Per Curiam

SUPREME COURT OF THE UNITED STATES

JEREMY CARROLL *v.* ANDREW CARMAN, ET UX.

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

No. 14–212. Decided November 10, 2014

PER CURIAM.

On July 3, 2009, the Pennsylvania State Police Department received a report that a man named Michael Zita had stolen a car and two loaded handguns. The report also said that Zita might have fled to the home of Andrew and Karen Carman. The department sent Officers Jeremy Carroll and Brian Roberts to the Carmans' home to investigate. Neither officer had been to the home before. 749 F. 3d 192, 195 (CA3 2014).

The officers arrived in separate patrol cars around 2:30 p.m. The Carmans' house sat on a corner lot—the front of the house faced a main street while the left (as viewed from the front) faced a side street. The officers initially drove to the front of the house, but after discovering that parking was not available there, turned right onto the side street. As they did so, they saw several cars parked side-by-side in a gravel parking area on the left side of the Carmans' property. The officers parked in the "first available spot," at "the far rear of the property." *Ibid.* (quoting Tr. 70 (Apr. 8, 2013)).

The officers exited their patrol cars. As they looked toward the house, the officers saw a small structure (either a carport or a shed) with its door open and a light on. *Id.,* at 71. Thinking someone might be inside, Officer Carroll walked over, "poked [his] head" in, and said "Pennsylvania State Police." 749 F. 3d, at 195 (quoting Tr. 71 (Apr. 8, 2013); alteration in original). No one was there, however, so the officers continued walking toward the house. As they approached, they saw a sliding glass

door that opened onto a ground-level deck. Carroll thought the sliding glass door "looked like a customary entryway," so he and Officer Roberts decided to knock on it. 749 F. 3d, at 195 (quoting Tr. 83 (Apr. 8, 2013)).

As the officers stepped onto the deck, a man came out of the house and "belligerent[ly] and aggressively approached" them. 749 F. 3d, at 195. The officers identified themselves, explained they were looking for Michael Zita, and asked the man for his name. The man refused to answer. Instead, he turned away from the officers and appeared to reach for his waist. *Id.,* at 195–196. Carroll grabbed the man's right arm to make sure he was not reaching for a weapon. The man twisted away from Carroll, lost his balance, and fell into the yard. *Id.,* at 196.

At that point, a woman came out of the house and asked what was happening. The officers again explained that they were looking for Zita. The woman then identified herself as Karen Carman, identified the man as her husband, Andrew Carman, and told the officers that Zita was not there. In response, the officers asked for permission to search the house for Zita. Karen Carman consented, and everyone went inside. *Ibid.*

The officers searched the house, but did not find Zita. They then left. The Carmans were not charged with any crimes. *Ibid.*

The Carmans later sued Officer Carroll in Federal District Court under 42 U. S. C. §1983. Among other things, they alleged that Carroll unlawfully entered their property in violation of the Fourth Amendment when he went into their backyard and onto their deck without a warrant. 749 F. 3d, at 196.

At trial, Carroll argued that his entry was lawful under the "knock and talk" exception to the warrant requirement. That exception, he contended, allows officers to knock on someone's door, so long as they stay "on those portions of [the] property that the general public is al-

lowed to go on." Tr. 7 (Apr. 8, 2013). The Carmans responded that a normal visitor would have gone to their front door, rather than into their backyard or onto their deck. Thus, they argued, the "knock and talk" exception did not apply.

At the close of Carroll's case in chief, the parties each moved for judgment as a matter of law. The District Court denied both motions, and sent the case to a jury. As relevant here, the District Court instructed the jury that the "knock and talk" exception "allows officers without a warrant to knock on a resident's door or otherwise approach the residence seeking to speak to the inhabitants, just as any private citizen might." *Id.*, at 24 (Apr. 10, 2013). The District Court further explained that "officers should restrict their movements to walkways, driveways, porches and places where visitors could be expected to go." *Ibid.* The jury then returned a verdict for Carroll.

The Carmans appealed, and the Court of Appeals for the Third Circuit reversed in relevant part. The court held that Officer Carroll violated the Fourth Amendment as a matter of law because the "knock and talk" exception "requires that police officers begin their encounter at the front door, where they have an implied invitation to go." 749 F. 3d, at 199. The court also held that Carroll was not entitled to qualified immunity because his actions violated clearly established law. *Ibid.* The court therefore reversed the District Court and held that the Carmans were entitled to judgment as a matter of law.

Carroll petitioned for certiorari. We grant the petition and reverse the Third Circuit's determination that Carroll was not entitled to qualified immunity.

A government official sued under §1983 is entitled to qualified immunity unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct. See *Ashcroft* v. *al-Kidd*, 563 U. S. ___, ___ (2011) (slip op., at 3). A right is clearly

established only if its contours are sufficiently clear that "a reasonable official would understand that what he is doing violates that right." *Anderson* v. *Creighton*, 483 U. S. 635, 640 (1987). In other words, "existing precedent must have placed the statutory or constitutional question beyond debate." *al-Kidd*, 563 U. S., at ___ (slip op., at 9). This doctrine "gives government officials breathing room to make reasonable but mistaken judgments," and "protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Id.,* at ___ (slip op., at 12) (quoting *Malley* v. *Briggs*, 475 U. S. 335, 341 (1986)).

Here the Third Circuit cited only a single case to support its decision that Carroll was not entitled to qualified immunity—*Estate of Smith* v. *Marasco*, 318 F. 3d 497 (CA3 2003). Assuming for the sake of argument that a controlling circuit precedent could constitute clearly established federal law in these circumstances, see *Reichle* v. *Howards*, 566 U. S. ___, ___ (2012) (slip op., at 7), *Marasco* does not clearly establish that Carroll violated the Carmans' Fourth Amendment rights.

In *Marasco*, two police officers went to Robert Smith's house and knocked on the front door. When Smith did not respond, the officers went into the backyard, and at least one entered the garage. 318 F. 3d, at 519. The court acknowledged that the officers' "entry into the curtilage after not receiving an answer at the front door might be reasonable." *Id.,* at 520. It held, however, that the District Court had not made the factual findings needed to decide that issue. *Id.,* at 521. For example, the Third Circuit noted that the record "did not discuss the layout of the property or the position of the officers on that property," and that "there [was] no indication of whether the officers followed a path or other apparently open route that would be suggestive of reasonableness." *Ibid.* The court therefore remanded the case for further proceedings.

In concluding that Officer Carroll violated clearly estab-

lished law in this case, the Third Circuit relied exclusively on *Marasco*'s statement that "entry into the curtilage after not receiving an answer at the front door might be reasonable." *Id.,* at 520; see 749 F. 3d, at 199 (quoting *Marasco*, *supra,* at 520). In the court's view, that statement clearly established that a "knock and talk" must begin at the front door. But that conclusion does not follow. *Marasco* held that an unsuccessful "knock and talk" at the front door does not automatically allow officers to go onto other parts of the property. It did not hold, however, that knocking on the front door is *required* before officers go onto other parts of the property that are open to visitors. Thus, *Marasco* simply did not answer the question whether a "knock and talk" must begin at the front door when visitors may also go to the back door. Indeed, the house at issue seems not to have even had a back door, let alone one that visitors could use. 318 F. 3d, at 521.

Moreover, *Marasco* expressly stated that "there [was] no indication of whether the officers followed a path or other apparently open route that would be suggestive of reasonableness." *Ibid.* That makes *Marasco* wholly different from this case, where the jury necessarily decided that Carroll "restrict[ed] [his] movements to walkways, driveways, porches and places where visitors could be expected to go." Tr. 24 (Apr. 10, 2013).

To the extent that *Marasco* says anything about this case, it arguably supports Carroll's view. In *Marasco*, the Third Circuit noted that "[o]fficers are allowed to knock on a residence's door or otherwise approach the residence seeking to speak to the inhabitants just as any private citizen may." 318 F. 3d, at 519. The court also said that, "'when the police come on to private property . . . and restrict their movements to places visitors could be expected to go (*e.g.*, walkways, driveways, porches), observations made from such vantage points are not covered by the Fourth Amendment.'" *Ibid.* (quoting 1 W. LaFave,

Search and Seizure §2.3(f) (3d ed. 1996 and Supp. 2003) (footnotes omitted)). Had Carroll read those statements before going to the Carmans' house, he may have concluded—quite reasonably—that he was allowed to knock on any door that was open to visitors.*

The Third Circuit's decision is even more perplexing in comparison to the decisions of other federal and state courts, which have rejected the rule the Third Circuit adopted here. For example, in *United States* v. *Titemore*, 437 F. 3d 251 (CA2 2006), a police officer approached a house that had two doors. The first was a traditional door that opened onto a driveway; the second was a sliding glass door that opened onto a small porch. The officer chose to knock on the latter. *Id.*, at 253–254. On appeal, the defendant argued that the officer had unlawfully entered his property without a warrant in violation of the Fourth Amendment. *Id.,* at 255–256. But the Second Circuit rejected that argument. As the court explained, the sliding glass door was "a primary entrance visible to and used by the public." *Id.,* at 259. Thus, "[b]ecause [the officer] approached a principal entrance to the home using a route that other visitors could be expected to take," the court held that he did not violate the Fourth Amendment. *Id.,* at 252.

The Seventh Circuit's decision in *United States* v. *James*, 40 F. 3d 850 (1994), vacated on other grounds, 516 U. S. 1022 (1995), provides another example. There, police

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*In a footnote, the Court of Appeals "recognize[d] that there may be some instances in which the front door is not *the* entrance used by visitors," but noted that "this is not one such instance." 749 F. 3d 192, 198, n. 6 (2014) (emphasis added). This footnote still reflects the Third Circuit's view that the "knock and talk" exception is available for only one entrance to a dwelling, "which in most circumstances is the front door." *Id.,* at 198. Cf. *United States* v. *Perea-Rey*, 680 F. 3d 1179, 1188 (CA9 2012) ("Officers conducting a knock and talk . . . need not approach only a specific door if there are multiple doors accessible to the public.").

officers approached a duplex with multiple entrances. Bypassing the front door, the officers "used a paved walkway along the side of the duplex leading to the rear side door." 40 F. 3d, at 862. On appeal, the defendant argued that the officers violated his Fourth Amendment rights when they went to the rear side door. The Seventh Circuit rejected that argument, explaining that the rear side door was "accessible to the general public" and "was commonly used for entering the duplex from the nearby alley." *Ibid.* In situations "where the back door of a residence is readily accessible to the general public," the court held, "the Fourth Amendment is not implicated when police officers approach that door in the reasonable belief that it is a principal means of access to the dwelling." *Ibid.* See also, *e.g., United States* v. *Garcia*, 997 F. 2d 1273, 1279–1280 (CA9 1993) ("If the front and back of a residence are readily accessible from a public place, like the driveway and parking area here, the Fourth Amendment is not implicated when officers go to the back door reasonably believing it is used as a principal entrance to the dwelling"); *State* v. *Domicz*, 188 N. J. 285, 302, 907 A. 2d 395, 405 (2006) ("when a law enforcement officer walks to a front or back door for the purpose of making contact with a resident and reasonably believes that the door is used by visitors, he is not unconstitutionally trespassing on to the property").

We do not decide today whether those cases were correctly decided or whether a police officer may conduct a "knock and talk" at any entrance that is open to visitors rather than only the front door. "But whether or not the constitutional rule applied by the court below was correct, it was not 'beyond debate.'" *Stanton* v. *Sims*, 571 U. S. ___, ___ (2013) (*per curiam*) (slip op., at 8) (quoting *al-Kidd*, 563 U. S., at ___ (slip op., at 9)). The Third Circuit therefore erred when it held that Carroll was not entitled to qualified immunity.

The petition for certiorari is granted. The judgment of

the United States Court of Appeals for the Third Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Filarsky v. Delia, 132 S. Ct. 1657, 182 L. Ed. 2d 662, 33 IER Cases 1518 (2012) [2012 BL 94147]

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Supreme Court of the United States

STEVE A. FILARSKY, PETITIONER v. NICHOLAS B. DELIA.

No. 10-1018
On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit.
Argued January 17, 2012, Decided April 17, 2012 **[**664] [*1658]**

Hide Headnotes

BNA Headnotes

INDIVIDUAL EMPLOYMENT RIGHTS

PRIVACY

[1] Fourth Amendment — Municipal employees — Qualified immunity ►100.0501 ►110.07 ►215.1901 ►215.25 ►235.11 ►275.2515 ►425.0601 ►425.0602 ►505.09 [Show Topic Path]

Ninth Circuit improperly held that private attorney—hired by city to assist with fire department's internal affairs investigation of firefighter—does not have qualified immunity from claim that he violated Fourth Amendment by ordering firefighter to accompany department officials to firefighter's house and produce unused rolls of insulation firefighter had purchased for home improvement project while on injury leave, where private individual temporarily retained by government to carry out its work is entitled to seek qualified immunity, based on principles of common-law tort immunity that are incorporated into **42 U.S.C. §1983**.

Respondent Delia, a firefighter employed by the City of Rialto, California, missed work after becoming ill on the job. Suspicious of Delia's extended absence, the City hired a private investigation firm to conduct surveillance on him. When Delia was seen buying fiberglass insulation and other building supplies, the City initiated an internal affairs investigation. It hired petitioner Filarsky, a private attorney, to interview Delia. At the interview, which Delia's attorney and two fire department officials also attended, Delia acknowledged buying the supplies, but denied having done any work on his home. To verify Delia's claim, Filarsky asked Delia to allow a fire department official to enter his home and view the unused materials. When Delia refused, Filarsky ordered him to bring the materials out of his home for the official to see. This prompted Delia's attorney to threaten a civil rights action against the City and Filarsky. Nonetheless, after the interview concluded, officials followed Delia to his home, where he produced the materials.

Delia brought an action under **42 U. S. C. § 1983** against the City, the Fire Department, Filarsky, and other individuals, alleging that the order to produce the building materials violated his Fourth and Fourteenth Amendment rights. The District Court granted summary judgment to the individual defendants on the basis of qualified immunity. The Court of Appeals for the Ninth Circuit affirmed with respect to all

individual defendants except Filarsky, concluding that he was not entitled to seek qualified immunity because he was a private attorney, not a City employee.

Held: A private individual temporarily retained by the government to carry out its work is entitled to seek qualified immunity from suit under **§ 1983**. Pp. 4-16.

(a) In determining whether the Court of Appeals made a valid distinction between City employees and Filarsky **[**665]** for qualified immunity purposes, this Court looks to the general principles of tort immunities and defenses applicable at common law, and the reasons the Court has afforded protection from suit under **§ 1983**. See *Imbler* v. *Pacht-man*, **424 U. S. 409**, **418**. The common law as it existed in 1871, when Congress enacted **§ 1983**, did not draw a distinction between full-time public servants and private individuals engaged in public service in according protection to those carrying out government responsibilities. Government at that time was smaller in both size and reach, had fewer responsibilities, and operated primarily at the local level. Government work was carried out to a significant extent by individuals who did not devote all their time to public duties, but instead pursued private callings as well. In according protection from suit to individuals doing the government's work, the common law did not draw distinctions based on the nature of a worker's engagement with the **[***2]** government. Indeed, examples of individuals receiving immunity for actions taken while engaged in public service on a temporary or occasional basis are as varied as the reach of government itself. Common law principles of immunity were incorporated into **§ 1983** and should not be abrogated absent clear legislative intent. See *Pulliam* v. *Allen**[*1659]*** , **466 U. S. 522**, **529**. Immunity under **§ 1983** therefore should not vary depending on whether an individual working for the government does so as a permanent or full-time employee, or on some other basis. Pp. 4-11.

(b) Nothing about the reasons this Court has given for recognizing immunity under **§ 1983** counsels against carrying forward the common law rule. First, the government interest in avoiding "unwarranted timidity" on the part of those engaged in the public's business— which has been called "the most important special government immunity-producing concern," *Richardson* v. *McKnight*, **521 U. S. 399**, *409*—is equally implicated regardless of whether the individual sued as a state actor works for the government full-time or on some other basis. Second, affording immunity to those acting on the government's behalf serves to "`ensure that talented candidates [are] not deterred by the threat of damages suits from entering public service.'" **Id., at 408**. The government, in need of specialized knowledge or expertise, may look outside its permanent workforce to secure the services of private individuals. But because those individuals are free to choose other work that would not expose them to liability for government actions, the most talented candidates might decline public engagements if they did not receive the same immunity enjoyed by their public employee counterparts. Third, the public interest in ensuring performance of government duties free from the distractions that can accompany lawsuits is implicated whether those duties are discharged by private individuals or permanent government employees. Finally, distinguishing among those who carry out the public's business based on their particular relationship with the government creates significant line-drawing problems and can deprive state actors of the ability to "`reasonably anticipate when their conduct may give rise to liability for damages,'" *Anderson* v. *Creighton**[**666]*** , **483 U. S. 635**, **646**. Pp. 11-13.

(c) This conclusion is not contrary to *Wyatt* v. *Cole*, **504 U. S. 158**, or *Richardson* v. *McKnight*, **521 U. S. 399**. *Wyatt* did not implicate the reasons underlying recognition of qualified immunity because the defendant in that case had no connection to government and pursued purely private ends. *Richardson* involved the unusual circumstances of prison guards employed by a private company who worked in a privately run prison facility. Nothing of the sort is involved here, or in the typical case of an individual hired by the government to assist in carrying out its work. Pp. 13-15.

621 F. 3d 1069, reversed.

ROBERTS, C. J., delivered the opinion for a unanimous Court. GINS-BURG, J., and SOTOMAYOR, J., filed concurring opinions. **[*1660]**

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Section 1983 provides a cause of action against state actors who violate an individual's rights **[***3]** under federal law. **42 U. S. C. § 1983**. At common law, those who carried out the work of government enjoyed various protections from liability when doing so, in order to allow them to serve the government without undue fear of personal exposure. Our decisions have looked to these common law protections in affording either absolute or qualified immunity to individuals sued under **§ 1983**. The question in this case is whether an individual hired by the government to do its work is prohibited from seeking such immunity, solely because he works for the government on something other than a permanent or full-time basis.

I

A

Nicholas Delia, a firefighter employed by the City of Rialto, California, became ill while responding to a toxic spill in August 2006. Under a doctors orders, Delia missed three weeks of work. The City became suspicious of Delia's extended absence, and hired a private investigation firm to conduct surveillance on him. The private investigators observed Delia purchasing building supplies—including several rolls of fiberglass insulation—from a home improvement store. The City surmised that Delia was missing work to do construction on his home rather than because of illness, and it initiated a formal internal affairs investigation of him.

