No. 25-216

# In the Supreme Court of the United States

MATHEW GRASHORN,

*Petitioner*,

*v.*

WENDY LOVE, ET AL.,

*Respondents*.

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

## BRIEF OF AMICUS CURIAE LAW ENFORCEMENT LEGAL DEFENSE FUND IN SUPPORT OF PETITIONER


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## INTEREST OF AMICUS CURIAE[1]

The Law Enforcement Legal Defense Fund ("LELDF") is a non-profit organization that provides legal assistance to law enforcement officers. LELDF has aided more than one hundred officers, many of whom have been acquitted or otherwise exonerated, mostly in cases where officers have faced criminal or civil actions for using force in the line of duty.

LELDF and the police officers it represents have a profound interest in this case, as it deals with the availability of the meaningful appellate review necessary to effectuate the purposes of qualified immunity. Without appropriate opportunities for appellate review, many non-meritorious claims against police will not be dismissed early in litigation, forcing police officers to endure the expense, disruption, and risks of trial. Accordingly, LELDF respectfully asks this Court to ensure that robust and meaningful appellate review of qualified immunity decisions is available at the pre-trial stage. Having supported over one hundred police officers through painful litigation, LELDF is uniquely situated to articulate the need for this Court to grant the Petition.

## INTRODUCTION & SUMMARY OF ARGUMENT

Tracing back over a century, the doctrine of qualified immunity recognizes the need to shield public officers from personal liability when

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[1] Counsel of record received timely notice of LELDF's intent to file this brief under Supreme Court Rule 37.2. No counsel for any party authored this brief in whole or in part, nor did any such counsel or party make any monetary contribution intended to fund the preparation or submission of this brief.

performing official duties. The doctrine serves several vital purposes, for both law enforcement and the public good, ensuring that police officers are not hampered in their duties by the constant threat of costly litigation. *See, e.g.*, *Plumhoff* v. *Rickard*, 572 U.S. 765, 771–72 (2014). The defense is especially important when officers must make split-second decisions in dangerous and unpredictable situations. Without qualified immunity, officers might hesitate in those life-threatening scenarios and fail to protect themselves or the community from imminent danger.

Whether an officer faced an "immediate threat" before he or she responded to a situation is a question that is central to many qualified immunity cases—indeed, it is often dispositive to the existence of the immunity. Because of the importance of that determination, it is critical that appellate courts undertake interlocutory review of pre-trial orders that turn on an assessment of "immediate threat." If a trial court errs in concluding that there is a triable question of whether an officer faced an "immediate threat," the officer must face lengthy and expensive litigation. This undermines the entire purpose of qualified immunity because, if the case eventually makes it to an appellate court after final judgment, it will be too late to effectively remedy the cost and disruption caused by the litigation. That is why this Court has long held that a denial of summary judgment on qualified immunity grounds is exactly the type of "collateral order" that may be appealed before trial.

Currently, however, several circuit courts incorrectly treat the existence of an "immediate threat" (or, "imminent danger") as a purely factual

question not subject to interlocutory review under this Court's decision in *Johnson* v. *Jones*, 515 U.S. 304, 313 (1995). But the narrow holding in *Johnson*—that sufficiency-of-the-evidence arguments at summary judgment are not subject to interlocutory review—should not apply to assessments of "immediate threat" at the pre-trial stage. That question is a legal or, at most, mixed question and thus subject to *de novo* interlocutory review. This principle has deeply divided circuit courts and warrants this Court's review, not only for doctrinal clarity and consistency, but also because of the profound impact this seemingly technical question has on the careers, job performance, and everyday lives of hundreds of thousands of law enforcement officers throughout the country.

