate for certiorari.

As to the arrest, prosecution, and search, Petitioners address these claims together in a cursory, jumbled discussion of probable cause. *See* Pet. 10–12. The linchpin of their argument is the assertion that

Mr. Parham engaged in "erratic actions" and that his behavior "qualified as 'suspicious,' warranting not only his arrest, but the search and seizure of his automobile." *Id.* at 12. Again, as noted above, the petition's characterization of Mr. Parham's actions as "erratic" and "suspicious" is disputed in the record. As the district court explained, the record shows that Mr. Parham "merely decelerated and then drove in a controlled manner a few blocks to his grandparents' house, calmly and fully complied with all instructions for several minutes before the disputed scuffle." Pet. 28a. It is up to a jury to determine which version of events to believe.

Moreover, the probable cause analyses for Mr. Parham's wrongful arrest, malicious prosecution, and unlawful search and seizure claims are not properly bundled together. Petitioners suggest that Mr. Parham's behavior (as they describe it) *prior* to his coming to a complete stop in front of his grandparents' home and his compliance with the officers' subsequent instructions justified everything that came after—the arrest, the search, and the prosecution. Pet. 10–12. But the qualified immunity analysis for each claim turns on the reasonableness of different actions, at different points in time, about which the officers had different knowledge. Despite Petitioners' contrary assertion, Pet. 11, the lower courts correctly analyzed each of these questions separately, *see Id.* at 4a–8a, 27a–31a.

As to the wrongful arrest claim, the court of appeals recognized that the relevant question was whether, at the time they arrested Mr. Parham pursuant to California Vehicle Code § 2800.1(a) for attempting to evade a pursuing police officer, they had a reasonable basis to believe that Mr. Parham had the

requisite intent to evade. Pet. 5a–6a. At the time of the arrest, though, the officers had seen Mr. Parham drive "in a controlled manner to his nearby grandfather's house" and observed that, once there, "over a period of four minutes, he fully complied wi[th] all officer commands." *Id.* These facts, which Petitioners ignore, were properly considered as part of the requisite analysis.

As to malicious prosecution, as the court of appeals recognized, Mr. Parham alleged that when the officers filed a report after they arrested Mr. Parham, they falsely stated that Mr. Parham had actively resisted arrest after they placed him in handcuffs (and beat him). *Id.* at 6a. Whether the officers had reason to believe that Mr. Parham actually did so is a question of disputed fact. Thus, the court properly denied summary judgment as to that claim.

Petitioners' beliefs when they first pulled Mr. Parham over are also irrelevant to Mr. Parham's claim arising out of the search and seizure of his vehicle after the beating. As to that claim, Petitioners fault the lower courts for discussing the "community caretaker" exception for warrantless searches. Pet. 12. It is Petitioners themselves, though, who invoked that exception, asserting that the reason they seized Mr. Parham's vehicle was to avoid theft. 9th Cir. ER 386. And while Petitioners assert that the seizure was *de facto* valid because it was a search incident to arrest, they ignore the court of appeals' explicit rejection of that argument as based on disputed facts. Pet. 7a.

In sum, the petition rests solely on mischaracterizations of the factual record that ignore relevant evidence and factual disputes. There is no basis to review the court of appeals' holding that those

disputed facts required the denial of summary judgment.

II. The presence of a dissent as to the holding on one of Mr. Parham's five claims does not automatically establish Petitioners are entitled to qualified immunity.

Petitioners ask this Court to hold that, whenever an appellate panel is not unanimous as to whether an officer violated the Constitution, that officer must be granted qualified immunity. Pet. 13–16. Applying this proposed rule, they argue that Judge Miller's dissent as to the wrongful arrest claim means they are entitled to qualified immunity on every claim, even though Judge Miller joined the holding denying qualified immunity on the other four claims. Petitioners' rule runs contrary to this Court's precedent and would, without statutory basis, depart from the general rules that govern judicial decisionmaking. Further, the dissent as to the single claim was not based on a disagreement as to the relevant constitutional standard, but to the application of the law to the facts of the case. Review of Petitioners' second question is therefore unwarranted.

A. This Court has already rejected a rule requiring judicial unanimity to deny qualified immunity.

Petitioners ask this Court to hold that whenever judges disagree as to whether a constitutional violation has occurred, qualified immunity must be granted. Pet. 13. No court of appeals has adopted this rule, and this Court has rejected it. Petitioners provide no basis for revisiting that decision here.