Delia was ordered to appear for an administrative investigation interview. The City hired Steve Filarsky to conduct the interview. Filarsky was an experienced employment lawyer who had previously represented the City in several investigations. Delia and his attorney attended the interview, along with Filarsky and two fire department officials, Mike Peel and Frank Bekker. During the interview, Filarsky questioned Delia about the building supplies. Delia acknowledged that he had purchased the supplies, but claimed that he had not yet done the work on his home.

During a break, Filarsky met with Peel, Bekker, and Fire Chief Stephen **[**667]** Wells. Filarsky proposed resolving the investigation by verifying Delia's claim that he had not done any work on his home. To do so, Filarsky recommended asking Delia to produce the building materials. Chief Wells approved the plan.

When the meeting resumed, Filarsky requested permission for Peel to enter Delia's home to view the materials. On the advice of counsel, Delia refused. Filarsky then asked Delia if he would be willing to bring the materials out onto his lawn, so that Peel could observe them without entering his home. Delia again refused to consent. Unable to obtain Delia's cooperation, Filarsky ordered him to produce the materials for inspection.

Delia's counsel objected to the order, asserting that it would violate the **Fourth Amendment**. When that objection proved unavailing, Delia's counsel threatened to sue the City. He went on to tell Filarsky that "[w]e might quite possibly find a way **[*1661]** to figure if we can name you Mr. Filarsky. . . . If you want to take that chance, you go right ahead." App. 131-132. The threat was repeated over and over: "[E]verybody is going to get named, and they are going to sweat it out as to whether or not they have

individual liability. . . ." "[Y]ou **[***4]** order him and you will be named and that is not an idle threat." "Whoever issues that order is going to be named in the lawsuit." "[W]e will seek any and all damages including individual liability. . . . [W]e are coming if you order this." "[M]ake sure the spelling is clear [in the order] so we know who to sue." *Id.*, at 134-136, 148-149. Despite these threats, Filarsky prepared an order directing Delia to produce the materials, which Chief Wells signed.

As soon as the interview concluded, Peel and Bekker followed Delia to his home. Once there, Delia, his attorney, and a union representative went into Delia's house, brought out the four rolls of insulation, and placed them on Delia's lawn. Peel and Bekker, who remained in their car during this process, thanked Delia for showing them the insulation and drove off.

B

Delia brought an action under **42 U. S. C. § 1983** against the City, its Fire Department, Chief Wells, Peel, Bekker, Filarsky, and ten unidentified individuals, alleging that the order to produce the building materials violated his rights under the **Fourth** and **Fourteenth Amendments**. The District Court granted summary judgment to all the individual defendants, concluding that they were protected by qualified immunity. The court held that Delia had "not demonstrated a violation of a clearly established constitutional right," because "Delia was not threatened with insubordination or termination if he did not comply with any order given and none of these defendants entered [his] house." *Delia* v. *Rialto*, No. *CV 08-03359* (CD Cal., Mar. 9, 2009), App. to Pet. for Cert. 42, 48.

The Court of Appeals for the Ninth Circuit affirmed with respect to all defendants except Filarsky. The Court of Appeals concluded that the order violated the **Fourth Amendment**, but agreed with the District Court that Delia "ha[d] not demonstrated that a constitutional right was clearly established as of the date of Chief Wells's order, such that defendants would have known that their actions were unlawful." *Delia* v. *Rialto*, **621 F. 3d 1069**, **1079** (2010). As to Filarsky, however, the court concluded that because he was a private attorney and not a City employee, he **[**668]** was not entitled to seek the protection of qualified immunity. **Id., at 1080-1081**. The court noted that its decision conflicted with a decision of the Court of Appeals for the Sixth Circuit, see *Cullinan* v. *Abramson*, **128 F. 3d 301**, **310** (1997), but considered itself bound by Circuit precedent and therefore "not free to follow the *Cullinan* decision." **621 F. 3d, at 1080** (citing *Gonzalez* v. *Spencer*, **336 F. 3d 832** (CA9 2003)).

Filarsky filed a petition for certiorari, which we granted. **564 U. S. ___** (2011).

II

Section 1983 provides a cause of action against any person who deprives an individual of federally guaranteed rights "under color" of state law. **42 U. S. C. § 1983**. Anyone whose conduct is "fairly attributable to the state" can be sued as a state actor under **§ 1983**. See *Lugar* v. *Ed-mondson Oil Co.*, **457 U. S. 922**, **937** (1982). At common law, government actors were afforded certain protections from liability, based on the reasoning that "the public good can best be secured by allowing officers **[*1662]** charged with the duty of deciding upon the rights of others, to act upon their own free, unbiased convictions, uninfluenced by any apprehensions." *Wasson* v. *Mitchell*, **18 Iowa 153**, **155-156** (1864) (**[***5]** internal quotation marks omitted); see also W. Prosser, Law of Torts § 25, p. 150 (1941) (common law protections derived from the need to avoid the "impossible burden [that] would fall upon all our agencies of government" if those acting on behalf of the government were "unduly hampered and intimidated in the discharge of their duties" by a fear of personal liability). Our decisions have recognized similar immunities under **§ 1983**, reasoning that common law protections "`well grounded in history and

reason' had not been abrogated `by covert inclusion in the general language' of **§ 1983**." *Imbler* v. *Pachtman*, **424 U. S. 409**, **418** (1976) (quoting *Tenney* v. *Brandhove*, **341 U. S. 367**, **376** (1951)).

In this case, there is no dispute that qualified immunity is available for the sort of investigative activities at issue. See *Pearson* v. *Callahan*, **555 U. S. 223**, **243-244** (2009). The Court of Appeals granted this protection to Chief Wells, Peel, and Bekker, but denied it to Filarsky, because he was not a public employee but was instead a private individual "retained by the City to participate in internal affairs investigations." **621 F. 3d, at 1079-1080**. In determining whether this distinction is valid, we look to the "general principles of tort immunities and defenses" applicable at common law, and the reasons we have afforded protection from suit under **§ 1983**. *Imbler*, **supra, at 418**.

A

Under our precedent, the inquiry begins with the common law as it existed when Congress passed **§ 1983** in 1871. *Tower* v. *Glover*, **467 U. S. 914**, **920** (1984). Understanding the protections the common law afforded to those exercising government power in 1871 requires an appreciation of the nature of government at that time. In the mid-nineteenth century, government was smaller in both size and reach. It had fewer responsibilities, and operated primarily at the local **[**669]** level. Local governments faced tight budget constraints, and generally had neither the need nor the ability to maintain an establihed bureaucracy staffed by professionals. See B. Campbell, The Growth of American Government: Governance From the Cleveland Era to the Present 14-16, 20-21 (1995); *id.*, at 20 (noting that in the 1880s "[t]he governor's office staff in Wisconsin . . . totaled five workers if we count the lieutenant governor and the janitor").

As one commentator has observed, there was at that time "no very clear conception of a professional office, that is, an office the incumbent of which devotes his entire time to the discharge of public functions, who has no other occupation, and who receives a sufficiently large compensation to enable him to live without resorting to other means." F. Goodnow, Principles of the Administrative Law of the United States 227 (1905). Instead, to a significant extent, government was "administered by members of society who temporarily or occasionally discharge[d] public functions." *Id.*, at 228. Whether government relied primarily upon professionals or occasional workers obviously varied across the country and across different government functions. But even at the turn of the twentieth century, a public servant was often one who "does not devote his entire time to his public duties, but is, at the same time that he is holding public office, permitted **[***6]** to carry on some other regular business, and as a matter of fact finds his main means of **[*1663]** support in such business or in his private means since he receives from his office a compensation insufficient to support him." *Id.*, at 227.

Private citizens were actively involved in government work, especially where the work most directly touched the lives of the people. It was not unusual, for example, to see the owner of the local general store step behind a window in his shop to don his postman's hat. See, *e.g.*, Stole Stamps, Maysville, KY, The Evening Bulletin, p. 1, Sept. 25, 1895 (reporting that "[t]he post office and general store at Mount Hope was broken into," resulting in the loss of $400 worth of cutlery and stamps). Nor would it have been a surprise to find, on a trip to the docks, the local ferryman collecting harbor fees as public wharfmaster. See 3 E. Johnson, A History of Kentucky and Kentuckians 1346 (1912).

Even such a core government activity as criminal prosecution was often carried out by a mixture of public employees and private individuals temporarily serving the public. At the time **§ 1983** was enacted, private lawyers were regularly engaged to conduct criminal prosecutions on behalf of the State. See, *e.g.*, *Commonwealth* v. *Gibbs*, **70 Mass. 146** (1855); *White* v. *Polk County*, **17 Iowa 413** (1864). Abraham Lincoln himself accepted several such appointments. See, *e.g.*, An Awful Crime and Speedy Punishment,

Springfield Daily Register, May 14, 1853 (reporting that "A. Lincoln, esq. was appointed prosecutor" in a rape case). In addition, private lawyers often assisted public prosecutors in significant cases. See, *e.g.*, *Commonwealth* v. *Knapp*, **10 Mass. 477**, **490-491** (1830); *Chambers* v. *State*, **22 Tenn. 237** (1842). And public prosecutors themselves continued to represent private clients while in office—sometimes creating odd conflicts of interest. See *People* v. *Bussey*, **82 Mich. 49**, **46 N. W. 97**, **98** (1890) (public prosecutor employed as private counsel by the defendant's wife **[**670]** in several civil suits against the defendant); *Phillip* v. *Waller*, **5 Haw. 609**, **617** (1886) (public prosecutor represented plaintiff in a suit for malicious prosecution); *Oliver* v. *Pate*, **43 Ind. 132**, **139** (1873) (public prosecutor who conducted a state prosecution against a defendant later served as counsel for the defendant in a malicious prosecution suit against the complaining witness).

This mixture of public responsibility and private pursuits extended even to the highest levels of government. Until the position became full-time in 1853, for example, the Attorney General of the United States was expected to and did maintain an active private law practice. To cite a notable illustration, in *Hayburn's Case*, **2 Dall. 409** (1792), the first Attorney General, Edmund Randolph, sought a writ of mandamus from this Court to compel a lower court to hear William Hayburn's petition to be put on the pension list. When this Court did not allow the Attorney General to seek the writ in his official capacity, Randolph readily solved the problem by arguing the case as Hay-burn's private lawyer. ***Ibid.***; see also Letter from Edmund Randolph to James Madison (Aug. 12, 1792), reprinted in 14 The Papers of James Madison 348, 349 (R. Rutland, T. Mason, R. Brugger, J. Sisson, & F. Teute eds. 1983); Bloch, **[***7]** The Early Role of the Attorney General in Our Constitutional Scheme: In the Beginning There Was Pragmatism, 1989 Duke L. J. 561, 598-599, n. 121, 619.

Given all this, it should come as no surprise that the common law did not draw a distinction between public servants and private individuals engaged in public service in according protection to those carrying out government responsibilities. Government actors involved in adjudicative activities, for example, were protected by an absolute immunity from suit. See **[*1664]** *Bradley* v. *Fisher*, **13 Wall. 335**, **347-348** (1872); J. Bishop, Commentaries on the Non-Contract Law § 781 (1889). This immunity applied equally to "the highest judge in the State or nation" and "the lowest officer who sits as a court and tries petty causes," T. Cooley, Law of Torts 409 (1879), including those who served as judges on a part-time or episodic basis. Justices of the peace, for example, often maintained active private law practices (or even had nonlegal livelihoods), and generally served in a judicial capacity only part-time. See *Hubbell* v. *Harbeck*, **54 Hun. 147**, **7 N. Y. S. 243** (1889); *Ingraham* v. *Leland*, **19 Vt. 304** (1847). In fact, justices of the peace were not even paid a salary by the government, but instead received compensation through fees payable by the parties that came before them. See W. Murfee, The Justice of the Peace § 1145 (1886). Yet the common law extended the same immunity "to a justice of the peace as to any other judicial officer." *Pratt* v. *Gardner*, **56 Mass. 63**, **70** (1848); see also *Mangold* v. *Thorpe*, **33 N. J. L. 134**, **137-138** (1868).

The common law also extended certain protections to individuals engaged in law enforcement activities, such as sheriffs and constables. At the time **§ 1983** was enacted, however, "[t]he line between public and private policing was frequently hazy. Private detectives and privately employed patrol personnel often were publicly appointed as special policemen, and the means and objects of detective work, in particular, made it difficult to distinguish between those on the public **[**671]** payroll and private detectives." Sklansky, The Private Police, 46 UCLA L. Rev. 1165, 1210 (1999) (footnotes and internal quotation marks omitted). The protections provided by the common law did not turn on whether someone we today would call a police officer worked for the government full-time or instead for both public and private employers. Rather, at common law, "[a] special constable, duly appointed according to law, ha[d] all the powers of a regular constable so far as may be necessary for the proper discharge of the special duties intrusted to him, and in the lawful discharge of those duties, [was] as fully protected as any other officer." W. Murfee, A Treatise on the Law of Sheriffs and Other Ministerial Officers § 1121, p. 609 (1884).

Sheriffs executing a warrant were empowered by the common law to enlist the aid of the able-bodied men of the community in doing so. See 1 W. Blackstone, Commentaries on the Laws of England 332 (1765); *In re Quarles*, **158 U. S. 532**, **535** (1895). While serving as part of this "posse comitatus," a private individual had the same authority as the sheriff, and was protected to the same extent. See, *e.g.*, *Robinson* v. *State*, **93 Ga. 77**, **18 S. E. 1018**, **1019** (1893) ("A member of a posse comitatus summoned by the **[***8]** sheriff to aid in the execution of a warrant for a felony in the sheriff `s hands is entitled to the same protection in the discharge of his duties as the sheriff himself "); *State* v. *Mooring*, **115 N. C. 709**, **20 S. E. 182** (1894) (considering it "well settled by the courts" that a sheriff may break open the doors of a house to execute a search warrant and that "if he act in good faith in doing so, both he and his posse comitatus will be protected"); *North Carolina* v. *Gosnell*, **74 F. 734**, **738-739** (CC WDNC 1896) ("Both judicial and ministerial officers, in the execution of the duties of their office, are under the strong protection of the law; and their legally summoned assistants, for such time as in service, are officers of the law"); *Reed* v. *Rice*, **25 Ky. 44**, **46-47** (App. 1829) (private individuals summoned by a constable to execute a search warrant were protected from a suit based on the invalidity of the warrant). **[*1665]**

Indeed, examples of individuals receiving immunity for actions taken while engaged in public service on a temporary or occasional basis are as varied as the reach of government itself. See, *e.g.*, *Gregory* v. *Brooks*, **37 Conn. 365**, **372** (1870) (public wharfmaster not liable for ordering removal of a vessel unless the order was issued maliciously); *Henderson* v. *Smith*, **26 W. Va. 829**, **836-838** (1885) (notaries public given immunity for discretionary acts taken in good faith); *Chamberlain* v. *Clayton*, **56 Iowa 331**, **9 N. W. 237** (1881) (trustees of a public institution for the disabled not liable absent a showing of malice); *McCor-mick* v. *Burt*, **95 Ill. 263**, **265-266** (1880) (school board members not liable for suspending a student in good faith); *Donohue* v. *Richards*, **38 Me. 379**, **392** (1854) (same); *Downer* v. *Lent*, **6 Cal. 94**, **95** (1856) (members of a Board of Pilot Commissioners given immunity for official acts); *Rail* v. *Potts & Baker*, **27 Tenn. 225**, **228-230** (1847) (private individuals appointed by the sheriff to serve as judges of an election were not liable for refusing a voter absent a showing of malice); *Jenkins* v. *Waldron*, **11 Johns. 114**, **120-121** (NY Sup. Ct. 1814) (same).

[1] We read **§ 1983** "in harmony with general principles of tort immunities and defenses." *Imbler*, **424 U. S., at 418**. **[**672]** And we "proceed[] on the assumption that common-law principles of . . . immunity were incorporated into our judicial system and that they should not be abrogated absent clear legislative intent to do so." *Pulliam* v. *Allen*, **466 U. S. 522**, **529** (1984). Under this assumption, immunity under **§ 1983** should not vary depending on whether an individual working for the government does so as a full-time employee, or on some other basis.

B

Nothing about the reasons we have given for recognizing immunity under **§ 1983** counsels against carrying forward the common law rule. As we have explained, such immunity "protect[s] government's ability to perform its traditional functions." *Wyatt* v. *Cole*, **504 U. S. 158**, **167** (1992). It does so by helping to avoid "unwarranted timidity" in performance of public duties, ensuring that talented candidates are not deterred from public service, and preventing the harmful distractions from carrying out the work of government that can often accompany damages suits. *Richardson* v. *McKnight*, **521 U. S. 399**, **409-411** (1997).

We have called the government interest in avoiding "unwarranted timidity" on the part of those engaged in the public's business "the most important special government immunity-producing concern." **Id., at 409**. Ensuring that those who serve the **[***9]** government do so "with the decisiveness and the judgment required by the public good," *Scheuer* v. *Rhodes*, **416 U. S. 232**, **240** (1974), is of vital importance regardless whether the individual sued as a state actor works full-time or on some other basis.

Affording immunity not only to public employees but also to others acting on behalf of the government similarly serves to "`ensure that talented candidates [are] not deterred by the threat of damages suits from entering public service.'" *Richardson*, **supra, at 408** (quoting *Wyatt*, **supra, at 167**). The government's need to attract talented individuals is not limited to full-time public employees. Indeed, it is often when there is a particular need for specialized knowledge or expertise that the government **[*1666]** must look outside its permanent work force to secure the services of private individuals. This case is a good example: Filarsky had 29 years of specialized experience as an attorney in labor, employment, and personnel matters, with particular expertise in conducting internal affairs investigations. App. to Pet. for Cert. 59, 89; App. 156. The City of Rialto certainly had no permanent employee with anything approaching those qualifications. To the extent such private individuals do not depend on the government for their livelihood, they have freedom to select other work—work that will not expose them to liability for government actions. This makes it more likely that the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts.