Part I below discusses the importance of qualified immunity to the public good and, in turn, the importance of interlocutory review of pre-trial orders denying qualified immunity. Without a meaningful opportunity for interlocutory appellate review, erroneous pre-trial orders can defeat the very purpose of qualified immunity from suit and hamper law enforcement. As this Court has explained, immunity defenses should be fully decided as early in litigation as possible, and not post-trial when the officer has already endured the disruption of litigation. Part II explains that, beyond being good policy, treating "immediate threat" as a legal or mixed question subject to interlocutory review is appropriate under longstanding doctrine and principles. Although the law-fact distinction is notoriously murky, the question of "immediate threat" falls comfortably on the legal side. That is because assessing "immediate threat" is

not a purely empirical inquiry, but requires a balancing of interests and the application of a normative or legal framework to historical facts—a process that courts, not juries, are best suited to handle. Part III demonstrates how several circuits erroneously treat "immediate threat" as a purely factual issue and thereby deny police officers a meaningful opportunity for appellate review of qualified immunity determinations, in violation of this Court's precedents.

## ARGUMENT

### I. This Court Should Grant Certiorari to Ensure That Police Officers Have a Meaningful Opportunity for Interlocutory Review of Qualified Immunity Decisions

#### A. Qualified Immunity Is Designed to Protect Against the Cost of Litigation Itself

Qualified immunity is designed to balance "the need to hold public officials accountable when they exercise power irresponsibly" against "the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson* v. *Callahan*, 555 U.S. 223, 231 (2009). When "an official's duties legitimately require action," such as the use of force, "the public interest may be better served by action taken with independence and without fear of consequences." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 819 (1982) (quotation omitted).

But using force as a police officer has consequences. The Fourth Amendment rules that

govern police conduct are "not capable of precise definition or mechanical application," *Bell* v. *Wolfish*, 441 U.S. 520, 559 (1979), and instead require an analysis of the "totality of the circumstances," *Barnes* v. *Felix*, 605 U.S. 73, 80 (2025). As a result, every officer who uses force in the line of duty risks facing litigation because, even if the use of force is lawful and justifiable, a plaintiff may still be able to allege a facially plausible claim. Indeed, "[i]t cannot be disputed seriously that [excessive force] claims frequently run against the innocent as well as the guilty." *Harlow*, 457 U.S. at 814.

Non-meritorious litigation against police officers carries heavy "cost not only to the defendant officials, but to society as a whole." *Id.* The risk of a wrongful verdict may be the least of these costs; more important are the "social costs" of "the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office." *Id.*; *see also Behrens* v. *Pelletier*, 516 U.S. 299, 308 (1996) ("[I]nquiries of this kind can be peculiarly disruptive of effective government."); *Anderson* v. *Creighton,* 483 U.S. 635, 638 (1987) (allowing suits against government officials "can entail substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties"). Even worse, "there is the danger that fear of being sued will dampen the ardor of all but the most resolute . . . in the unflinching discharge of their duties." *Harlow*, 457 U.S. at 814 (quotations omitted). Given the costs imposed by even non-meritorious suits against police, "the mere threat of litigation may

significantly affect the fearless and independent performance of duty." *Mitchell* v. *Forsyth*, 472 U.S. 511, 522 (1985).

That is why this Court has continually fine-tuned its qualified immunity jurisprudence so that it can effectively protect officers from the costs inherent in litigation itself. This Court has "repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in litigation," *Hunter* v. *Bryant*, 502 U.S. 224, 227 (1991) (per curiam), and has warned that "[insubstantial] lawsuits" should be "quickly terminated" and that "insubstantial claims should not proceed to trial." *Harlow*, 457 U.S. at 813. This Court has even revised the standard for qualified immunity itself to "'objective legal reasonableness,' rather than good faith, precisely in order to 'permit the defeat of insubstantial claims without resort to trial.'" *Behrens*, 516 U.S. at 306 (quoting *Harlow*, 457 U.S. at 819); *see also Mitchell*, 472 U.S. at 526 ("[T]he *Harlow* Court refashioned the qualified immunity doctrine in such a way as to 'permit the resolution of many insubstantial claims on summary judgment' and to avoid '[subjecting] government officials . . . to the costs of trial.'") (quoting *Harlow*, 457 U.S. at 817–18).

### B. Pre-trial Rulings Erroneously Denying Qualified Immunity Are Effectively Unreviewable After Final Judgment

The "importance" this Court places on "resolving immunity questions at the earliest possible stage in litigation," *Hunter*, 502 U.S. at 227, is reflected by the longstanding rule that pre-trial orders

denying qualified immunity are immediately appealable. A district court decision that does not end the litigation is immediately appealable if it "finally determine[s] claims of right separable from, and collateral to, rights asserted in the action," and which are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949).