Petitioners primarily base their argument on dicta in *Wilson v. Layne*, 526 U.S. 603, 618 (1999). There, the Court held that the defendant officers were entitled to qualified immunity, noting, among other reasons, the "underdeveloped state of the law" and "a split among the Federal Circuits" on the relevant constitutional question that existed at the time of the officers' conduct. *Id.* at 617–18. Addressing this hazy legal background, the Court commented that "[i]f judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy." *Id.* at 618. While Petitioners argue otherwise, *Wilson* does not establish a rule that any disagreement among judges as to what the Constitution requires and whether it was violated in a specific case results in qualified immunity. Rather, there, the Court was addressing circumstances involving a legal question that was "by no means open and shut," *id.* at 615, a federal policy expressly allowing the challenged action, the absence of judicial opinions at the relevant time, and a subsequently developed division among the circuits. *Id.* at 616–18.

More relevant is this Court's subsequent decision in *Safford*, 557 U.S. at 378. There, after finding that the Constitution prohibited the strip search of a student, the Court concluded that school officials were entitled to qualified immunity because "lower courts ha[d] reached divergent conclusions" and these differences were "numerous enough" to "counsel doubt" about the state of the law. *Id.* at 378–79. At the same time, though, the Court rejected the suggestion that "entitlement to qualified immunity is the guaranteed product of disuniform views of the law" in lower courts. *Id.* at 378. The Court stated: "the fact

that a single judge, or even a group of judges, disagrees about the contours of a right does not automatically render the law unclear if we have been clear." *Id.*

The rule that Petitioners ask this Court to adopt would do exactly that: provide qualified immunity wherever a single judge disagrees, whether about the contours of a constitutional right or, as here, how to view a particular factual record. As courts of appeals have explained since *Safford*, "[al]though judicial disagreement about the existence of a right is certainly a factor we consider in determining whether a right has been clearly established, disagreement alone does not defeat a plaintiff's claim in every instance." *Owens v. Baltimore City State's Att'ys Off.*, 767 F.3d 379, 399 (4th Cir. 2014) (citing *Pearson v. Callahan,* 555 U.S. 223, 245 (2009)); *see also Boyd v. McNamara*, 74 F.4th 662, 671 (5th Cir. 2023) ("flatly reject[ing]" the argument that the court of appeals must grant qualified immunity if the district court concluded "that no constitutional violation occurred").

B. Petitioners' proposed rule would run against fundamental principles of the federal judicial system.

Petitioners' suggestion—that qualified immunity is mandatory whenever a single judge disagrees as to whether a constitutional violation occurred—would run afoul of two basic principles of the federal judicial system.

To start, panels of the federal courts of appeals speak through the majority—not any dissent. As this Court has recognized, "[t]he almost universally accepted common-law rule is… [that], in the absence of a contrary statutory provision, a majority of a

quorum constituted of a simple majority of a collective body is empowered to act for the body." *FTC v. Flotill Prods., Inc.*, 389 U.S. 179, 183 (1967). Even where a judge dissents, "the final judgment announced by the majority of a divided court is as conclusive and effectual as though the judges had been unanimous." Emlin McClain, *Dissenting Opinions*, 14 Yale L.J. 191, 192 (1905). To make a dissenting view the controlling one for purposes of qualified immunity, as Petitioners suggest, would run afoul of this basic tenet—transforming a dissent into the court's holding. In so doing, it would upset the longstanding practice of courts of appeals around the country—which frequently reject claims of qualified immunity over a dissent. *See, e.g., French v. Merrill*, 15 F.4th 116, 128–36 (1st Cir. 2021); *Galloway v. Cty. of Nassau*, 141 F.4th 417, 425–28 (2d Cir. 2025); *Williams v. Sec'y, Pa. Dep't of Corrs.*, 117 F.4th 503, 517–26 (3d Cir. 2024); *Case v. Beasley*, 167 F.4th 651, 662–65 (4th Cir. 2026); *Spiller v. Harris Cty.*, 113 F.4th 573, 576–78 (5th Cir. 2024); *Salter v. City of Detroit*, 133 F.4th 527, 535–42 (6th Cir. 2025); *Neita v. City of Chicago*, 148 F.4th 916, 930–38 (7th Cir. 2025); *Locke v. Cty. of Hubbard*, 152 F.4th 903, 908–11 (8th Cir. 2025); *Armendariz v. City of Colorado Springs,* 169 F.4th 1036, 1044 (10th Cir. 2026); *Jarrad v. Sheriff of Polk Cty.*, 115 F.4th 1306, 1323–26 (11th Cir. 2024).