Sometimes, as in this case, private individuals will work in close coordination with public employees, and face threatened legal action for the same conduct. See App. 134 (Delia's **[**673]** lawyer: "everybody is going to get named" in threatened suit). Because government employees will often be protected from suit by some form of immunity, those working alongside them could be left holding the bag—facing full liability for actions taken in conjunction with government employees who enjoy immunity for the same activity. Under such circumstances, any private individual with a choice might think twice before accepting a government assignment.

The public interest in ensuring performance of government duties free from the distractions that can accompany even routine lawsuits is also implicated when individuals other than permanent government employees discharge these duties. See *Richardson*, **supra, at 411**. Not only will such individuals' performance of any ongoing government responsibilities suffer from the distraction of lawsuits, but such distractions will also often affect any public employees with whom they work by embroiling those employees in litigation. This case is again a good example: If the suit against Filarsky moves forward, it is highly likely that Chief Wells, Bekker, and Peel will all be required to testify, given their roles in the dispute. Allowing suit under **§ 1983** against private individuals assisting the government will substantially undermine an important reason immunity is accorded public **[***10]** employees in the first place.

Distinguishing among those who carry out the public's business based on the nature of their particular relationship with the government also creates significant line-drawing problems. It is unclear, for example, how Filarsky would be categorized if he regularly spent half his time working for the City, or worked exclusively on one City project for an entire year. See Tr. of Oral Arg. 34-36. Such questions deprive state actors of the ability to "reasonably anticipate when their conduct may give rise to liability for damages," *Anderson* v. *Creighton*, **483 U. S. 635**, **646** (1987) (alteration and internal quotation marks omitted), frustrating the purposes immunity is meant to serve. An uncertain immunity is little better than no immunity at all.

III

Our decisions in *Wyatt* v. *Cole*, **504 U. S. 158** (1992), and *Richardson* v. *McKnight*, **521 U. S. 399** (1997), are not to the contrary. In *Wyatt*, we held that individuals who used a state replevin law to compel the local sheriff to seize disputed property from a former business partner were not entitled to seek qualified immunity. Cf. *Lugar*, **457 U. S. 922** (holding **[*1667]** that an individual who uses a state replevin, garnishment, or attachment statute later declared to be unconstitutional acts under color of state law for purposes of **§ 1983**). We explained that the reasons underlying recognition of qualified immunity did not support its extension to individuals who had no connection to government and pursued purely private

ends. Because such individuals "hold no office requiring them to exercise discretion; nor are they principally concerned with enhancing the public good," we concluded that extending immunity to them would "have no bearing on whether public officials are able to act forcefully and decisively in their jobs or on whether qualified applicants enter public service." **504 U. S., at 168**.

[**674] *Wyatt* is plainly not implicated by the circumstances of this case. Unlike the defendants in *Wyatt*, who were using the mechanisms of government to achieve their own ends, individuals working for the government in pursuit of government objectives are "principally concerned with enhancing the public good." ***Ibid***. Whether such individuals have assurance that they will be able to seek protection if sued under **§ 1983** directly affects the government's ability to achieve its objectives through their public service. Put simply, *Wyatt* involved no government agents, no government interests, and no government need for immunity.

In *Richardson*, we considered whether guards employed by a privately run prison facility could seek the protection of qualified immunity. Although the Court had previously determined that public-employee prison guards were entitled to qualified immunity, see *Procunier* v. *Navarette*, **434 U. S. 555** (1978), it determined that prison guards employed by a private company and working in a privately run prison facility did not enjoy the same protection. We explained that the various incentives characteristic of the private market in that case ensured that the guards would not perform their public duties with unwarranted timidity or be deterred from entering **[***11]** that line of work. **521 U. S., at 410-411**.

Richardson was a self-consciously "narrow[]" decision. **Id., at 413** ("[W]e have answered the immunity question narrowly, in the context in which it arose"). The Court made clear that its holding was not meant to foreclose all claims of immunity by private individuals. ***Ibid***. Instead, the Court emphasized that the particular circumstances of that case—"a private firm, systematically organized to assume a major lengthy administrative task (managing an institution) with limited direct supervision by the government, undertak[ing] that task for profit and potentially in competition with other firms"—combined sufficiently to mitigate the concerns underlying recognition of governmental immunity under **§ 1983**. ***Ibid***. Nothing of the sort is involved here, or in the typical case of an individual hired by the government to assist in carrying out its work.

* * *

A straightforward application of the rule set out above is sufficient to resolve this case. Though not a public employee, Filarsky was retained by the City to assist in conducting an official investigation into potential wrongdoing. There is no dispute that government employees performing such work are entitled to seek the protection of qualified immunity. The Court of Appeals rejected Filarsky's claim to the protection accorded Wells, Bekker, and Peel solely because he was not a permanent, full-time employee of the City. The common law, however, did not draw **[*1668]** such distinctions, and we see no justification for doing so under **§ 1983**.

New York City has a Department of Investigation staffed by full-time public employees who investigate city personnel, and the resources to pay for it. The City of Rialto has neither, and so must rely on the occasional services of private individuals such as Mr. Filarsky. There is no reason Rialto's internal affairs investigator should be denied the qualified immunity **[**675]** enjoyed by the ones who work for New York.

In light of the foregoing, the judgment of the Court of Appeals denying qualified immunity to Filarsky is reversed.

It is so ordered.

JUSTICE GINSBURG, concurring.

The Court addresses a sole question in this case: Is a private attorney retained by a municipality to investigate a personnel matter eligible for qualified immunity in a suit under **42 U. S. C § 1983** alleging a constitutional violation committed in the course of the investigation? I agree that the answer is yes and that the judgment of the Court of Appeals holding private attorney Filarsky categorically ineligible for qualified immunity must be reversed. Qualified immunity may be overcome, however, if the defendant knew or should have known that his conduct violated a right "clearly established" at the time of the episode in suit. See *Harlow* v. *Fitzgerald*, **457 U. S. 800**, **818** (1982). Because the Ninth Circuit did not consider the application of that standard to Filarsky, the matter, as I see it, may be pursued on remand.

Filarsky was retained by the City of Rialto to investigate whether city firefighter Delia was taking time off from work under the false pretense of a disabling physical condition. In pursuit of the investigation, **[***12]** Filarsky asked Delia to consent to a search of his home to determine what Delia had done with several rolls of insulation he had recently purchased at a home improvement store. When Delia, on counsel's advice, refused to consent to the search, Filarsky "hatch[ed] a plan" to overcome Delia s resistance. *Delia* v. *Rialto*, **621 F. 3d 1069**, **1077** (CA9 2010). "[W]e will do it a different way," Filarsky informed Delia. App. 129; see **621 F. 3d, at 1077** ("Unable to obtain Delia's consent to a warrantless search of his house . . ., Filarsky tried a different tactic.").

Following Filarsky's advice, Fire Chief Wells ordered Delia to bring the insulation out of his house and place the rolls on his lawn for inspection. App. 158. Filarsky recommended this course, the Ninth Circuit observed, mindful that "an individual does not have an expectation of privacy in items exposed to the public, thereby eliminating the need for a search warrant." **621 F. 3d, at 1077**. Delia complied with Chief Wells's order by producing the rolls, all of them unused, App. 78, 85, after which the investigation into the legitimacy of Delia's absence from work apparently ended.

In explaining why the individual defendants other than Filarsky were entitled to summary judgment on their qualified immunity pleas, the Ninth Circuit stated that "no . . . threat to [Delia's] employment" attended Fire Chief Wells's order. **621 F. 3d, at 1079**. The District Court similarly stated that "Delia was not threatened with insubordination or termination if he did not comply with [the] order." App. to Pet. for Cert. 48.

These statements are at odds with the facts, as recounted by the Court of Appeals. "At the onset of the interview," the Ninth Circuit stressed, "Filarsky warned Delia that he was obligated to fully cooperate," and that "[i]f at any time it is deemed **[*1669]** you are not **[**676]** cooperating then you can be held to be insubordinate and subject to disciplinary action, up to and including termination." **621 F. 3d, at 1072** (internal quotation marks omitted). Continuing in this vein, the Court of Appeals concluded that "Delia's actions were involuntary and coerced by the direct threat of sanctions including loss of his firefighter position." **Id., at 1077**; see **id., at 1085** ("Delia's actions were involuntary and occurred as a result of the direct threat of sanctions[.]").

In further proceedings upon return of this case to the Court of Appeals, these questions bear attention. First, if it is "clearly established," as the Ninth Circuit thought it was, that "the warrantless search of a home is presumptively unreasonable," **id., at 1075**, and that a well-trained investigating officer would so comprehend,**[fn1]** may an official circumvent the warrant requirement by ordering the person under investigation to cart his personal property out of the house for inspection?**[fn2]** And if it is "clearly established" that an employee may not be fired for exercising a constitutional right, see **id., at 1079**,**[fn3]**

is it not equally plain that discipline or discharge may not be threatened to induce surrender of such a right?

In short, the Court has responded appropriately to the question tendered for our review, but the Circuit's law will remain muddled absent the Court of Appeals' focused attention to the question whether Filarsky's conduct **[***13]** violated "clearly established" law.

[fn1] Delia also suggests that Filarsky's conduct should be measured against a "reasonable attorney" standard: whether an attorney provid ing advice in a public-employee investigation should have known that the search of Delia's personal property, stored in his home, would be lawless. See Brief for Respondent 45-46.

[fn2] An additional inquiry may be appropriate: Although conceived as a substitute for a warrantless entry, should the inspection order Filarsky counseled pass muster as a permissible discovery device? Cf. *Okla homa Press Publishing Co.* v. *Walling*, **327 U. S. 186**, **195**, **208-211** (1946) (subpoena *duces tecum* for a corporation's business records, authorized by § 9 of the Fair Labor Standards Act, encountered no Fourth Amend ment shoal).

[fn3] The Ninth Circuit referred to cases holding that public employees' job retention cannot be conditioned on relinquishing the Fifth Amend ment's safeguard against self-incrimination: *Uniformed Sanitation Men Assn., Inc.* v. *Commissioner of Sanitation of City of New York*, **392 U. S. 280** (1968), and *Gardner* v. *Broderick*, **392 U. S. 273** (1968).

JUSTICE SOTOMAYOR, concurring.

The Court of Appeals denied qualified immunity to Filarsky solely because, as retained outside counsel, he was not a formal employee of the City of Rialto. I agree with and join today s opinion holding that this distinction is not a sound basis on which to deny immunity.

I add only that it does not follow that *every* private individual who works for the government in some capacity necessarily may claim qualified immunity when sued under **42 U. S. C. § 1983**. Such individuals must satisfy our usual test for conferring immunity. As the Court explains, that test "look[s] to the `general principles of tort immunities and defenses' applicable at common law, and the reasons we have afforded protection from suit under **§ 1983**." *Ante*, at 5 (quoting *Imbler* v. *Pachtman*, **424 U. S. 409**, **418** (1976)).

Thus in *Richardson* v. *McKnight*, **521 U. S. 399** (**[**677]** 1997), we denied qualified immunity to prison guards who were **[*1670]** significantly favoring an extension of governmental immunity" in that context. **Id., at 412**. We left open, however, the question whether immunity would be appropriate for "a private individual briefly associated with a government body, serving as an adjunct to government in an essential governmental activity, or acting under close official supervision." **Id., at 413**.

Filarsky, supported by the United States as *amicus curiae*, contends that he fits into this coda because he worked in close coordination with and under the supervision of City employees. Whether Filarsky was supervised by those employees, and did not himself do the supervising, is unclear. But there is no doubt that Filarsky worked alongside the employees in investigating Delia. In such circumstances, I agree that Filarsky should be allowed to claim qualified immunity from a § 1983 suit. As the Court's opinion persuasively explains, there is a "`firmly rooted' tradition of immunity" applicable to individuals who perform government work in capacities other than as formal employees. **Id., at 404**; see *ante*, at 5-11. And conferring qualified immunity on individuals like Filarsky helps "protec[t] government's ability to

perform its traditional functions," and thereby helps "protect the public at large." *Wyatt* v. *Cole*, **504 U. S. 158**, **167-168** (1992). When a private individual works closely with immune government employees, there is a real risk that the individual will be intimidated from performing his duties fully if he, and he alone, may bear the price of liability for collective conduct. See *ante*, at 12; see also *ante*, at 13 (noting distraction caused to immune public employees by § 1983 litigation brought against nonimmune associates).

This does not mean that a private individual may assert qualified immunity *only* when working in close coordination with government employees. For example, *Richardson*'s suggestion that immunity is also appropriate for individuals "serving as an adjunct to government in an essential governmental activity," **521 U. S., at 413**, would seem to encompass modern-day special prosecutors and comparable individuals hired for their independence. There may yet be other circumstances in which immunity is warranted for private actors. The point is simply **[***14]** that such cases should be decided as they arise, as is our longstanding practice in the field of immunity law.

Messerschmidt v. Millender, 132 S. Ct. 1235, 182 L. Ed. 2d 47 (2012) [2012 BL 42476]

Pagination

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Supreme Court of the United States

CURT MESSERSCHMIDT, ET AL., PETITIONERS v. BRENDA MILLENDER, AS EXECUTOR OF THE ESTATE OF AUGUSTA MILLENDER, DECEASED, ET AL.

No. 10-704
On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
Argued December 5, 2011 Decided February 22, 2012 **[**51] [*1238]**

Syllabus

Shelly Kelly was afraid that she would be attacked by her boyfriend, Jerry Ray Bowen, while she moved out of her apartment. She therefore requested police protection. Two officers arrived, but they were called away to an emergency. As soon as the officers left, Bowen showed up at the apartment, yelled "I told you never to call the cops on me bitch!" and attacked Kelly, attempting to throw her over a second-story landing. After Kelly escaped to her car, Bowen pointed a sawed-off shotgun at her and threatened to kill her if she tried to leave. Kelly nonetheless sped away as Bowen fired five shots at the car, blowing out one of its tires.

Kelly later met with Detective Curt Messerschmidt to discuss the incident. She described the attack in detail, mentioned that Bowen had previously assaulted her, that he had ties to the Mona Park Crips gang, and that he might be staying at the home of his former foster mother, Augusta Millender. Following this conversation, Messerschmidt conducted a detailed investigation, during which he confirmed Bowen's connection to the Millenders' home, verified his membership in two gangs, and learned that Bowen had been arrested and convicted for numerous violent and firearm-related offenses. Based on this investigation, Messerschmidt drafted an application for a warrant authorizing a search of the Millenders' home for all firearms and ammunition, as well as evidence indicating gang membership.

Messerschmidt included two affidavits in the warrant application. The first detailed his extensive law enforcement experience and his specialized training in gang-related crimes. The second, expressly incorporated into the search warrant, described the incident and explained why Messerschmidt believed there was probable cause for the search. It also requested that the warrant be endorsed for night service because of Bowen's gang ties. Before submitting the application to a magistrate for approval, Messerschmidt had it reviewed by his supervisor, Sergeant Robert Lawrence, as well as a police lieutenant and a deputy district attorney. Messerschmidt then submitted the application to a magistrate, who issued the warrant. The ensuing search uncovered only Millender's shotgun, a California Social Services letter addressed to Bowen, and a box of .45-caliber ammunition.

The Millenders filed an action under **42 U. S. C. § 1983** against petitioners Messerschmidt and Lawrence, alleging **[**52]** that the officers had subjected them to an unreasonable search in violation of the **Fourth** Amendment. The District Court granted summary judgment to the Millenders, concluding that the firearm and gang-material aspects of the search warrant were overbroad and that the officers were not entitled to qualified immunity from **[***2]** damages. The Ninth Circuit, sitting en banc, affirmed the denial of qualified immunity. The court held that the warrant's authorization was unconstitutionally overbroad because the affidavits and warrant failed to establish probable cause that the broad categories of firearms, firearm-related material, and gang-related material **[*1239]** were contraband or evidence of a crime, and that a reasonable officer would have been aware of the warrant's deficiency.

Held: The officers are entitled to qualified immunity. Pp. 8-19.

(a) Qualified immunity "protects government officials `from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson* v. *Callahan*, **555 U. S. 223**, **231**. Where the alleged **Fourth** Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner, or in "objective good faith." *United States* v. *Leon*, **468 U. S. 897**, **922-923**. Nonetheless, that fact does not end the inquiry into objective reasonableness. The Court has recognized an exception allowing suit when "it is obvious that no reasonably competent officer would have concluded that a warrant should issue." *Malley* v. *Briggs*, **475 U. S. 335**, **341**. The "shield of immunity" otherwise conferred by the warrant, *id.*, at *345*, will be lost, for example, where the warrant was "based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, **468 U. S., at 923**. The threshold for establishing this exception is high. "[I]n the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination" because "[i]t is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the **Fourth** Amendment." *Leon*, *supra*, at *921*. Pp. 8-10.

(b) This case does not fall within that narrow exception. It would not be entirely unreasonable for an officer to believe that there was probable cause to search for all firearms and firearm-related materials. Under the circumstances set forth in the warrant, an officer could reasonably conclude that there was a "fair probability" that the sawed-off shotgun was not the only firearm Bowen owned, *Illinois* v. *Gates*, **462 U. S. 213**, **238**, and that Bowen's sawed-off shotgun was illegal. Cf. **26 U. S. C. §§ 5845**(a), **5861**(d). Given Bowen's possession of one illegal gun, his gang membership, willingness to use the gun to kill someone, and concern about the police, it would not be unreasonable for an officer to conclude that Bowen owned other illegal guns. An officer also **[**53]** could reasonably believe that seizure of firearms was necessary to prevent further assaults on Kelly. California law allows a magistrate to issue a search warrant for items "in the possession of any person with the intent to use them as a means of committing a public offense," Cal. Penal Code Ann. § **1524**(a)(3), and the warrant application submitted by the officers specifically referenced this **[***3]** provision as a basis for the search. Pp. 10-12.

(c) Regarding the warrant's authorization to search for gang-related materials, a reasonable officer could view Bowen's attack as motivated not by the souring of his romantic relationship with Kelly but by a desire to prevent her from disclosing details of his gang activity to the police. It would therefore not be unreasonable — based on the facts set out in the affidavit — for an officer to believe that evidence of Bowen's gang affiliation would prove helpful in prosecuting him for the attack on Kelly, in supporting additional, related charges against Bowen for the assault, or in impeaching Bowen or rebutting his defenses. **[*1240]** Moreover, even if this were merely a domestic dispute, a reasonable officer could still conclude that gang paraphernalia found at the Millenders' residence could demonstrate Bowen's control over the premises or his connection to other evidence found there. Pp. 12-16.