A pre-trial order denying a police officer's motion for summary judgment on qualified immunity grounds meets this standard, among other reasons, because it "conclusively determines the defendant's claim of right not to stand trial," as "there are simply no further steps that can be taken in the District Court to avoid the trial the defendant maintains is barred." *Mitchell*, 472 U.S. at 527 (quotation omitted). Because "qualified immunity is in part an entitlement not to be forced to litigate the consequences of official conduct" and not "a mere defense to liability," "it is effectively lost if a case is erroneously permitted to go to trial." *Id.* at 526. Thus, unless a pre-trial order denying qualified immunity "can be reviewed before the proceedings terminate, it never can be reviewed at all.'" *Id.* at 525–26 (quotations omitted).

## II. This Court Should Grant Certiorari to Clarify That "Immediate Threat" Is a Mixed Question That Appellate Courts Can Review on Interlocutory Appeal

### A. The Law-Fact Distinction Is Notoriously Murky but Critical for Qualified Immunity Cases

This Court should grant certiorari to provide doctrinal clarity on the law-fact distinction that confounds the circuits, especially in qualified immunity cases. The distinction between questions of law and questions of fact is one of the most mystifying concepts in our legal system. Judges have wrestled with this problem for centuries, including this Court, which has called the distinction "vexing," *Pullman-Standard* v. *Swint*, 456 U.S. 273, 288 (1982), and "slippery." *Thompson* v. *Keohane*, 516 U.S. 99, 111 (1995). Scholars, too, have struggled with this puzzle and debated it persistently.[2]

In theory, discerning factual versus legal questions should not be difficult. Questions of fact require the reconstruction of historical events. Was the defendant's car behind or in front of the traffic line after the light turned red? A question of law, by

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[2] For a small sample of a substantial and centuries-old body of literature, see Ronald J. Allen & Michael S. Pardo, *The Myth of the Law–Fact Distinction*, 97 NW U. L. REV. 1769 (2003); Henry P. Monaghan, *Constitutional Fact Review*, 85 COLUM. L. REV. 229 (1985); Stephen A. Weiner, *The Civil Jury Trial and the Law–Fact Distinction*, 54 CALIF. L. REV. 1867 (1966); Clarence Morris, *Law and Fact*, 55 HARV. L. REV. 1303 (1942); Jabez Fox, *Law and Fact*, 12 HARV. L. REV. 545 (1899); James B. Thayer, *"Law and Fact" in Jury Trials*, 4 HARV. L. REV. 147 (1890).

contrast, identifies and interprets the rules applicable to the situation. Does the law prohibit a driver from passing through a red light and, if so, does it assign fault or liability to that driver in the event of an accident? *See Townsend* v. *Sain*, 372 U.S. 293, 310 n.6 (1963) ("By 'issues of fact' we mean to refer to what are termed basic, primary, or historical facts: facts 'in the sense of a recital of external events and the credibility of their narrators.'" (quoting *Brown* v. *Allen*, 344 U.S. 443, 506 (1953) (opinion of Frankfurter, J.))); *see also Wright* v. *Walls*, 288 F.3d 937 (7th Cir. 2002) (Easterbrook, J., dissenting) (distinguishing between the "state of the world" and the "state of the law"). The judge determines the law by locating and interpreting relevant statutes and cases, and then the judge puts questions of historical fact to the jury. Having been instructed on the law, the jury decides liability based on what it believes happened after hearing and weighing the evidence. *See* 1 E. Coke, Institutes 155b (1628) ("*ad quaestionem facti non respondent judices; ad quaestionem juris non respondent juratores*"[3]).

Few lawsuits, however, involve such black-and-white legal rules or factual questions. Most statutes and common-law torts do not turn on mathematically or scientifically precise rules, or on easily quantifiable behaviors by parties, but instead turn on qualitative behaviors and open-ended standards. That is especially true in the police context, which often turns on legal standards such as reasonableness,

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[3] "Judges do not answer questions of fact; jurors do not answer questions of law."

imminence, causation, good faith, excessiveness, and so forth.