Further, the minority veto proposed by Petitioners would create a carveout from the rights to appeal and to seek certiorari, reflected in both statutes and the federal rules. 28 U.S.C. § 1291 authorizes appeals from all final decisions of the district courts except those specifically identified. It does not exempt decisions in which the lower court finds that a defendant is entitled to qualified immunity. But

Petitioners' rule, under which the view of any one judge that an officer is entitled to qualified immunity carries the day, would effectively do just that, making a district judge's determination that an official is entitled to qualified immunity the final, unreviewable word. There is no statutory support for such a carveout. And, unsurprisingly, no circuit has adopted this view. To the contrary, each of the courts of appeals regularly reviews district courts' grants of qualified immunity, frequently reversing them. *See, e.g., French*, 15 F.4th at 128–36; *Baltas v. Chapdelaine*, 153 F.4th 328, 339–42 (2d Cir. 2025); *Clark v. Coupe*, 55 F.4th 167, 178–88 (3d Cir. 2022); *Harris v. Town of S. Pines*, 110 F.4th 633, 639–45 (4th Cir. 2024); *Spiller*, 113 F.4th at 576–78; *Cooperrider v. Woods*, 127 F.4th 1019, 1036–40 (6th Cir. 2025); *Neita*, 148 F.4th at 930–38; *Locke*, 152 F.4th at 908–11; *Weldeyohannes v. Washington*, 162 F.4th 972, 978–79 (9th Cir. 2025); *Armendariz,* 169 F.4th at 1044; *Jarrad*, 115 F.4th at 1323–26; *Johnson v. District of Columbia*, 528 F.3d 969, 977–78 (D.C. Cir. 2008).

Petitioners' proposed rule that the vote of a single federal judge means qualified immunity is mandatory would also run counter to the statutes and rules governing certiorari review in this Court. Nothing in 28 U.S.C. § 1254 or this Court's Rule 10 precludes this Court from granting certiorari to review a court of appeals' final decision holding an official is entitled to qualified immunity, and this Court has regularly done so. *See, e.g.*, *Taylor v. Riojas*, 592 U.S. 7 (2020) (per curiam); *Sause v. Bauer*, 585 U.S. 957 (2018) (per curiam); *Tolan*, 572 U.S. 650; *Hope v. Pelzer*, 536 U.S. 730 (2002); *see also Lombardo v. City of St. Louis*, 594 U.S. 464 (2021) (per curiam) (granting petition and

vacating and remanding court of appeals decision finding no constitutional violation despite district court's conclusion that the officers were entitled to qualified immunity); *Torres v. Madrid*, 592 U.S. 306 (2021) (similar). Petitioners' rule would effectively do just that.

Further, this Court would be precluded from affirming any decision that an official is not entitled to qualified immunity unless this Court is unanimous. Such a rule would strike at the heart of this Court's authority and conflict with its historic practice. *See, e.g.*, *Groh v. Ramirez*, 540 U.S. 551, 566 (2004) (affirming denial of qualified immunity over dissent).

C. The nature of the partial dissent here makes this case a poor vehicle to consider the question presented.

As noted above, the dispute between the panel majority and the partial dissent here was not over the requisite legal standard for Mr. Parham's wrongful arrest claim. Every judge to consider the case here agrees on the answer to the "constitutional question," Pet. 15 (quoting *Wilson*, 526 U.S. at 618)—that it is clearly established that an arrest is unlawful where an officer lacks probable cause to believe that an individual has violated the law. *See* Pet. 4a–6a (court of appeals majority); *id.* at 9a (court of appeals dissent); *id.* at 27a–28a (district court). Judge Miller's disagreement was whether, on the disputed record, the officers reasonably concluded they had the requisite probable cause. *See id.* 9a–10a. Such a disagreement is different in kind from those at issue in cases like *Wilson* and *Safford*, as well as in the lower court cases that Petitioners cite, where the underlying legal standard was subject to debate.

Further, Judge Miller's separate opinion explicitly "agree[d] that the defendant officers are not entitled to qualified immunity on the claims for excessive force, unlawful search, malicious prosecution, and deliberate indifference." *Id.* at 8a–9a. That this case involves a partial dissent as to only one of five claims, where no constitutional question is in doubt, makes this case a poor candidate to consider Petitioners' proposed rule.

CONCLUSION

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

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