(d) The fact that the officers sought and obtained approval of the warrant application from a superior and a deputy district attorney before submitting it to the magistrate provides further support for the conclusion that an officer could reasonably have believed that the scope of the warrant was supported by probable cause. A contrary conclusion would mean not only that Messerschmidt and Lawrence were "plainly incompetent" in concluding that the warrant was supported by probable cause, *Malley*, ***supra***, at *341*, but that their supervisor, the deputy district attorney, and the magistrate were as well. Pp. 16-18.

(e) In holding that the warrant in this case was so obviously defective that no reasonable officer could have believed it to be valid, the court below erred in relying on *Groh* v. *Ramirez*, **540 U. S. 551**. There, officers who carried out a warrant-approved search were not entitled to qualified immunity because the warrant failed to describe any of the items to be seized and "even a cursory reading of the warrant" would have revealed this defect. *Id.*, at *557*. Here, in contrast, any arguable defect would have become apparent only upon a close parsing of the warrant application, and a comparison of the supporting affidavit to the terms of the warrant to determine whether the affidavit established probable cause to search for all the items listed in the warrant. Unlike in *Groh*, any error here would not be one that "just a simple glance" would have revealed. *Id. at 564*. Pp. 18-19.

620 F. 3d 1016, reversed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, BREYER, and ALITO, JJ., joined. BREYER, J., filed a concurring opinion. KAGAN, J., filed an **[**54]** opinion concurring in part and dissenting in part. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined.

CHIEF JUSTICE ROBERTS delivered the opinion of theCourt.

Petitioner police officers conducted a search of respondents' home pursuant to a **[*1241]** warrant issued by a neutral magistrate. The warrant authorized a search for all guns and gang-related material, in connection with the investigation of a known gang member for shooting at his ex-girlfriend with a pistol-gripped sawed-off shotgun, **[***4]** because she had "call[ed] the cops" on him. App. 56. Respondents brought an action seeing to hold the officers personally liable under **42 U. S. C. § 1983**, alleging that the search violated their **Fourth** Amendment rights because there was not sufficient probable cause to believe the items sought were evidence of a crime. In particular, respondents argued that there was no basis to search for all guns simply because the suspect owned and had used a sawed-off shotgun, and no reason to search for gang material because the shooting at the ex-girlfriend for "call[ing] the cops" was solely a domestic dispute. The Court of Appeals for the Ninth Circuit held that the warrant was invalid, and that the officers were not entitled to immunity from personal liability because this invalidity was so obvious that any reasonable officer would have recognized it, despite the magistrate's approval. We disagree and reverse.

I

A

Shelly Kelly decided to break off her romantic relationship with Jerry Ray Bowen and move out of her apartment, to which Bowen had a key. Kelly feared an attack from Bowen, who had previously assaulted her and had been convicted of multiple violent felonies. She therefore asked officers from the Los Angeles County Sheriffs Department to accompany her while she gathered her things. Deputies from the Sheriff `s Department came to assist Kelly but were called away to respond to an emergency before the move was complete.

As soon as the officers left, an enraged Bowen appeared at the bottom of the stairs to the apartment, yelling "I told you never to call the cops on me bitch!" App. 39, 56. Bowen then ran up the stairs to Kelly, grabbed her by her shirt, and tried to throw her over the railing of the second-story landing. When Kelly successfully resisted, Bowen bit her on the shoulder and attempted to drag her inside the apartment by her hair. Kelly again managed to escape Bowen's grasp, and ran to her car. By that time, Bowen had retrieved a black sawed-off shotgun with a pistol grip. He ran in front of Kelly's car, pointed the shotgun at her, and told Kelly that if she tried to leave he would kill her. Kelly leaned over, fully depressed the gas pedal, and sped away. Bowen fired at the car a total of five times, blowing out the car's left front tire in the process, but Kelly managed to escape.

Kelly quickly located police officers and reported the assault. She told the police what had happened — that Bowen had attacked her after becoming "angry because she had called the **[**55]** Sheriff's Department" — and she mentioned that Bowen was "an active member of the `Mona Park Crips,'" a local street gang. *Id.*, at 39. Kelly also provided the officers with photographs of Bowen.

Detective Curt Messerschmidt was assigned to investigate the incident. Messerschmidt met with Kelly to obtain details of the assault and information about Bowen. Kelly described the attack and informed Messerschmidt that she thought Bowen was staying at his foster mother's home at 2234 East 120th Street. Kelly also informed Messerschmidt of Bowen's previous assaults on her and of his gang ties.

Messerschmidt then conducted a **[***5]** background check on Bowen by consulting police **[*1242]** records, California Department of Motor Vehicles records, and the "cal-gang" database. Based on this research, Messerschmidt confirmed Bowen's connection to the 2234 East 120th Street address. He also confirmed that Bowen was an "active" member of the Mona Park Crips and a "secondary" member of the Dodge City Crips. *Id.*, at 64. Finally, Messerschmidt learned that Bowen had been arrested and convicted for numerous violent and firearm-related offenses. Indeed, at the time of the investigation, Bowen's "rapsheet" spanned over 17 printed pages, and indicated that he had been arrested at least 31 times. Nine of these arrests were for firearms offenses and six were for violent crimes, including three arrests for assault with a deadly weapon (firearm). *Id.*, at 72-81.

Messerschmidt prepared two warrants: one to authorize Bowen's arrest and one to authorize the search of 2234 East 120th Street. An attachment to the search warrant described the property that would be the object of the search:

"All handguns, rifles, or shotguns of any caliber, or any firearms capable of firing ammunition, or firearms or devices modified or designed to allow it [*sic*] to fire ammunition. All caliber of ammunition, miscellaneous gun parts, gun cleaning kits, holsters which could hold or have held any caliber handgun being sought. Any receipts or paperwork, showing the purchase, ownership, or possession of the handguns being sought. Any firearm for which there is no proof of ownership. Any firearm capable of firing or chambered to fire any caliber ammunition.

"Articles of evidence showing street gang membership or affiliation with any Street Gang to include but not limited to any reference to `Mona Park Crips', including writings or graffiti depicting gang membership, activity or identity. Articles of personal property tending to establish the identity of person [*sic*] in control of the premise or premises. Any photographs or photograph albums depicting persons, vehicles, weapons or locations, which may appear relevant to gang membership, or which may depict the item being sought and or believed to be evidence in the case being investigated on this warrant, or which may depict evidence of criminal activity. Additionally to include any gang indicia that would establish the persons being sought in this warrant, affiliation or membership with the `Mona Park Crips' street gang." *Id.*, at 52.

Two affidavits accompanied Messerschmidt's warrant applications. The first affidavit described Messerschmidt's **[**56]** extensive law enforcement experience, including that he had served as a peace officer for 14 years, that he was then assigned to a "specialized unit" "investigating gang related crimes and arresting gang members for various violations of the law," that he had been involved in "hundreds of gang related incidents, contacts, and or arrests" during his time on the force, and that he had "received specialized training in the field of gang related crimes" and training in "gang related shootings." *Id.*, at 53-54.

The second affidavit — expressly **[***6]** incorporated into the search warrant — explained why Messerschmidt believed there was sufficient probable cause to support the warrant. That affidavit described the facts of the incident involving Kelly and Bowen in great detail, including the weapon used in the assault. The affidavit recounted that Kelly had identified Bowen as the assailant and that she thought Bowen might be found at 2234 East 120th Street. It also reported that Messerschmidt had "conducted an extensive background search on the suspect by utilizing departmental **[*1243]** records, state computer records, and other police agency records," and that from that information he had concluded that Bowen resided at 2234 East 120th Street. *Id.*, at 58.

The affidavit requested that the search warrant be endorsed for night service because "information provided by the victim and the cal-gang data base" indicated that Bowen had "gang ties to the Mona Park Crip gang" and that "night service would provide an added element of safety to the community as well as for the deputy personnel serving the warrant." *Id.*, at 59. The affidavit concluded by noting that Messerschmidt "believe[d] that the items sought" would be in Bowen's possession and that "recovery of the weapon could be invaluable in the successful prosecution of the suspect involved in this case, and the curtailment of further crimes being committed." *Ibid.*

Messerschmidt submitted the warrants to his supervisors — Sergeant Lawrence and Lieutenant Ornales — for review. Deputy District Attorney Janet Wilson also reviewed the materials and initialed the search warrant, indicating that she agreed with Messerschmidt's assessment of probable cause. *Id.*, at 27, 47. Finally, Messerschmidt submitted the warrants to a magistrate. The magistrate approved the warrants and authorized night service.

The search warrant was served two days later by a team of officers that included Messerschmidt and Lawrence. Sheriff's deputies forced open the front door of 2234 East 120th Street and encountered Augusta Millender — a woman in her seventies — and Millender's daughter and grandson. As instructed by the police, the Millenders went outside while the residence was secured but remained in the living room while the search was conducted. Bowen was not found in the residence. The search did, however, result in the seizure of Augusta Millender's shotgun, a California Social Services letter addressed to Bowen, and a box of .45-caliber ammunition.

Bowen was arrested two weeks later after Messerschmidt found him hiding under a bed in a motel room.

B

The Millenders filed suit in Federal District Court against the County of **[**57]** Los Angeles, the sheriff `s department, the sheriff, and a number of individual officers, including Messerschmidt and Lawrence. The complaint alleged, as relevant here, that the search warrant was invalid under the **Fourth** Amendment. It sought damages from Messerschmidt and Lawrence, among others.

The parties filed cross motions for summary judgment on the validity of the search warrant. The District Court found the warrant defective **[***7]** in two respects. The District Court concluded that the warrant's

authorization to search for firearms was unconstitutionally overbroad because the "crime specified here was a physical assault with a very specific weapon" — a black sawed-off shotgun with a pistol grip — negating any need to "search for all firearms." *Millender* v. *County of Los Angeles*, Civ. *No. 05-2298* (CD Cal., Mar. 15, 2007), App. to Pet. for Cert. 106, 157, *2007 WL 7589200*, *21. The court also found the warrant overbroad with respect to the search for gang-related materials, because there "was no evidence that the crime at issue was gang-related." App. to Pet. for Cert. 157. As a result, the District Court granted summary judgment to the Millenders on their constitutional challenges to the firearm and gang material aspects of the search warrant. *Id.*, at *160*. The District Court also rejected the officers' claim that they were entitled to qualified immunity from damages. *Id.*, at *171*. **[*1244]**

Messerschmidt and Lawrence appealed, and a divided panel of the Court of Appeals for the Ninth Circuit reversed the District Court's denial of qualified immunity. **564 F. 3d 1143** (2009). The court held that the officers were entitled to qualified immunity because "they reasonably relied on the approval of the warrant by a deputy district attorney and a judge." ***Id.***, at **1145**.

The Court of Appeals granted rehearing en banc and affirmed the District Court's denial of qualified immunity. **620 F. 3d 1016** (CA9 2010). The en banc court concluded that the warrant's authorization was unconstitutionally overbroad because the affidavit and the warrant failed to "establish[ ] probable cause that the broad categories of firearms, firearm-related material, and gang-related material described in the warrant were contraband or evidence of a crime." ***Id.***, at **1033**. In the en banc court's view, "the deputies had probable cause to search for a single, identified weapon. . . . They had no probable cause to search for the broad class of firearms and firearm-related materials described in the warrant." ***Id.***, at **1027**. In addition, "[b]ecause the deputies failed to establish any link between gang-related materials and a crime, the warrant authorizing the search and seizure of all gang-related evidence [was] likewise invalid." ***Id.***, at **1031**. Concluding that "a reasonable officer in the deputies' position would have been well aware of this deficiency," the en banc court held that the officers were not entitled to qualified immunity. ***Id.***, at **1033**-**1035**.

There were two separate dissenting opinions. Judge Callahan determined that "the officers had probable cause to search for and seize any firearms in the home in which Bowen, a gang member and felon, was thought to reside." ***Id.***, at **1036**. She also concluded that "the officers reasonably relied on their superiors, the district attorney, and the magistrate to correct" any overbreadth in the warrant, **[**58]** and that the officers were entitled to qualified immunity because their actions were not objectively unreasonable. ***Id.***, at **1044, 1049**. Judge Silverman also dissented, concluding that the "deputies' belief in the validity of . . . the warrant was entirely reasonable" and that the "record [wa]s totally devoid of any evidence that the deputies acted other than in good **[***8]** faith." ***Id.***, at **1050**. Judge Tallman joined both dissents.

We granted certiorari. **564 U. S. ___** (2011).

II

The Millenders allege that they were subjected to an unreasonable search in violation of the **Fourth** Amendment because the warrant authorizing the search of their home was not supported by probable cause. They seek damages from Messerschmidt and Lawrence for their roles in obtaining and executing this warrant. The validity of the warrant is not before us. The question instead is whether Messerschmidt and Lawrence are entitled to immunity from damages, even assuming that the warrant should not have been issued.

"The doctrine of qualified immunity protects government officials `from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a

reasonable person would have known.'" *Pearson* v. *Callahan*, **555 U. S. 223**, **231** (2009) (quoting *Harlow* v. *Fitzgerald*, **457 U. S. 800**, **818** (1982)). Qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments," and "protects `all but the plainly incompetent or those who knowingly violate the law.'" *Ashcroft* v. *al-Kidd*, **563 U. S. ___**, ___ (**[*1245]** 2011) (slip op., at 12) (quoting *Malley* v. *Briggs*, **475 U. S. 335**, **341** (1986)). "[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the `objective legal reasonableness' of the action, assessed in light of the legal rules that were `clearly established' at the time it was taken." *Anderson* v. *Creighton*, **483 U. S. 635**, **639** (1987) (citation omitted).

Where the alleged **Fourth** Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner or, as we have sometimes put it, in "objective good faith." *United States* v. *Leon*, **468 U. S. 897**, **922-923** (1984).**[fn1]** Nonetheless, under our precedents, the fact that a neutral magistrate has issued a warrant authorizing the allegedly unconstitutional search or seizure does not end the inquiry into objective reasonableness. Rather, we have recognized an exception allowing suit when "it is obvious **[**59]** that no reasonably competent officer would have concluded that a warrant should issue." *Malley*, **475 U. S., at 341**. The "shield of immunity" otherwise conferred by the warrant, ***id.***, at **345**, will be lost, for example, where the warrant was "based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, **468 U. S., at 923** (internal quotation marks omitted).**[fn2]**

Our precedents make clear, however, that the threshold for establishing this exception is a high one, and it should be. As we explained in *Leon*, "[i]n the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination" because "[i]t is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the **Fourth** Amendment." ***Id.***, at **921**; see also *Malley*, ***supra***, at **346**, n. 9 ("It is a sound presumption that the magistrate is more qualified than the police **[***9]** officer to make a probable cause determination, and it goes without saying that where a magistrate acts mistakenly in issuing a warrant but within the range of professional competence of a magistrate, the officer who requested the warrant cannot be held liable" (internal quotation marks and citation omitted)). **[*1246]**

III

The Millenders contend, and the Court of Appeals held, that their case falls into this narrow exception. According to the Millenders, the officers "failed to provide *any* facts or circumstances from which a magistrate could properly conclude that there was probable cause to seize the broad classes of items being sought," and "[n]o reasonable officer would have presumed that such a warrant was valid." Brief for Respondents 27. We disagree.

A

With respect to the warrant's authorization to search for and seize all firearms, the Millenders argue that "a reasonably well-trained officer would have readily perceived that there was no probable cause to search the house for *all* firearms and firearm-related items." *Id.*, at 32. Noting that "the affidavit indicated exactly what item was evidence of a crime — the `black sawed off shotgun with a pistol grip,'" they argue that "[n]o facts established that Bowen possessed any other firearms, let alone that such firearms (if they existed) were `contraband or evidence of a crime.'" *Ibid.* (quoting App. 56).

Even if the scope of the warrant were overbroad in authorizing a **[**60]** search for all guns when there was information only about a specific one, that specific one was a sawed-off shotgun with a pistol grip, owned by a known gang member, who had just fired the weapon five times in public in an attempt to murder another person, on the asserted ground that she had "call[ed] the cops" on him. *Id.*, at 56. Under these circumstances — set forth in the warrant — it would not have been unreasonable for an officer to conclude that there was a "fair probability" that the sawed-off shotgun was not the only firearm Bowen owned. *Illinois* v. *Gates*, **462 U. S. 213**, **238** (1983). And it certainly would have been reasonable for an officer to assume that Bowen's sawed-off shotgun was illegal. Cf. **26 U. S. C. §§ 5845**(a), **5861**(d). Evidence of one crime is not always evidence of several, but given Bowen's possession of one illegal gun, his gang membership, his willingness to use the gun to kill someone, and his concern about the police, a reasonable officer could conclude that there would be additional illegal guns among others that Bowen owned.**[fn3]**

A reasonable officer also could believe that seizure of the firearms was necessary to prevent further assaults on Kelly. California law allows a magistrate to issue a search warrant for items "in the possession of any person with the intent to use them as a means of committing a public offense," Cal. Penal Code Ann. § **1524**(a)(3) (West 2011), and the warrant application submitted by the officers specifically referenced this provision as a basis for the search. App. 48. Bowen had already attempted to murder Kelly once with a firearm, and had yelled "I'll kill you" as she tried to escape from him. *Id.*, at 56-57. A reasonable officer could conclude that Bowen would make another attempt on **[***10]** Kelly's life and that he possessed other firearms "with the intent to use them" to that end. Cal. Penal Code Ann. § **1524**(a)(3).

Given the foregoing, it would not have been "entirely unreasonable" for an officer to believe, in the particular circumstances of this case, that there was probable cause to search for all firearms and firearm-related **[*1247]** materials. *Leon*, ***supra***, at **923** (internal quotation marks omitted).

With respect to the warrant's authorization to search for evidence of gang membership, the Millenders contend that "no reasonable officer could have believed that the affidavit presented to the magistrate contained a sufficient basis to conclude that the gang paraphernalia sought was contraband or evidence of a crime." Brief for Respondents 28. They argue that "the magistrate [could not] have reasonably concluded, based on the affidavit, that Bowen's gang membership had anything to do with the crime under investigation" because "[t]he affidavit described a `spousal assault' that ensued after Kelly decided to end her `on going dating relationship' with Bowen" and "[n]othing in that description suggests that the crime was gang-related." *Ibid.* (quoting App. 55).