Some scholars have therefore argued that the law-fact distinction is not cleanly demarcated but instead exists on a continuum. *See* Henry P. Monaghan, *Constitutional Fact Review*, 85 COLUM. L. REV. 229, 261–62 (1985). Others have argued that there is no epistemological or analytical distinction at all. *See* Ronald J. Allen & Michael S. Pardo, *The Myth of the Law–Fact Distinction*, 97 NW U. L. REV. 1769 (2003). Courts have introduced the concept of "mixed questions" perhaps to encompass those not-so-clear situations; but, even with that third category, this Court has recognized that mixed questions are "not all alike," with some more fact-intensive, and others more law-focused. *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt.* v. *Vill. at Lakeridge, LLC*, 583 U.S. 387, 395–96 (2018); *see also Miller* v. *Fenton,* 474 U.S. 104, 114 (1985) (when an "issue falls somewhere between a pristine legal standard and a simple historical fact," the standard of review often reflects which "judicial actor is better positioned" to make the decision).

The law-fact distinction is not one of mere abstraction or scholarly debate. It has critical and often outcome-determinative consequences for litigants. Whether an issue is characterized as one of law or one of fact (or as "mixed") can govern a host of important consequences, such as the allocation of courtroom decision-making between the judge and jury, the scope or availability of appellate review, evidentiary admissibility, discovery rules, and deference to agency adjudicators. The law-fact distinction can have a constitutional dimension as

well, as it affects one's right to a jury trial under the Seventh Amendment. *See, e.g., City of Monterey* v. *Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999); *Simler* v. *Conner*, 372 U.S. 221, 222 (1963); *Byrd* v. *Blue Ridge Elec. Co-Op*, 356 U.S. 525 (1958).

Notwithstanding the practical importance of the law-fact distinction, this Court has admitted it has "not charted an entirely clear course" when classifying questions as factual or legal in nature. *See Thompson,* 516 U.S. at 110–11. Without clear demarcation, this Court and lower courts have devised and applied various tests that are contradictory and inconsistent as between different subject-matter areas. For example, the concept of "reasonableness" has been treated as both factual and legal, depending on the context. *Compare Sioux City & Pac. R.R.* v. *Stout*, 84 U.S. 657, 663–64 (1873) (treating "reasonableness" in the tort context as a question of fact), *with Scott* v. *Harris*, 550 U.S. 372, 381 n.8 (2007) (treating "reasonableness" in the policing context as a question of law). Similarly, voluntariness has been treated as both factual and legal, depending on the context. *Compare Miller* v. *Fenton*, 474 U.S. 104, 115–16 (1985) (treating "voluntariness" of confessions as a pure question of law), *with Schneckloth* v. *Bustamonte*, 412 U.S. 218, 227 (1973) (treating "voluntariness" of search consent as a pure question of fact).[4]

Accordingly, this area in general requires more clarity. But this is especially true with regard to

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[4] For examples of similar inconsistencies, see, e.g., G. Alexander Nunn, *Law, Fact, and Procedural Justice*, 70 EMORY L.J. 1273, 1279 (2021).

qualified immunity, where treating certain outcome-determinative conclusions, like the existence of an "immediate threat," as a purely factual question completely undermines the purposes of the immunity.

### B. "Immediate Threat" Is Best Treated as a Legal or Mixed Question

When a police officer is sued over a use of force in the line of duty, whether or not the officer reasonably believed the suspect posed an "immediate threat" largely controls whether the use of force was lawful. *See Graham* v. *Connor*, 490 U.S. 386, 396 (1989) (courts determine the "reasonableness" of a use of force by weighing "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight"). Where deadly force is used, whether the suspect posed an "immediate threat" is often the only question. *See Tennessee* v. *Garner*, 471 U.S. 1, 11 (1985) ("Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so."); *see also, e.g., Smith* v. *Finkley*, 10 F.4th 725, 743 (7th Cir. 2021) ("Deadly force is warranted only when an immediate threat of serious harm to the officers is present."); *Begin* v. *Drouin*, 908 F.3d 829, 834 (1st Cir. 2018) ("The law in this circuit has long been clear that the use of deadly force . . . is reasonable (and, therefore, constitutional) only when at a minimum, a suspect poses an immediate threat to police officers or civilians.") (quotation omitted). Thus, in the particular context of deadly force, the requirement that courts perform "a careful balancing

of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake," *Graham*, 490 U.S. at 396, is often reduced to the question of whether an "immediate threat" existed.

The concept of "immediate threat" is a legal or mixed question because it is not empirical or measurable; rather, it is a normative assessment or framework that must be applied to a given set of facts. The very notion of immediacy is entirely relative, depending on the legal context. Whether something is "immediate" differs completely in a case involving a police response to an armed attacker (seconds?) versus an immediate injury when a seller is planning to sell real property (days, weeks?). Thus, to determine imminence, a court must decide not only what happened as a historical and empirical matter, but whether those historical events satisfy the applicable legal framework (*i.e.*, whether the threat was sufficiently "immediate" to justify the use of force).

Whether a suspect posed a "threat" is also relative. Every time an officer seeks to detain a suspect, particularly one who is resisting, the officer faces some threat insomuch as the risk of harm to the officer is never zero. *See, e.g.*, *Terry* v. *Ohio*, 392 U.S. 1, 23 (1966) ("American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded."); *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977) ("[W]e have specifically recognized the inordinate risk confronting an officer as he approaches a person seated in an automobile.").

Thus, while it is a factual question whether the suspect did, in fact, run at an officer at night while holding a knife and was about ten feet away from the officer, it is a legal question whether, given those historical facts, it was "objectively reasonable" for the officer to judge the "threat" sufficiently "immediate" and grave so as to justify the use of deadly force. Thus, *Garner*'s reduction of Fourth Amendment reasonableness to the existence of an "immediate threat" does not entirely eliminate *Graham*'s interest-balancing; it merely masks it. *See Scott*, 550 U.S. at 382–83 ("*Garner* was simply an application of the Fourth Amendment's 'reasonableness' test" and "did not establish a magical on/off switch").

"Immediate threat" is therefore not merely a factual question, but an inherently normative judgment about competing constitutional values like individual liberty and public safety, and about what degree of temporal uncertainty and physical risk police officers should be required to accept before acting. Those questions are best judged by courts, not juries. *See Bose Corp.* v. *Consumers Union of U.S., Inc.*, 466 U.S. 485, 502 (1984) ("[T]he constitutional values protected by the rule make it imperative that judges—and in some cases judges of this Court—make sure that it is correctly applied."); *see also* Henry P. Monaghan, *Constitutional Fact Review*, 85 COLUM L. REV. 229, 237 (1985) (suggesting that, when assessing whether a question is legal or factual, "[t]he real issue is not analytic, but allocative: what [decision maker] should decide the issue?"); Ernest A. Young, *Institutional Settlement in a Globalizing Judicial System*, 54 DUKE L.J. 1143, 1149–50 (2005) ("[L]aw should allocate decisionmaking to the institutions

best suited to decide particular questions, and that the decisions arrived at by those institutions must then be respected by other actors in the system, even if those actors would have reached a different conclusion.").

Moreover, if immediacy is deemed purely factual and thus determined by juries, there would be very little "law" developed by trial or appellate courts, and therefore less legal guidance for officers confronting similar situations in the future. But police officers need to know the rules governing their conduct in order to take the sort of decisive action that is often necessary for public safety. Appellate courts, not juries, are best suited to provide that guidance. *See Salve Regina College* v. *Russell*, 499 U.S. 225, 231–233 (1991) (discussing appellate courts' "institutional advantages" in giving legal guidance); *Plumhoff*, 572 U.S. at 773–77 ("deciding legal issues," such as whether a vehicular flight poses a sufficiently "grave public safety risk" such that "the police acted reasonably in using deadly force to end that risk" is "a core responsibility of appellate courts, and requiring appellate courts to decide such issues is not an undue burden" but "will be beneficial in developing constitutional precedent") (quotations omitted).