This effort to characterize the case solely as a domestic dispute, however, is misleading. Cf. *post*, at 5 (SOTOMAYOR, J., dissenting); **[**61]** *post*, at 2 (KAGAN, J., concurring in part and dissenting in part). Messerschmidt began his affidavit in support of the warrant by explaining that he "has been investigating an assault with a deadly weapon incident" and elaborated that the crime was a "spousal assault *and* an assault with a deadly weapon." App. 55 (emphasis added). The affidavit also stated that Bowen was "a known Mona Park Crip gang member" "based on information provided by the victim and the cal-gang data-base,"**[fn4]** and that he had attempted to murder Kelly after becoming enraged that she had "call[ed] the cops on [him]." *Id.*, at 56, 58-59. A reasonable officer could certainly view Bowen's attack as motivated not by the souring of his romantic relationship with Kelly but instead by a desire to prevent her from disclosing details of his gang activity to the police. She was, after all, no longer linked with him as a girlfriend; he had assaulted her in the past; and she had indeed called the cops on him. And, as the affidavit supporting the warrant made clear, Kelly had in fact given the police information about Bowen's gang ties. *Id.*, at 59.**[fn5]**

It would therefore not have been unreasonable — based on the facts set out in the affidavit — for an officer to believe that evidence regarding Bowen's gang affiliation would prove helpful in prosecuting him for the attack on Kelly. See *Warden, Md. Penitentiary* v. *Hayden*, **387 U. S. 294**, **307** (1967) (holding that the **Fourth** Amendment allows a search for evidence when there is "probable cause . . . to believe that the evidence sought will aid in a particular apprehension or conviction"). Not only would such evidence help to establish motive, **[*1248]** either apart from or in addition to any domestic dispute, it would also support the bringing of additional, related charges against Bowen for the assault. See, *e.g.*, Cal. Penal Code Ann. § **136.1**(b)(1) (West 1999) (It is a crime to "attempt[ ] **[***11]** to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from . . . [m]aking any report of that victimization to any . . . law enforcement officer").**[fn6]**

[62]** In addition, a reasonable officer could believe that evidence demonstrating Bowen's membership in a gang might prove helpful in impeaching Bowen or rebutting various defenses he could raise at trial. For example, evidence that Bowen had ties to a gang that uses guns such as the one he used to assault Kelly would certainly be relevant to establish that he had familiarity with or access to this type of weapon.

Moreover, even if this were merely a domestic dispute, a reasonable officer could still conclude that gang paraphernalia found at the Millenders' residence would aid in the prosecution of Bowen by, for example, demonstrating Bowen's connection to other evidence found there. The warrant authorized a search for "any gang indicia that would establish the persons being sought in this warrant," and "[a]rticles of personal property tending to establish the identity of [the] person in control of the premise or premises." App. 52. Before the District Court, the Millenders "acknowledge[d] that evidence of who controlled the premises would be relevant if incriminating evidence were found and it became necessary to tie that evidence to a person," and the District Court approved that aspect of the warrant on this basis. App. to Pet. for Cert. 158-159 (internal quotation marks omitted). Given Bowen's known gang affiliation, a reasonable officer could conclude that gang paraphernalia found at the residence would be an effective means of demonstrating Bowen's control over the premises or his connection to evidence found there.**[fn7]**

Whatever the use to which evidence of Bowen's gang involvement might ultimately **[*1249]** have been put, it would not have been "entirely unreasonable" for an officer to believe that the facts set out in the affidavit established a fair probability that such evidence would aid the prosecution of Bowen for the criminal acts at issue. *Leon*, **468 U. S., at 923** (internal quotation marks omitted).

B

Whether any of these facts, standing alone or taken together, actually establish probable cause is a question we need not decide. Qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments." *al-Kidd*, **563 U. S., at ___** (slip op., at 12). **[**63]** The officers' judgment that the scope of the warrant was supported by probable cause may have been mistaken, but it was not "plainly incompetent." *Malley*, **475 U. S., at 341**.

On top of all this, the fact that the officers sought and obtained approval of the warrant application from a superior and a deputy district attorney before submitting it to the magistrate provides further support for the conclusion that an officer could reasonably have believed that the scope of the warrant was supported by probable cause. ***Ibid.*** Before seeking to have the warrant issued by a magistrate, Messerschmidt conducted an extensive investigation into Bowen's background and the facts of the crime. Based on this investigation, Messerschmidt prepared **[***12]** a detailed warrant application that truthfully laid out the pertinent facts. The only facts omitted — the officers' knowledge of Bowen's arrest and conviction

records, see *supra*, at 3 — would only have strengthened the warrant. Messerschmidt then submitted the warrant application for review by Lawrence, another superior officer, and a deputy district attorney, all of whom approved the application without any apparent misgivings. Only after this did Messerschmidt seek the approval of a neutral magistrate, who issued the requested warrant. The officers thus "took every step that could reasonably be expected of them." *Massachusetts* v. *Sheppard*, **468 U. S. 981**, **989** (1984). In light of the foregoing, it cannot be said that "no officer of reasonable competence would have requested the warrant." *Malley*, **475 U. S., at 346**, n. 9. Indeed, a contrary conclusion would mean not only that Messerschmidt and Lawrence were "plainly incompetent," ***id.***, at **341**, but that their supervisor, the deputy district attorney, and the magistrate were as well.

The Court of Appeals, however, gave no weight to the fact that the warrant had been reviewed and approved by the officers' superiors, a deputy district attorney, and a neutral magistrate. Relying on *Malley*, the court held that the officers had an "independent responsibility to ensure there [was] at least a colorable argument for probable cause." **620 F. 3d, at 1034**. It explained that "[t]he deputies here had a responsibility to exercise their reasonable professional judgment," and that "in circumstances such as these a neutral magistrate's approval (and, a fortiori, a non-neutral prosecutor's) cannot absolve an officer of liability." ***Ibid***. (citation omitted).

We rejected in *Malley* the contention that an officer is automatically entitled to qualified immunity for seeking a warrant unsupported by probable cause, simply because a magistrate had approved the application. **475 U. S., at 345**. And because the officers' superior and the deputy district attorney are part of the prosecution team, their review also cannot be regarded as dispositive. But by holding in *Malley* that a magistrate's approval does not automatically render an officer's **[*1250]** conduct reasonable, we did not suggest that approval by a magistrate or review by others is irrelevant to the objective reasonableness of the officers' determination that the warrant was valid. Indeed, we expressly noted that we were not deciding "whether [the officer's] conduct in [**[**64]** that] case was in fact objectively reasonable." ***Id.***, at **345**, n. 8. The fact that the officers secured these approvals is certainly pertinent in assessing whether they could have held a reasonable belief that the warrant was supported by probable cause.

C

In holding that the warrant in this case was so obviously defective that no reasonable officer could have believed it was valid, the court below relied heavily on our decision in *Groh* v. *Ramirez*, **540 U. S. 551** (2004), but that precedent is far afield. There, we held that officers who carried out a warrant-approved search were not entitled to qualified immunity because the warrant in question failed to describe the items to be seized *at all*. ***Id.***, at **557**. We explained that "[**[***13]** i]n the portion of the form that called for a description of the `person or property' to be seized, [the applicant] typed a description of [the target's] two-story blue house rather than the alleged stockpile of firearms." ***Id.***, at **554**. Thus, the warrant stated nonsensically that "`there is now concealed [on the specified premises] a certain person or property, namely [a] single dwelling residence two story in height which is blue in color and has two additions attached to the east.'" ***Id.***, at **554**-**555**, n. 2 (bracketed material in original). Because "even a cursory reading of the warrant in [that] case — perhaps just a simple glance — would have revealed a glaring deficiency that any reasonable police officer would have known was constitutionally fatal," ***id.***, at **564**, we held that the officer was not entitled to qualified immunity.

The instant case is not remotely similar. In contrast to *Groh*, any defect here would not have been obvious from the face of the warrant. Rather, any arguable defect would have become apparent only upon a close parsing of the warrant application, and a comparison of the affidavit to the terms of the warrant to determine whether the affidavit established probable cause to search for all the items listed in the warrant. This is not an error that "just a simple glance" would have revealed. ***Ibid.*** Indeed, unlike in *Groh*, the

officers here did not merely submit their application to a magistrate. They also presented it for review by a superior officer, and a deputy district attorney, before submitting it to the magistrate. The fact that none of the officials who reviewed the application expressed concern about its validity demonstrates that any error was not obvious. *Groh* plainly does not control the result here.

* * *

The question in this case is not whether the magistrate erred in believing there was sufficient probable cause to support the scope of the warrant he issued. It is instead whether the magistrate so obviously erred that any reasonable officer would have recognized the error. The occasions on which this standard will be met may be rare, but so too are the circumstances in which it will be appropriate to impose personal liability on a lay officer in the face of judicial approval of his actions. Even if the warrant in this case were invalid, it was not so obviously lacking in probable cause that the officers can be **[**65]** considered "plainly incompetent" for concluding otherwise. *Malley*, ***supra***, at **341**. The judgment of the Court of Appeals **[*1251]** denying the officers qualified immunity must therefore be reversed.

It is so ordered.

[fn1] Although *Leon* involved the proper application of the exclusionary rule to remedy a **Fourth** Amendment violation, we have held that "the same standard of objective reasonableness that we applied in the context of a suppression hearing in *Leon* defines the qualified immunity accorded an officer" who obtained or relied on an allegedly invalid warrant. *Malley* v. *Briggs*, **475 U. S. 335**, **344** (1986) (citation omitted); *Groh* v. *Ramirez*, **540 U. S. 551**, **565**, n. 8 (2004).

[fn2] The dissent relies almost entirely on facts outside the affidavit, including Messerschmidt's deposition testimony, *post*, at 4, 11 (opinion of SOTOMAYOR, J.), crime analysis forms, *post*, at 5, Kelly's interview, *post*, at 5-6, and n. 5, Messerschmidt's notes regarding Kelly's interview, *post*, at 5-6, n. 5, and even several briefs filed in the District Court and the Court of Appeals, *post*, at 8-9, 12. In contrast, the dissent cites the probable cause affidavit itself *only twice*. See *post*, at 12. There is no contention before us that the affidavit was misleading in omitting any of the facts on which the dissent relies. Cf. *Leon*, **468 U. S., at 923**.

[fn3] The dissent caricatures our analysis as being that "because Bowen fired one firearm, it was reasonable for the police to conclude . . . that [he] must have possessed others," *post*, at 10 (opinion of SOTOMAYOR, J.). This simply avoids coming to grips with the facts of the crime at issue.

[fn4] Although the cal-gang database states that information contained therein cannot be used to establish probable cause, see App. 64, the affidavit makes clear that Kelly also provided this information to Messerschmidt, *id.*, at 59, as she did to the deputies who initially responded to the attack, *id.*, at 39 (describing Kelly's statement that Bowen was "an active member of the `Mona Park Crips'"). We there fore need not decide whether the cal-gang database's disclaimer is relevant to **Fourth** Amendment analysis.

[fn5] Contrary to the dissent's suggestion, see *post*, at 5-6, n. 5 (opinion of SOTOMAYOR, J.), the affidavit's account of Bowen's statements is consistent with other accounts of the confrontation, in particular the report prepared by the officers who spoke with Kelly immediately after the attack. See App. 39 (stating that when Bowen "appeared at the base of the stairs and began yelling at [Kelly,] [h]e was angry because she had called the Sheriff `s Department"). And at no point during this litigation has the accuracy of the affidavit's account of the attack been called into question.

[fn6] The dissent relies heavily on Messerschmidt's deposition, in which he stated that Bowen's crime was not a "gang crime." See *post*, at 4-7. Messerschmidt's belief about the nature of the crime, however, is not *information* he possessed but a *conclusion* he reached based on information known to him. See *Anderson* v. *Creighton*, **483 U. S. 635**, **641** (1987). We have "eschew[ed] inquiries into the subjective beliefs of law enforcement officers who seize evidence pursuant to a subsequently invalidated warrant." *United States* v. *Leon*, **468 U. S. 897**, **922**, n. 23 (1984); see also *Harlow* v. *Fitzgerald*, **457 U. S. 800**, **815-819** (1982). In any event, as the dissent recognizes, the inquiry under our precedents is whether "a reasonably well-trained officer in petitioner's position would have known that *his affidavit* failed to establish probable cause." *Malley*, **475 U. S., at 345** (emphasis added). Messerschmidt's own evaluation does not answer the question whether it would have been unreasonable for an officer to have reached a different conclusion from the facts in the affidavit. See n. 2, ***supra***.

[fn7] The **Fourth** Amendment does not require probable cause to believe evidence will *conclusively* establish a fact before permitting a search, but only "probable cause . . . to believe the evidence sought *will aid* in a particular apprehension or conviction." *Warden, Md. Penitentiary* v. *Hayden*, **387 U. S. 294**, **307** (1967) (emphasis added). Even if gang evidence might have turned out not to be conclusive because other members of the Millender household also had gang ties, see *post*, at 8 (opinion of SOTOMAYOR, J.); *post*, at 2-3 (opinion of KAGAN, J.), a reasonable officer could still conclude that evidence of gang membership would help show Bowen's connection to the residence. Such evidence could, for example, have displayed Bowen's gang moniker ("C Jay") or could have been identified by Kelly as belonging to Bowen. See App. 64.

JUSTICE BREYER, concurring.

The Court concludes that the officers acted reasonably in searching the house for "`all firearms and firearm-related items.'" *Ante*, at 11-12 (emphasis deleted). In support of this conclusion, it cites two sets of circumstances. First, the majority points to "Bowen s possession of one illegal gun, his gang membership, his willingness to use the gun to kill someone, and his concern about the police. . . ." *Ante*, at 11. Second, the majority notes that "[a] reasonable officer also could believe that seizure of the firearms was necessary to prevent further assaults on Kelly," because "**[***14]** Bowen had already attempted to murder Kelly once with a firearm, and had yelled `I'll kill you' as she tried to escape from him." *Ante*, at 12. In my view, given all these circumstances together, the officers could reasonably have believed that the scope of their search was supported by probable cause. On that basis, I concur.

JUSTICE KAGAN, concurring in part and dissenting in part.

Both the Court and the dissent view this case as an all-or-nothing affair: The Court awards immunity across the board to Messerschmidt and his colleagues, while the dissent would grant them none at all. I think the right answer lies in between, although the Court makes the more far-reaching error.

I agree with the Court that a reasonably competent police officer could have thought this warrant valid in authorizing a search for all firearms and related items. See *ante*, at 11-12. The warrant application recounted that a known gang member had used a sawed-off shot-gun — an illegal weapon under California law, see Cal. Penal Code Ann. § **33215** (West 2012 Cum. Supp.) — to try to kill another person. See App. 56-57, 59. Perhaps gang ties plus possession of an unlawful gun plus use of that gun to commit a violent assault do not add up to what was needed for this search: probable cause to believe that Bowen had additional illegal firearms (or legal firearms that he intended to use to violate the law) at the place he was staying. But because our and the Ninth Circuit's decisions leave that conclusion debatable, a reasonable police officer could have found the warrant adequately supported by "indicia of probable

cause." *Malley* v. *Briggs*, **475 U. S. 335**, **345** (1986). So Messerschmidt and his fellow officers should receive qualified immunity for their search for firearms.

The Court, however, goes astray when it holds that a reasonable officer could have thought the warrant valid in approving a search for evidence of "street gang membership," App. 52. Membership in even the worst gang does not violate California law, so the officers could not search for gang paraphernalia just to establish Bowen's ties to the Crips. Instead, the police needed probable cause to believe that such items would provide **[**66]** evidence of an actual crime — and as the Court acknowledges, see *ante*, at 12-14, the only crime mentioned in the warrant application was the assault on Kelly. The problem for the Court is that nothing in the application supports a link between Bowen's gang membership and that shooting. Contra the Court's elaborate theory-spinning, see *ante*, at 12-16, Messerschmidt's affidavit in fact characterized the violent assault only as a domestic dispute, not as a gang-related one, see App. 55 (describing the crime as a "spousal assault and an assault with a deadly weapon"). And that **[*1252]** description is consistent with the most natural understanding of the events. The warrant application thus had a hole at its very center: It lacked any explanation of how gang items would (or even might) provide evidence of the domestic assault the police were investigating.

To fill this vacuum, the Court proposes an alternative, but similarly inadequate justification **[***15]** — that gang paraphernalia could have demonstrated Bowen's connection to the Millender residence and to any evidence of the assault found there. The dissent rightly notes one difficulty with this argument: The discovery of gang items would not have established that Bowen was staying at the house, given that several other gang members regularly did so. See *post*, at 8-9 (opinion of SOTOMAYOR, J.). And even setting that issue aside, the Court's reasoning proves far too much: It would sanction equally well a search for *any* of Bowen's possessions on the premises — a result impossible to square with the **Fourth** Amendment. See, *e.g.*, *Andresen* v. *Maryland*, **427 U. S. 463**, **480** (1976) (disapproving "`a general, exploratory rummaging in a person's belongings'" (quoting *Coolidge* v. *New Hampshire*, **403 U. S. 443**, **467** (1971))). In authorizing a search for all gang-related items, the warrant far outstripped the officers' probable cause. Because a reasonable officer would have recognized that defect, I would not award qualified immunity to Messerschmidt and his colleagues for this aspect of their search.

Still more fundamentally, the Court errs in scolding the Court of Appeals for failing to give "weight to the fact that the warrant had been reviewed and approved by the officers' superiors, a deputy district attorney, and a neutral magistrate." *Ante*, at 17. As the dissent points out, see *post*, at 13-15, this Court's holding in *Malley* is to the opposite effect: An officer is *not* "entitled to rely on the judgment of a judicial officer in finding that probable cause exists and hence issuing the warrant." **475 U. S., at 345**. *Malley* made clear that qualified immunity turned on the officer's own "professional judgment," considered separately from the mistake of the magistrate. ***Id.***, at **346**; see *ibid.*, n. 9 ("The officer . . . cannot excuse his own default by pointing to the greater incompetence of the magistrate"); ***id.***, at **350** (Powell, J., concurring in part and dissenting in part) (objecting to the Court's decision to "give little evidentiary weight to the finding of probable cause by a magistrate"). And what we said in *Malley* about a magistrate's authorization applies still **[**67]** more strongly to the approval of other police officers or state attorneys. All those individuals, as the Court puts it, are "part of the prosecution team." *Ante*, at 18. To make their views relevant is to enable those teammates (whether acting in good or bad faith) to confer immunity on each other for unreasonable conduct — like applying for a warrant without anything resembling probable cause.