Finally, viewing "immediate threat" or "imminent danger" as a legal or mixed question aligns with this Court's jurisprudence in other related areas that evaluate the reasonableness of police conduct. For example, in *Ornelas* v. *United States*, 517 U.S. 690 (1996), this Court held that determinations of "reasonable suspicion" and "probable cause" should be reviewed *de novo* because they are "mixed questions," where, once facts are "admitted or established," the

issue is whether those facts satisfy the relevant legal standards. *Id.* at 696 (quoting *Pullman–Standard* v. *Swint*, 456 U.S. 273, 289 n.19 (1982)). The same goes for Fourth Amendment "objective reasonableness," *see Graham* v. *Connor*, 490 U.S. 386, 396–97 (1989), and, relatedly, "excessive force." *See Scott*, 550 U.S. at 381 n.8. Circuits courts also uniformly treat "exigent circumstances"—a similarly temporal inquiry—as a legal or mixed question. *See, e.g., United States* v. *Tibolt*, 72 F.3d 965, 969 (1st Cir. 1995); *United States* v. *Laurent*, 33 F.4th 63, 95 (2d Cir. 2022); *United States* v. *Curry*, 965 F.3d 313, 319 (4th Cir. 2020); *Tamez* v. *City of San Marcos, Texas*, 118 F.3d 1085, 1094 (5th Cir. 1997); *United States* v. *Granville*, 222 F.3d 1214, 1217 (9th Cir. 2000); *McInerney* v. *King*, 791 F.3d 1224, 1232 (10th Cir. 2015). The circuits that treat imminent danger as a factual question are therefore creating an outlier in the general legal landscape.

## III. Circuits That Treat "Immediate Danger" as a Factual Question Not Subject to Interlocutory Appeal Severely Undermine the Purpose of Qualified Immunity

Currently, three circuits correctly treat "immediate threat" as a legal or mixed question. On the other hand, five incorrectly treat it as a pure question of fact. And one has taken an internally inconsistent approach. *See* Pet.15–26. This deep circuit split warrants this Court's review to align the circuits, but even more so here because of the deleterious effects that the erroneous interpretations are causing.

Indeed, denials of qualified immunity in Fourth Amendment cases have become effectively unreviewable in the circuits that treat the existence of an "immediate threat" as a purely factual question. These circuits simply ask whether the district court found genuine disputes about whether the suspect constituted an "immediate threat." If it did, the court of appeals will dismiss any appeal for lack of jurisdiction without considering whether the historical facts, taken in the light most favorable to the plaintiff, could actually support a finding of an "immediate threat." *See, e.g.*, *Smith*, 10 F.4th at 742 ("[T]here was a factual dispute as to whether a reasonable officer could conclude that the circumstances posed a threat of serious physical harm to himself or others. No jurisdiction existed because this type of factual dispute was not reviewable."); *Rush* v. *City of Phila.*, 78 F.4th 610, 615 (3d Cir. 2023) (finding a lack of interlocutory jurisdiction over "whether the District Court correctly concluded that a reasonable jury could find that Mr. Dennis posed no threat to surrounding officers or public safety"); *Begin*, 908 F.3d at 834 ("[T]he district court determined that the evidence could support a jury finding 'that Plaintiff did not pose an immediate threat to Defendant Drouin and the others who were present.' That determination . . . is not a ruling that we can review on this interlocutory appeal.").

These circuits fail to engage in the inquiry required by this Court's precedents: evaluate as a matter of law whether the historical facts (viewed in the light most favorable to the plaintiff) showed that the officer faced an immediate threat justifying the use of force. *See, e.g.*, *Scott*, 550 U.S. at 381 n.8 ("once

[the appeals court has] determined the relevant set of facts and drawn all inferences in favor of the nonmoving party to the extent supportable by the record," reasonableness, including, "[w]hether [a suspect's] actions have risen to a level warranting deadly force, is a pure question of law"). This irreparably deprives police officers of a meaningful opportunity to seek an appellate determination of whether, even under the facts viewed most favorably to the plaintiff, the officer is legally entitled to immunity from having to stand trial. This Court should grant the Petition to resolve this circuit split and ensure that the purposes of qualified immunity are fulfilled.

## CONCLUSION

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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