For these reasons, I would reverse in part and affirm in part the judgment of the Court of Appeals, and I would remand this case for further proceedings.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

The fundamental purpose of the **Fourth** Amendment's warrant clause is "to protect against all general searches." *Go-Bart Importing Co.* v. *United States*, **282 U. S. 344**, **357** (1931). The **Fourth** Amendment was adopted specifically in response to the Crown s practice of using general warrants and writs of assistance to search "suspected places" for **[*1253]** evidence of smuggling, libel, or other crimes. *Boyd* v. *United States*, **116 U. S. 616**, **625-626** (1886). Early patriots railed against **[***16]** these practices as "the worst instrument of arbitrary power" and John Adams later claimed that "the child Independence was born" from colonists' opposition to their use. ***Id.***, at **625** (internal quotation marks

To prevent the issue of general warrants on "loose, vague or doubtful bases of fact," *Go-Bart Importing Co.*, **282 U. S., at 357**, the Framers established the inviolable principle that should resolve this case: "no Warrants shall issue, but upon probable cause . . . and particularly describing the . . . things to be seized." U. S. Const., Amdt. **4**. That is, the police must articulate an adequate reason to search for specific items related to specific crimes.

In this case, police officers investigating a specific, non-gang-related assault committed with a specific firearm (a sawed-off shotgun) obtained a warrant to search for all evidence related to "any Street Gang," "[a]ny photographs . . . which may depict evidence of criminal activity," and "any firearms." App. 52. They did so for the asserted reason that the search might lead to evidence related to other gang members and other criminal activity, and that other "[v]alid warrants commonly allow police to search for `firearms and ammunition.'" See *infra*, at 8-9. That kind of general warrant is antithetical to the **Fourth** Amendment.

The Court nonetheless concludes that the officers are entitled to qualified immunity because their conduct was "objectively reasonable." I could not disagree more. All 13 federal judges who previously considered this case had little difficulty concluding that the police officers' search for any gang-related material violated the **Fourth** Amendment. See App. to Pet. for Cert. 28-29, 45, n. 7, 73, 94, 157-158. And a substantial majority agreed that the police's search for both gang-related material and all firearms not only violated the **Fourth** Amendment, but was objectively unreasonable. Like them, I believe that any "reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause." *Malley* v. *Briggs****[**68]*** , **475 U. S. 335**, **345** (1986).

The Court also hints that a police officer's otherwise unreasonable conduct may be excused by the approval of a magistrate, or more disturbingly, another police officer. *Ante*, at 16-18. That is inconsistent with our focus on the objective reasonableness of an officer's decision to submit a warrant application to a magistrate, and we long ago rejected it. See *Malley*, **475 U. S., at 345-346**.

The Court's analysis bears little relationship to the record in this case, our precedents, or the purposes underlying qualified immunity analysis. For all these reasons, I respectfully dissent.

I

The Court holds that a well-trained officer could have reasonably concluded that there was probable cause to search the Millenders' residence for any evidence of affiliation with "any Street Gang," and "all handguns, rifles, or shotguns of any caliber, or any firearms capable of firing ammunition." App. 52.**[fn1]** I cannot agree.

A

Most troubling is the Court's determination that petitioners reasonably could have **[*1254]** concluded that they had probable cause to search for all evidence of any gang affiliation in the Millenders' home. The

[*17]** Court reaches this result only by way of an unprecedented, *post hoc* reconstruction of the crime that wholly ignores the police's own conclusions, as well as the undisputed facts presented to the District Court.

The Court primarily theorizes that "[a] reasonable officer could certainly view Bowen's attack as motivated not by the souring of his romantic relationship with Kelly but instead by a desire to prevent her from disclosing details of his gang activity to the police." *Ante*, at 13. The majority therefore dismisses as "misleading" the Millenders' characterization of the case as a "domestic dispute," insisting that Detective Messerschmidt could have reasonably thought that the crime was gang related. See *ante*, at 13-14.**[fn2]**

The police flatly rejected that hypothesis, however, concluding that the crime was a domestic dispute that was not in any way gang related. Detective Messerschmidt's deposition is illustrative.

"Q: So as far as you knew, it was just sort of a spousal-abuse-type case where the perpetrator happened to be in a gang, right?

"A: Correct. **[**69]**

"Q: So you didn't have any reason to believe that the assault on Kelly was any sort of gang crime, did you?

"A: No." Record in No. *CV 05-2298 DDP* (RZx) (CD Cal.) (hereinafter Record), Doc. 51, (Exh. X), p. 120 (hereinafter Deposition).**[fn3]**

The "Crime Analysis" forms prepared by the police likewise identified Bowen as a "Mona Park Crip" gang member, but did not check off "gang-related" as a motive for the attack. See App. 41, 44 (Crime Analysis Supplemental Form — M. O. Factors). And the District Court noted it was undisputed that Detective Messerschmidt "had no reason to believe Bowen's crime **[*1255]** was a `gang' crime." App. to Pet. for Cert. 115.**[fn4]**

The police's conclusions matched the victim's own account of the attack. Kelly asked police officers to help her move out because Bowen "ha[d] a domestic violence on his record," had "hit [her] once or twice" already, had repeatedly threatened her "You'll never leave me. I'll kill you if you leave me," and she was "planning on breaking up" with him. Record, Doc. 51 (Exh. C), pp. 5-6 (hereinafter Kelly Interview). As Kelly described the confrontation, it was only after she fled to her car in order to leave that Bowen reemerged from their shared apartment with the shotgun and told her "I'm gonna kill your ass right here if you take off," consistent with his prior threats. *Id.*, at 7-8. Every piece of information, therefore, accorded with Detective Messerschmidt's conclusion: The crime was domestic violence that was not gang related.**[fn5]**

[70]** Unlike the Members of this Court, Detective Messerschmidt alone had 14 years of experience as a peace officer, "hundreds of hours of instruction on the dynamics of gangs and gang trends," received "specialized training in the field of gang related crimes," and had been "involved in hundreds of gang related incidents, contacts, and or arrests." App. 53-54. The Court provides no justification for sweeping aside the conclusions he reached on the basis of his far greater expertise, let alone the facts found by the District Court. We have repeatedly and recently warned appellate courts, "far removed from the scene," against second-guessing the **[***18]** judgments made by the police or reweighing the facts as they stood before the district court. *Ryburn* v. *Huff*, **565 U. S. ___**, ___ (2012) (*per curiam*) (slip op., at 6-8). The majority's decision today is totally inconsistent with those principles. **[*1256]**

Qualified immunity analysis does not direct courts to play the role of crime scene investigators, second-guessing police officers' determinations as to whether a crime was committed with a handgun or a shotgun, or whether violence was gang related or a domestic dispute. Indeed, we have warned courts against asking "whether another reasonable, or more reasonable, interpretation of the events can be constructed five years after the fact." *Hunter* v. *Bryant*, **502 U. S. 224**, **228** (1991) (*per curiam*). The inquiry our precedents demand is not whether different conclusions might conceivably be drawn from the crime scene. Rather, it is whether "a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause." *Malley*, **475 U. S., at 345**. The operative question in this case, therefore, is whether — given that, as petitioners comprehended, the crime itself was not gang related — a reasonable officer nonetheless could have believed he had probable cause to seek a warrant to search the suspect's residence for all evidence of affiliation not only with the suspect's street gang, but "any Street Gang." He could not.

The Court offers two secondary explanations for why a search for gang-related items might have been justified, but they are equally unpersuasive. First, the majority suggests that such evidence hypothetically "might prove helpful in impeaching Bowen or rebutting various defenses he could raise at trial." *Ante*, at 15. That is a non-starter. The **Fourth** Amendment does not permit the police to search for evidence solely because it could be admissible for impeachment or rebuttal purposes. If it did, the police would **[**71]** be equally entitled to obtain warrants to rifle through the papers of anyone reasonably suspected of a crime for all evidence of his bad character, Fed. Rule Evid. **404**(a)(2)(B)(i), or any evidence of any "crime, wrong, or other act" that might prove the defendant's "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident," Fed. Rule Evid. **404**(b)(2). Indeed, the majority's rationale presumably would authorize the police to search the residence of every member of Bowen's street gang for similar weapons — which likewise "might [have] prove[d] helpful in impeaching Bowen or rebutting various defenses he could raise at trial." *Ante*, at 15. It has long been the case, however, that such general searches, detached from probable cause, are impermissible. See, *e.g.*, *Go-Bart Importing Co.*, **282 U. S., at 357**. By their own admission, however, the officers were not searching for gang-related indicia to bolster some hypothetical impeachment theory, but for other reasons: because "photos sought re gang membership could be linked with other gang members, evidencing criminal activity as gang affiliation is an enhancement to criminal charges." App. 181; see also ***id.***, at 145. That kind of fishing expedition for evidence **[***19]** of unidentified criminal activity committed by unspecified persons was the very evil the **Fourth** Amendment was intended to prevent.

Finally, the Court concludes that "even if this were merely a domestic dispute, a reasonable officer could still conclude that gang paraphernalia found at the Millenders' residence would aid in the prosecution of Bowen by, for example, demonstrating Bowen's connection to other [unspecified] evidence found there." *Ante*, at 15. That is difficult to understand. The police were well aware before obtaining a warrant that "other persons associated with the home, the Millender family members, were active Mona Park Crip gang members." App. 28. Simply finding gang-related paraphernalia, **[*1257]** therefore, would have done little to establish probable cause that particular evidence found in the home was connected to Bowen, rather than any of the several other active gang members who resided full time at the Millender home.**[fn6]** Moreover, it would have done nothing to establish that Bowen had committed the non-gang-related crime specified in the warrant.**[fn7]**

B

The Court also errs by concluding that petitioners could have reasonably concluded that they had probable cause to search for all firearms. Notably absent from the Court's discussion is any acknowledgment of the actual basis for petitioners' search. The police officers searched for all firearms not for the reasons hypothesized by the majority, but because they determined **[**72]** that "[v]alid

warrants commonly allow police to search for `firearms and ammunition,'" and that "[h]ere, any caliber of shotgun or receipts would show possession of and/or purchase of guns." *Id.*, at 144, 180-181; see also Brief for Appellant in No. *07-55518* (CA9), p. 41 (hereinafter CA9 Brief). It is small wonder that the District Court found these arguments "nonsensical and unpersuasive." App. to Pet. for Cert. 157. It bears repeating that the Founders adopted the **Fourth** Amendment to protect against searches for evidence of unspecified crimes. And merely possessing other firearms is not a crime at all. See generally *District of Columbia* v. *Heller*, **554 U. S. 570** (2008).**[fn8]**

By justifying the officers' actions on reasons of its own invention, the Court ignores the reasons the officers actually gave, as well as the facts upon which this case was decided below. The majority's analysis — akin to a rational-basis test — is thus far removed from what qualified immunity analysis demands. Even if the police had searched for the reasons the Court proposes, however, I still would find it inappropriate to afford them qualified immunity.

The Court correctly recognizes that to satisfy the **Fourth** Amendment the police were required to demonstrate probable cause that (1) other firearms could be **[*1258]** found at the Millenders' residence; and (2) such weapons were illegal or were "`possess[ed] . . . with the intent to use them as a means of committing a public offense.'" *Ante*, at 12 (quoting Cal. Penal Code Ann. § **1524**(a)(3) (West 2011)). The warrant failed to establish either.

The majority has little difficulty concluding that because Bowen fired one firearm, it was reasonable for the police to conclude not only **[***20]** that Bowen must have possessed others, but that he must be storing these other weapons at his 73-year-old former foster mother's home.**[fn9]** Again, however, this is not what the police actually concluded, as Detective Messerschmidt's deposition makes clear.

"Q: Did you have any reason to believe there would be any automatic weapons in the house?

"A: No.

"Q: Did you have any reason to believe there would be any hand guns in the house?

"A: I wasn't given information that there were." Deposition 120.

Undaunted, the majority finds that **[**73]** a well-trained officer could have concluded on this information that he had probable cause to search for "[a]ll hand guns, . . . [a]ll caliber of ammunition, miscellaneous gun parts, gun cleaning kits, holsters which could hold or have held any puzzling. If any aspect of the **Fourth** Amendment is clearly established, it is that the police cannot reasonably search — even pursuant to a warrant — for items that they do not have "any reason to believe" will be present. The Court's conclusion to the contrary simply reads the "probable cause" requirement out of the **Fourth** Amendment.

Even assuming that the police reasonably could have concluded that Bowen possessed other guns and was storing them at the Millenders' home, I cannot agree that the warrant provided probable cause to believe any weapon possessed in a home in which 10 persons regularly lived — none of them the suspect in this case — was either "contraband or evidence of a crime." *Ornelas* v. *United States*, **517 U. S. 690**, **696** (1996). The warrant set forth no specific facts or particularized explanation establishing probable cause to believe that other guns found in the home were connected to the crime specified in the warrant or were otherwise illegal.**[fn10]** While the Court hypothesizes that the police could have searched for all firearms to uncover evidence of yet unnamed crimes, *ante*, at 11-12, the warrant specified that the police were investigating one particular crime — "an assault with a deadly weapon." App. 55. And the police officers confirmed that their search was targeted to find the gun related to "the crime at issue." CA9 Brief 42; see

also App. 52 (obtaining authorization to search for "*the item* being sought and or believed to be evidence in the case being investigated on this warrant" (emphasis added)).

The police told the Ninth Circuit that they searched for all firearms not because, **[*1259]** as the majority hypothesizes, "there would be additional illegal guns among others that Bowen owned," *ante*, at 11-12, but on the dubious theory that "Kelly could have been mistaken in her description of the gun." App. to Pet. for Cert. 20-21. The Ninth Circuit properly dismissed that argument as carrying "little force." *Id.*, at 21. Its finding is unimpeachable, given that Kelly presented the police with a photograph of Bowen holding the specific gun used in the crime, and the police, the victim, and a witness to the crime all identified the gun as a sawed-off shotgun. See *id.*, at 20, 21, 24, 28.

Finally, the majority suggests that the officers could have reasonably believed that seizure of all firearms at the Millenders' residence was justified because those weapons **[***21]** might be possessed by Bowen "`with the intent to use them as a means of committing a public offense.'" *Ante*, at 12. But the warrant specified that the police sought only the shotgun used in this crime for that purpose. See App. 59 (statement **[**74]** of probable cause) ("Your Affiant also believes that the items sought will be in the possession of Jerry Ray Bowen and the recovery of *the weapon* could be invaluable in the successful prosecution of the suspect involved in this case, and the curtailment of further crimes being committed" (emphasis added)).

II

The Court also finds error in the Court of Appeals' failure to find "pertinent" the fact that the officer sought approval of his warrant from a magistrate.**[fn11]***Ante*, at 18. Whether Detective Messerschmidt presented his warrant application to a magistrate surely would be "pertinent" to demonstrating his subjective good faith.**[fn12]** But qualified immunity does not turn on whether an officer is motivated by good intentions or malice, but rather on the "objective reasonableness of an official's conduct." *Harlow* v. *Fitzgerald*, **457 U. S. 800**, **818** (1982).

The majority asserts, without citation, that the magistrate's approval is relevant to objective reasonableness. That view, however, is expressly contradicted by our holding in *Malley* v. *Briggs*, **475 U. S. 335**. There, we found that a police officer is not "entitled to rely on the judgment of a judicial officer in finding that probable cause exists and hence issuing the warrant," and explained that "[that] view of objective reasonableness is at odds with our development of that concept in *Harlow* and [*United States* v. *Leon*, **468 U. S. 897** (1984)]." ***Id.***, at **345**. The appropriate qualified immunity analysis, we held, was not whether an officer reasonably relied on a magistrate's probable cause determination, but rather "whether a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause and that he should not **[*1260]** have *applied* for the warrant." ***Ibid.*** (emphasis added).**[fn13]** In such a case, "the officer's application for a warrant [would] not [be] objectively reasonable, because it create[s] the unnecessary danger of an unlawful arrest." ***Ibid.*** When "no officer of reasonable competence would have requested the warrant," a "magistrate [who] issues the warrant [makes] not just a reasonable mistake, but an unacceptable error indicating gross incompetence or neglect of duty." ***Id.***, at **346**, n. 9. In such cases, "[t]he officer . . . cannot excuse **[**75]** his own default by pointing to the greater incompetence of the magistrate." ***Ibid.***

In cases in which it would be not only wrong but unreasonable for any well-trained officer to seek a warrant, allowing a magistrate's approval to immunize the police officer's unreasonable action retrospectively makes little sense. By motivating an officer "to reflect, before submitting a request for a warrant, upon whether he has a reasonable basis for believing that his affidavit establishes probable cause," we recognized that our qualified immunity precedents had the "desirable" effect of "reduc[ing] the

likelihood that the officer's request for a warrant will be premature," leading to "a waste of judicial **[***22]** resources" or "premature arrests." ***Id.***, at **343**. To the extent it proposes to cut back upon *Malley*, the majority will promote the opposite result — encouraging sloppy police work and exacerbating the risk that searches will not comport with the requirements of the **Fourth** Amendment.

The Court also makes much of the fact that Detective Messerschmidt sent his proposed warrant application to two superior police officers and a district attorney for review. Giving weight to that fact would turn the **Fourth** Amendment on its head. This Court made clear in *Malley* that a police officer acting unreasonably cannot obtain qualified immunity on the basis of a neutral magistrate's approval. It would be passing strange, therefore, to immunize an officer's conduct instead based upon the approval of other police officers and prosecutors.**[fn14]** See *Johnson* v. *United States*, **333 U. S. 10**, **14** (1948) (opinion of Jackson, J.) ("When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent"). The effect of the Court's rule, however, is to hold blameless the "plainly incompetent" action of the police officer seeking a warrant because of the "plainly incompetent" approval of his superiors and the district attorney. See *ante*, at 16-18; see also *ante*, at 3-4 (opinion of KAGAN, J.). Under the majority's test, four wrongs apparently make a right. I cannot agree, however, that the "objective legal reasonableness of an official's acts," *Harlow*, **457 U. S., at 819**, turns on the number of police officers or prosecutors who improperly sanction a search that violates the **Fourth** Amendment.

[*1261] III

Police officers perform a difficult and essential service to society, frequently at substantial risk to their personal safety. And criminals like Bowen are not sympathetic figures. But the **Fourth** Amendment "protects all, those suspected or known to be offenders as well as the innocent." *Go-Bart Importing Co.*, **282 U. S., at 357**. And this Court long ago recognized that efforts "to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those **[**76]** great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." *Weeks* v. *United States*, **232 U. S. 383**, **393** (1914).

Qualified immunity properly affords police officers protection so long as their conduct is objectively reasonable. But it is not objectively reasonable for police investigating a specific, non-gang-related assault committed with a particular firearm to search for all evidence related to "any Street Gang," "photographs . . . which may depict evidence of criminal activity," and all firearms. The Court reaches a contrary result not because it thinks that these police officers' stated reasons for searching were objectively reasonable, but because it thinks different conclusions might be drawn from the crime scene that reasonably might have led different officers to search for different reasons. That analysis, however, is far removed from qualified immunity's proper focus on whether *petitioners* acted in an objectively reasonable **[***23]** manner.

Because petitioners did not, I would affirm the judgment of the Court of Appeals.

[fn1] Not even the Court defends the warrant's authorization to search for "[a]ny photographs . . . which may depict evidence of criminal activity."

[fn2] The Court implies Detective Messerschmidt did not consider the crime "solely . . . a domestic dispute" because he labeled it a "spousal assault *and* an assault with a deadly weapon." *Ante*, at 13 (internal quotation marks omitted). Solely domestic disputes often involve gun violence, however. See Sorenson & Weibe, Weapons in the Lives of Battered Women, 94 Am. J. Pub. Health 1412, 1413 (2004) (noting more than one-third of female domestic violence shelter residents in California reported having

been threatened or harmed with a firearm). That was the case here. In any event, the Court's reading of Detective Messerschmidt's affidavit is incompatible with his testimony that the crime was "just sort of a spousal-abuse-type case," not a "gang crime." See *supra* this page.

[fn3] By suggesting that courts assessing qualified immunity should ignore police officers' testimony about the information they possessed at the time of the search, *ante*, at 14-15, n. 6, the Court misreads *Harlow* v. *Fitzgerald*, **457 U. S. 800**, **815-819** (1982), and *Anderson* v. *Creighton*, **483 U. S. 635**, **645** (1987). In *Harlow*, we adopted a qualified immunity test focusing on an officer's objective good faith, rather than whether the officer searched "*with the malicious intention* to cause a deprivation of constitutional rights or other injury." **457 U. S., at 815**. As we have explained, "examination of the information possessed by the searching officials . . . does not reintroduce into qualified immunity analysis the inquiry into officials' subjective intent that *Harlow* sought to minimize." *Anderson*, **483 U. S., at 641**. It is therefore highly relevant that Detective Messerschmidt testified that he lacked "any reason" to consider the crime gang related, ***supra*** this page, and possessed no "information" that there were handguns in the Millenders' home, *infra*, at 11. Courts cannot ignore information in crime analysis forms, ballistic reports, or victim interviews by labeling such information "conclusions."

[fn4] The Court is wrong to imply that courts should not consider "facts outside the affidavit," but within the officers' possession, when assessing qualified immunity. *Ante*, at 10, n. 2. Our precedents make clear that the objective reasonableness of an officer's conduct is judged "in light of clearly established law and the information the officers possessed." *Wilson* v. *Layne*, **526 U. S. 603**, **615** (1999). If an officer possesses information indicating that he lacks probable cause to search, and that information was not presented to the neutral magistrate when he approved the search, it is particularly likely that "a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." *United States* v. *Leon*, **468 U. S. 897**, **922**, n. 23 (1984).

[fn5] To support its theory that Bowen attacked Kelly to keep her silent about his gang activity, the majority relies principally on its claim that Bowen yelled, "`I told you never to call the cops on me bitch!'" *ante*, at 2, citing it no less than five times. See, *ante*, at 11 (Bowen "attempt[ed] to murder" Kelly "on the asserted ground that she had `call[ed] the cops' on him"); see also *ante*, at 1, 13. Bowen, however, never made that statement. Though it appears in the warrant application, the words are Messerschmidt's — taken from his own inaccurate notes of Kelly's account of the crime. What Kelly actually said during her interview was that as soon as the police deputies left, Bowen "came out of nowhere talking about, `Did you call the police on me? You called the police on me,'" to which Kelly responded "no one called the police on you. . . . [I]nstead of arguing and fighting with you I just want to get my shit done." Kelly Interview 7; compare *ibid.* with Record, Doc. 51 (Exh. B), p. 3 (Messerschmidt's narrative of interview with Kelly). Only after Kelly started to leave did Bowen exclaim "oh it's like that. It's like that," retrieve a gun, and threaten to shoot her if she left. Kelly Interview 7-8. That Bowen was "`angry,'" *ante*, at 14, n. 5, because she had called the sheriff's department for assistance reflected exactly what Kelly and the police expected at the outset — that Bowen "would give her a hard time about moving out." App. 38 (sheriff's department incident report).

[fn6] The Court suggests that even if gang-related evidence would be inconclusive generally, evidence bearing Bowen's particular gang moniker could have demonstrated Bowen's connection to the residence.

But the warrant did not authorize a search for items bearing Bowen's moniker, but rather for items related to "any Street Gang," including countless street gangs of which Bowen was not a member. App. 52. Even under the Court's interpretation, therefore, the warrant was hopelessly overbroad and invalid.

[fn7] The police also could not search for gang-related evidence for its own sake. Mere membership in a gang is not a crime under California law. See *People* v. *Gardeley*, **14 Cal. 4th 605**, **623**, **927 P. 2d 713**, **725** (1996).

[fn8] Although the Court recites additional facts about Bowen's back ground and arrest record, *ante*, at 2-3, none of these facts were disclosed to the magistrate. The police cannot rationalize a search *post hoc* on the basis of information they failed to set forth in their warrant application to a neutral magistrate. Rather, "[i]t is elementary that in passing on the validity of a warrant, the reviewing court may consider *only* information brought to the magistrate's attention." *Aguilar* v. *Texas*, **378 U. S. 108**, **109**, n. 1 (1964); see also *United States* v. *Jacobsen*, **466 U. S. 109**, **112** (1984). Likewise, a police officer cannot obtain qualified immunity for searching pursuant to a warrant by relying upon facts outside that warrant, as evinced by *Malley*'s focus on "whether a reasonably well-trained officer in petitioner's position would have known that his *affidavit* failed to establish probable cause." *Malley* v. *Briggs*, **475 U. S. 335**, **345** (1986) (emphasis added).

[fn9] The majority ignores that Bowen retrieved the shotgun that he fired from the apartment he shared with Kelly, not the Millenders' home. Kelly provided no indication that Bowen possessed other guns or that he stored them at his former foster mother's home.

[fn10] Augusta Millender was a 73-year-old grandmother living in a dangerous part of Los Angeles. It would not have been unreasonable to imagine that she validly possessed a weapon for self-defense, as turned out to be the case.

[fn11] Under California law, magistrates are the officials responsible for issuing search warrants. Cal. Penal Code Ann. § **1523** (West 2011).

[fn12] To be clear, no one suggests petitioners acted with malice or in tended to be "misleading in omitting . . . facts," *ante*, at 10, n. 2, that illustrate why it would have been objectively unreasonable to search for the reasons the Court proposes. It is hardly surprising, for instance, that Detective Messerschmidt did not include in his affidavit further facts affirming that the crime was not gang related, given that he did not believe the crime was gang related and did not search for gang-related material for that reason. See *supra*, at 7-8. The affidavit and warrant were perfectly consistent with the officers' stated reasons for their search — just not with the Court's own theories.

[fn13] Two Justices wrote separately, disagreeing with the majority because they believed that "substantial weight should be accorded the judge's finding of probable cause." *Malley*, **475 U. S., at 346** (Powell, J., joined by Rehnquist, C. J., concurring in part and dissenting in part).

[fn14] In the famous case of *Wilkes* v. *Wood*, Lofft 1, **98 Eng. Rep. 489** (C. P. 1763), one of the seminal events informing the Framers' development of the **Fourth** Amendment, the Undersecretary of State who searched the home of John Wilkes pursuant to a general warrant was subjected to monetary damages notwithstanding that his superior, Lord Halifax, issued the warrant. See *Boyd* v. *United States*, **116 U. S. 616**, **626** (1886).

Plumhoff v. Rickard, 134 S. Ct. 2012, 188 L. Ed. 2d 1056 (2014) [2014 BL 145772]

Pagination

* S. Ct.
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Majority Opinion >

U.S. Supreme Court

PLUMHOFF ET AL.v. RICKARD, A MINOR CHILD, INDIVIDUALLY, AND AS SURVIVING DAUGHTEROF RICKARD, DECEASED, BY ANDTHROUGH HER MOTHER RICKARD, AS PARENT AND NEXT FRIEND

No. 12-1117

May 27, 2014

[*2013] [*2014] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PDF of opinion[1060]**

Syllabus

No. 12-1117. Argued March 4, 2014-Decided May 27, 2014

Donald Rickard led police officers on a high-speed car chase that came to a temporary halt when Rickard spun out into a parking lot. Rickard resumed maneuvering his car, and as he continued to use the accelerator even though his bumper **[*2015]** was flush against a patrol car, an officer fired three shots into Rickard's car. Rickard managed to drive away, almost hitting an officer in the process. Officers fired 12 more shots as Rickard sped away, striking him and his passenger, both of whom died from some combination of gunshot wounds and injuries suffered when the car eventually crashed.

Respondent, Rickard's minor daughter, filed a **42 U.S.C. §1983** action, alleging that the officers used excessive force in violation of the **Fourth** and **Fourteenth Amendments** . The District Court denied the officers' motion for summary judgment based on qualified immunity, holding that their conduct violated the **Fourth Amendment** and was contrary to clearly established law at the time in question. After finding that it had appellate jurisdiction, the Sixth Circuit held that the officers' conduct violated the **Fourth Amendment** . It affirmed the District Court's order, suggesting that it agreed that the officers violated clearly established law.

Held:

1. The Sixth Circuit properly exercised jurisdiction under **28 U.S.C. §1291** , which gives courts of appeals jurisdiction to hear appeals from "final decisions" of the district courts. The general rule that an order denying a summary judgment motion is not a "final decision[n]," and thus not immediately appealable, does not apply when it is based on a qualified immunity claim. Johnson v. Jones, **515 U.S. 304** , **311** . Respondent argues that *Johnson* forecloses appellate jurisdiction here, but the order in *Johnson* was not immediately appealable because it merely decided "a question of 'evidence sufficiency,' " **id., at 313** , while here, petitioners' qualified immunity claims raise legal issues quite different from any purely factual issues that might be confronted at trial. Deciding such legal issues is a core responsibility of appellate courts and does not create an undue burden for them. See, *e.g.*, Scott v. Harris, **550 U.S. 372** .

[1061]** 2. The officers' conduct did not violate the **Fourth Amendment** .

(a) Addressing this question first will be "beneficial" in "develop[ing] constitutional precedent" in an area that courts typically consider in cases in which the defendant asserts a qualified immunity defense, Pearson v. Callahan, **555 U.S. 223** , **236** .

(b) Respondent's excessive-force argument requires analyzing the totality of the circumstances from the perspective "of a reasonable officer on the scene." Graham v. Connor, **490 U.S. 386** , **396** . Respondent contends that the **Fourth Amendment** did not allow the officers to use deadly force to terminate the chase, and that, even if they were permitted to **[***2]** fire their weapons, they went too far when they fired as many rounds as they did.

(1) The officers acted reasonably in using deadly force. A "police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the **Fourth Amendment** , even when it places the fleeing motorist at risk of serious injury or death." *Scott*, **supra, at 385** . Rickard's outrageously reckless driving-which lasted more than five minutes, exceeded 100 miles per hour, and included the passing of more than two dozen other motorists-posed a grave public safety risk, and the record conclusively disproves that the chase was over when Rickard's car came to a temporary standstill and officers began shooting. Under **[*2016]** the circumstances when the shots were fired, all that a reasonable officer could have concluded from Rickard's conduct was that he was intent on resuming his flight, which would again pose a threat to others on the road.

(2) Petitioners did not fire more shots than necessary to end the public safety risk. It makes sense that, if officers are justified in firing at a suspect in order to end a severe threat to public safety, they need not stop shooting until the threat has ended. Here, during the 10-second span when all the shots were fired, Rickard never abandoned his attempt to flee and eventually managed to drive away. A passenger's presence does not bear on whether officers violated Rickard's Fourth Amendment rights, which "are personal rights [that] may not be vicariously asserted." Alderman v. United States, **394 U.S. 165** , **174** .

3. Even if the officers' conduct had violated the **Fourth Amendment** , petitioners would still be entitled to summary judgment based on qualified immunity. An official sued under **§1983** is entitled to qualified immunity unless it is shown that the official violated a statutory or constitutional right that was " 'clearly established' " at the time of the challenged conduct. Ashcroft v. al-Kidd, **563 U.S. ___** , **___** . Brosseau v. Haugen, **543 U.S. 194** , **201** , where an officer shot at a fleeing vehicle to prevent possible harm, **[**1062]** makes plain that no clearly established law precluded the officer's conduct there. Thus, to prevail, respondent must meaningfully distinguish *Brosseau* or point to any "controlling authority" or "robust 'consensus of cases of persuasive authority,' " *al-Kidd*, **supra, at ___** , that emerged between the events there and those here that would alter the qualified-immunity analysis. Respondent has made neither

showing. If anything, the facts here are more favorable to the officers than the facts in *Brosseau*; and respondent points to no cases that could be said to have clearly established the unconstitutionality of using lethal force to end a high-speed car chase.

509 Fed. Appx. 388 , reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, SOTOMAYOR, and KAGAN, JJ., joined, in which GINSBURG, J., joined as to the judgment and Parts I, II, and III-C, and in which BREYER, J., joined except as to Part III-B-2.

Opinion of the Court

JUSTICE ALITO delivered the opinion of the Court. [*]

The courts below denied qualified **[***3]** immunity for police officers who shot the driver of a fleeing vehicle to put an end to a **[*2017]** dangerous car chase. We reverse and hold that the officers did not violate the **Fourth Amendment** . In the alternative, we conclude that the officers were entitled to qualified immunity because they violated no clearly established law.

I
A

Because this case arises from the denial of the officers' motion for summary judgment, we view the facts in the light most favorable to the nonmoving party, the daughter of the driver who attempted to flee. *Wilkie* v. *Robbins*, **551 U.S. 537** , **543** , n. 2 (2007). Near midnight on July 18, 2004, Lieutenant Joseph Forthman of the West Memphis, Arkansas, Police Department pulled over a white Honda Accord because the car had only one operating headlight. Donald Rickard was the driver of the Accord, and Kelly Allen was in the passenger seat. Forthman noticed an indentation, " 'roughly the size of a head or a basketball' " in the windshield of the car. Estate of Allen v. West Memphis, [**2011 BL 14933**], 2011 WL 197426 , *1 (WD Tenn., Jan. 20, 2011). He asked Rickard if he had been drinking, and Rickard responded that he had not. Because Rickard failed to produce his driver's license upon request and appeared nervous, Forthman asked him to step out of the car. Rather than comply with Forthman's request, Rickard sped away.

Forthman gave chase and was soon joined by five other police cruisers driven by Sergeant Vance Plumhoff and Officers Jimmy Evans, Lance Ellis, Troy Galtelli, and John Gardner. The officers pursued Rickard east on Interstate 40 toward Memphis, Tennessee. **[**1063]** While on I-40, they attempted to stop Rickard using a "rolling roadblock," ***id*** ., at *2, but they were unsuccessful. The District Court described the vehicles as "swerving through traffic at high speeds," ***id*** ., at *8, and respondent does not dispute that the cars attained speeds over 100 miles per hour. [1] See Memorandum of Law in Response to Defendants' Motion for Summary Judgment in No. 2:05-cv-2585 (WD Tenn.), p. 16; see also Tr. of Oral Arg. 54:23-55:6. During the chase, Rickard and the officers passed more than two dozen vehicles.

Rickard eventually exited I-40 in Memphis, and shortly afterward he made "a quick right turn," causing "contact [to] occu[r]" between his car and Evans' cruiser. [**2011 BL 14933**], 2011 WL 197426 , *3. As a result of that contact, Rickard's car spun out into a parking lot and collided with Plumhoff's cruiser. Now

in danger of being cornered, Rickard put his car into reverse "in an attempt to escape." **Ibid.** As he did so, Evans and Plumhoff got out of their cruisers and approached Rickard's car, and Evans, gun in hand, pounded on the passenger-side window. At that point, Rickard's car "made contact with" yet another police cruiser. ***Ibid.*** Rickard's tires started spinning, and his car "was rocking back and forth," ***ibid.*** , indicating that Rickard was using the accelerator even though his bumper was flush against a police cruiser. At that point, Plumhoff fired three shots into Rickard's car. Rickard then "reversed in a 180 degree arc" and "maneuvered onto" another street, forcing Ellis to "step to his right to avoid the vehicle." **[*2018]** **Ibid.** As Rickard continued "fleeing down" that street, ***ibid.*** , Gardner and Galtelli fired 12 shots toward Rickard's car, **[***4]** bringing the total number of shots fired during this incident to 15. Rickard then lost control of the car and crashed into a building. **Ibid.** Rickard and Allen both died from some combination of gunshot wounds and injuries suffered in the crash that ended the chase. See App. 60, 76.

B

Respondent, Rickard's surviving daughter, filed this action under Rev. Stat. **§1979** , **42 U.S.C. §1983** , against the six individual police officers and the mayor and chief of police of West Memphis. She alleged that the officers used excessive force in violation of the **Fourth** and **Fourteenth Amendments** .

The officers moved for summary judgment based on qualified immunity, but the District Court denied that motion, holding that the officers' conduct violated the **Fourth Amendment** and was contrary to law that was clearly established at the time in question. The officers appealed, but a Sixth Circuit motions panel initially dismissed the appeal for lack of jurisdiction based on this Court's decision in Johnson v. Jones, **515 U.S. 304** , **309** (1995). Later, however, that panel granted rehearing, vacated its dismissal order, and left the jurisdictional issue to be decided by a merits panel.**[**1064]**

The merits panel then affirmed the District Court's decision on the merits. Estate of Allen v. West Memphis, **509 Fed. Appx. 388** (CA6 2012). On the issue of appellate jurisdiction, the merits panel began by stating that a "motion for qualified immunity denied on the basis of a district court's determination that there exists a triable issue of fact generally cannot be appealed on an interlocutory basis." **Id., at 391** . But the panel then noted that the Sixth Circuit had previously interpreted our decision in Scott v. Harris, **550 U.S. 372** (2007), as creating an "exception to this rule" under which an immediate appeal may be taken to challenge " 'blatantly and demonstrably false' " factual determinations. **509 Fed. Appx., at 391** (quoting Moldowan v. Warren, **578 F. 3d 351** , **370** (CA6 2009)). Concluding that none of the District Court's factual determinations ran afoul of that high standard, and distinguishing the facts of this case from those in *Scott*, the panel held that the officers' conduct violated the **Fourth Amendment** . **509 Fed. Appx., at 392** , and n. 3. The panel said nothing about whether the officers violated *clearly established* law, but since the panel affirmed the order denying the officers' summary judgment motion,[2] the panel must have decided that issue in respondent's favor.

We granted certiorari. **571 U.S. ____** (2013).

II

We start with the question whether the Court of Appeals properly exercised jurisdiction under **28 U.S.C. §1291** , which gives the courts of appeals jurisdiction to hear appeals from "final decisions" of the district courts.

An order denying a motion for summary judgment is generally not a final decision within the meaning of **§1291** and is thus generally not immediately appealable. *Johnson*, **515 U.S., at 309** . But that general rule does not apply **[*2019]** when the summary judgment motion is based on a claim of qualified immunity. **Id., at 311** ; Mitchell v. Forsyth, **472 U.S. 511** , **528** (1985). "[Q]ualified immunity is 'an immunity from suit rather than a mere defense to liability.' " Pearson v. Callahan, **555 U.S. 223** , **231** (2009) (quoting *Mitchell*, **supra, at 526**). As a result, pretrial orders denying qualified immunity generally fall within the collateral **[***5]** order doctrine. See Ashcroft v. Iqbal, **556 U.S. 662** , **671** -**672** (2009). This is so because such orders conclusively determine whether the defendant is entitled to immunity from suit; this immunity issue is both important and completely separate from the merits of the action, and this question could not be effectively reviewed on appeal from a final judgment because by that time the immunity from standing trial will have been irretrievably lost. See ***ibid*** ; *Johnson*, **supra, at 311-312** (citing *Mitchell*, **supra, at 525-527**).**[**1065]**

Respondent argues that our decision in *Johnson*, forecloses appellate jurisdiction under the circumstances here, but the order from which the appeal was taken in *Johnson* was quite different from the order in the present case. In *Johnson*, the plaintiff brought suit against certain police officers who, he alleged, had beaten him. **515 U.S., at 307** . These officers moved for summary judgment, asserting that they were not present at the time of the alleged beating and had nothing to do with it. **Id., at 307-308** . The District Court determined, however, that the evidence in the summary judgment record was sufficient to support a contrary finding, and the court therefore denied the officers' motion for summary judgment. **Id., at 308** . The officers then appealed, arguing that the District Court had not correctly analyzed the relevant evidence. ***Ibid*** .

This Court held that the *Johnson* order was not immediately appealable because it merely decided "a question of 'evidence sufficiency,' *i.e.*, which facts a party may, or may not, be able to prove at trial." **Id., at 313** . The Court noted that an order denying summary judgment based on a determination of "evidence sufficiency" does not present a legal question in the sense in which the term was used in *Mitchell*, the decision that first held that a pretrial order rejecting a claim of qualified immunity is immediately appealable. *Johnson*, **515 U.S., at 314** . In addition, the Court observed that a determination of evidence sufficiency is closely related to other determinations that the trial court may be required to make at later stages of the case. **Id., at 317** . The Court also noted that appellate courts have "no comparative expertise" over trial courts in making such determinations and that forcing appellate courts to entertain appeals from such orders would impose an undue burden. **Id., at 309-310** , **316** .

The District Court order in this case is nothing like the order in *Johnson*. Petitioners do not claim that other officers were responsible for shooting Rickard; rather, they contend that their conduct did **[**1066]** not violate the **Fourth Amendment** and, in any event, did not violate clearly established law. Thus, they raise legal issues; these issues are quite different from any purely factual issues that the trial court might confront if the case were tried; deciding legal issues of this sort is a core responsibility of appellate courts, and requiring appellate courts to decide such issues is not an undue burden.**[*2020]**

The District Court order here is not materially distinguishable from the District Court order in Scott v. Harris, and in that case we expressed no doubts **[***6]** about the jurisdiction of the Court of Appeals under **§1291** . Accordingly, here, as in *Scott*, we hold that the Court of Appeals properly exercised jurisdiction, and we therefore turn to the merits.

III
A

Petitioners contend that the decision of the Court of Appeals is wrong for two separate reasons. They maintain that they did not violate Rickard's Fourth Amendment rights and that, in any event, their conduct did not violate any Fourth Amendment rule that was clearly established at the time of the events in question. When confronted with such arguments, we held in Saucier v. Katz, **533 U.S. 194** , **200** (2001), that "the first inquiry must be whether a constitutional right would have been violated on the facts alleged." Only after deciding that question, we concluded, may an appellate court turn to the question whether the right at issue was clearly established at the relevant time. ***Ibid.***

We subsequently altered this rigid framework in *Pearson*, declaring that "*Saucier*'s procedure should not be regarded as an inflexible requirement." **555 U.S., at 227** . At the same time, however, we noted that the *Saucier* procedure "is often beneficial" because it "promotes the development of constitutional precedent and is especially valuable with respect to questions that do not frequently arise in cases in which a qualified immunity defense is unavailable." **555 U.S., at 236** . *Pearson* concluded that courts "have the discretion to decide whether that [*Saucier*] procedure is worthwhile in particular cases." **Id., at 242** .

Heeding our guidance in *Pearson*, we begin in this case with the question whether the officers' conduct violated the **Fourth Amendment** . This approach, we believe, will be "beneficial" in "develop[ing] constitutional precedent" in an area that courts typically consider in cases in which the defendant asserts a qualified immunity defense. See *Pearson*, **supra, at 236** .

B

A claim that law-enforcement officers used excessive force to effect a seizure is governed by the **Fourth Amendment** 's "reasonableness" standard. See Graham v. Connor, **490 U.S. 386** (1989); Tennessee v. Garner, **471 U.S. 1** (1985). In *Graham*, we held that determining the objective reasonableness of a particular seizure under the **Fourth Amendment** "requires 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." **490 U.S., at 396** (internal quotation marks omitted). The inquiry requires analyzing the totality of the circumstances. See **ibid.**

We analyze this question from the perspective "of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." **Ibid.** We thus "allo[w] 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 396-397** .

In this case, respondent advances two main Fourth Amendment arguments. First, she contends that the **Fourth Amendment** **[*2021]** did not allow petitioners to use deadly force to terminate the chase. See Brief for Respondent 24-35. Second, she argues that the "degree of force **[***7]** was excessive," that is, that even if the officers were permitted to fire their weapons, they went too far when they fired as many rounds as they did. See *id.*, at 36-38. We address each issue in turn.**[**1067]**

1

In *Scott*, we considered a claim that a police officer violated the **Fourth Amendment** when he terminated a high-speed car chase by using a technique that placed a "fleeing motorist at risk of serious injury or death." **550 U.S., at 386** . The record in that case contained a videotape of the chase, and we found that the events recorded on the tape justified the officer's conduct. We wrote as follows: "Although there is no obvious way to quantify the risks on either side, it is clear from the videotape that respondent posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase." **Id., at 383-384** . We also wrote:

"[R]espondent's vehicle rac[ed] down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous maneuvers just to keep up." **Id., at 379-380** (footnote omitted).

In light of those facts, "we [thought] it [was] quite clear that [the police officer] did not violate the **Fourth Amendment** ." **Id., at 381** . We held that a "police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the **Fourth Amendment** , even when it places the fleeing motorist at risk of serious injury or death."[3] **Id., at 386** .

We see no basis for reaching a different conclusion here. As we have explained *supra,* at ___, the chase in this case exceeded 100 miles per hour and lasted over five minutes. During that chase, Rickard passed more than two dozen other vehicles, several of which were forced to alter course. Rickard's outrageously reckless driving posed a grave public safety risk. And while it is true that Rickard's car eventually collided with a police car and came temporarily to a near standstill, that did not end the chase. Less than three seconds later, Rickard resumed maneuvering his car. Just before the shots were fired, when the front bumper of his car was flush with that of one of the police cruisers, Rickard was obviously pushing down on the accelerator because the car's wheels were spinning, and then Rickard threw the car into reverse "in an **[**1068]** attempt to escape." Thus, the record conclusively **[*2022]** disproves respondent's claim that the chase in the present case was already over when petitioners began shooting. Under the circumstances at the moment when the shots were fired, all that a reasonable police officer could have concluded was that Rickard was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others **[***8]** on the road. Rickard's conduct even after the shots were fired-as noted, he managed to drive away despite the efforts of the police to block his path-underscores the point.

In light of the circumstances we have discussed, it is beyond serious dispute that Rickard's flight posed a grave public safety risk, and here, as in *Scott*, the police acted reasonably in using deadly force to end that risk.

2

We now consider respondent's contention that, even if the use of deadly force was permissible, petitioners acted unreasonably in firing a total of 15 shots. We reject that argument. It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended. As petitioners noted below, "if lethal force is justified, officers are taught to keep shooting until the threat is over." **509 Fed. Appx., at 392** .

Here, during the 10-second span when all the shots were fired, Rickard never abandoned his attempt to flee. Indeed, even after all the shots had been fired, he managed to drive away and to continue driving until he crashed. This would be a different case if petitioners had initiated a second round of shots after an initial round had clearly incapacitated Rickard and had ended any threat of continued flight, or if Rickard had clearly given himself up. But that is not what happened.

In arguing that too many shots were fired, respondent relies in part on the presence of Kelly Allen in the front seat of the car, but we do not think that this factor changes the calculus. Our cases make it clear that "Fourth Amendment rights are personal rights which . . . may not be vicariously asserted." Alderman v. United States, **394 U.S. 165** , **174** (1969); see also Rakas v. Illinois, **439 U.S. 128** , **138** -**143** (1978). Thus, the question before us is whether petitioners violated Rickard's Fourth Amendment rights, not Allen's. If a suit were brought on behalf of Allen under either **§1983** or state tort law, the risk to Allen would be of central concern.[4] But Allen's presence in the car cannot enhance Rickard's Fourth Amendment rights. After all, it was Rickard who put Allen in danger by fleeing and refusing to end the chase, and it would be perverse if his disregard for Allen's safety worked to his benefit.**[**1069]**

C

We have held that petitioners' conduct did not violate the **Fourth Amendment** , but even if that were not the case, **[*2023]** petitioners would still be entitled to summary judgment based on qualified immunity.

An official sued under **§1983** is entitled to qualified immunity unless it is shown that the official violated a statutory or constitutional right that was " 'clearly established' " at the time of the challenged conduct. Ashcroft v. al-Kidd, **563 U.S. ___** , ___ (2011) (**slip op., at 3**). And a defendant cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it. **Id., at ___** (**slip op., at 9**). In other words, "existing precedent must have placed the statutory or constitutional question" confronted by the official "beyond debate." ***Ibid.*** In addition, "[w]e have repeatedly **[***9]** told courts . . . not to define clearly established law at a high level of generality," **id., at ___** (**slip op., at 10**), since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced. We think our decision in Brosseau v. Haugen, **543 U.S. 194** (2004) (*per curiam*) squarely demonstrates that no clearly established law precluded petitioners' conduct at the time in question. In *Brosseau*, we held that a police officer did not violate clearly established law when she fired at a fleeing vehicle to prevent possible harm to "other officers on foot who [she] believed were in the immediate area, . . . occupied vehicles in [the driver's] path[,] and . . . any other citizens who might be in the area." **Id., at 197** (quoting **339 F. 3d 857** , **865** (CA9 2003); internal quotation marks omitted). After surveying lower court decisions regarding the reasonableness of lethal force as a response to vehicular flight, we observed that this is an area "in which the result depends very much on the facts of each case" and that the cases "by no means 'clearly establish[ed]' that [the officer's] conduct violated the **Fourth Amendment** ." **543 U.S., at 201** . In reaching that conclusion, we held that *Garner* and *Graham*, which are "cast at a high level of generality," did not clearly establish that the officer's decision was unreasonable. **543 U.S., at 199** .

Brosseau makes plain that as of February 21, 1999-the date of the events at issue in that case-it was not clearly established that it was unconstitutional to shoot a fleeing driver to protect those whom his flight might endanger. We did not consider later decided cases because they "could not have given fair notice to [the officer]." **Id., at 200** , n. 4. To defeat immunity here, then, respondent must show at a minimum either (1) that the officers' conduct in this case was materially different from the conduct in *Brosseau* or

(2) that between February 21, 1999, and July 18, 2004, there emerged either " 'controlling authority' " or a "robust 'consensus of cases of persuasive authority,' " *al-Kidd,* **supra, at ___** (**slip op., at 10**) (quoting Wilson v. Layne, **526 U.S. 603** , **617** (1999); some internal quotation marks omitted), that would alter our analysis of the **[**1070]** qualified immunity question. Respondent has made neither showing.

To begin, certain facts here are more favorable to the officers. In *Brosseau*, an officer on foot fired at a driver who had just begun to flee and who had not yet driven his car in a dangerous manner. In contrast, the officers here shot at Rickard to put an end to what had already been a lengthy, high-speed pursuit that indisputably posed a danger both to the officers involved and to any civilians who happened to be nearby. Indeed, the lone dissenting Justice in *Brosseau* emphasized that in **[*2024]** that case, "there was no ongoing or prior high-speed car chase to inform the [constitutional] analysis." **543 U.S., at 206** , n. 4 (opinion of Stevens, J.). Attempting to distinguish *Brosseau*, respondent focuses on the fact that the officer there fired only 1 shot, whereas here three officers collectively fired 15 shots. But it was certainly not clearly established at the time of the shooting in this case that the number of shots fired, under the **[***10]** circumstances present here, rendered the use of force excessive.

Since respondent cannot meaningfully distinguish *Brosseau*, her only option is to show that its analysis was out of date by 2004. Yet respondent has not pointed us to any case-let alone a controlling case or a robust consensus of cases-decided between 1999 and 2004 that could be said to have clearly established the unconstitutionality of using lethal force to end a high-speed car chase. And respondent receives no help on this front from the opinions below. The District Court cited only a single case decided between 1999 and 2004 that identified a possible constitutional violation by an officer who shot a fleeing driver, and the facts of that case-where a reasonable jury could have concluded that the suspect merely "accelerated to eighty to eighty-five miles per hour in a seventy-miles-per-hour zone" and did not "engag[e] in any evasive maneuvers," Vaughan v. Cox, **343 F. 3d 1323** , **1330** -**1331** (CA11 2003)-bear little resemblance to those here.

* * *

Under the circumstances present in this case, we hold that the **Fourth Amendment** did not prohibit petitioners from using the deadly force that they employed to terminate the dangerous car chase that Rickard precipitated. In the alternative, we note that petitioners are entitled to qualified immunity for the conduct at issue because they violated no clearly established law.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Argued by Mr. Michael Mosley for the petitioners, by Mr. John F. Bash for the United States as *amicus curiae*, by special leave of the Court, supporting the petitioners, and by Mr. Gary K. Smith for the respondent.

Brief for the United States as *amicus curiae* supporting petitioners filed 1/6/14, by by U.S. Solicitor General Donald B. Verrilli Jr., Stuart F. Delery, Ian Heath Gershengorn, John F. Bash, Barbara L. Herwig and Jonathan H. Levy, all of the attorney general's office, Washington. Brief for respondent filed 1/29/14,

by Gary K. Smith of Apperson Crump PLC, Memphis, Tenn. Brief for petitioners filed 12/30/13, by Michael A. Mosley, North Little Rock, Ark. and John Wesley Hall Jr., Little Rock, Ark.

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fn *

JUSTICE GINSBURG joins the judgment and Parts I, II, and III-C of this opinion. JUSTICE BREYER joins this opinion except as to Part III- B-2.

fn 1

It is also undisputed that Forthman saw glass shavings on the dashboard of Rickard's car, a sign that the windshield had been broken recently; that another officer testified that the windshield indentation and glass shavings would have justified a suspicion " 'that someone had possibly been struck by that vehicle, like a pedestrian' "; and that Forthman saw beer in Rickard's car. See App. 424-426 (Response to Defendant's Statement of Undisputed Material Facts in No. 2:05-cv-2585 (WD Tenn.), ¶¶15-19).

fn 2

After expressing some confusion about whether it should dismiss or affirm, the panel wrote that "it would seem that what we are doing is affirming [the District Court's] judgment." **509 Fed. Appx., at 393** .

fn 3

In holding that petitioners' conduct violated the **Fourth Amendment** , the District Court relied on reasoning that is irreconcilable with our decision in *Scott*. The District Court held that the danger presented by a high-speed chase cannot justify the use of deadly force because that danger was caused by the officers' decision to continue the chase. Estate of Allen v. West Memphis, [**2011 BL 14933**], 2011 WL 197426 , *8 (WD Tenn., Jan. 20, 2011). In *Scott*, however, we declined to "lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people's lives in danger," concluding that the Constitution "assuredly does not impose this invitation to impunity-earned-by-recklessness." **550 U.S., at 385-386** .

fn 4

There seems to be some disagreement among lower courts as to whether a passenger in Allen's situation can recover under a Fourth Amendment theory. Compare Vaughan v. Cox, **343 F. 3d 1323** (CA11 2003) (suggesting yes), and Fisher v. Memphis, **234 F. 3d 312** (CA6 2000) (same), with Milstead v. Kibler, **243 F. 3d 157** (CA4 2001) (suggesting no), and Landol-Rivera v. Cruz Cosme, **906 F. 2d 791** (CA1 1990) (same). We express no view on this question. We also note that in County of Sacramento v. Lewis, **523 U.S. 833** , **836** (1998), the Court held that a passenger killed as a result of a police chase could recover under a substantive due process theory only if the officer had "a purpose to cause harm unrelated to the legitimate object of arrest."

Wood v. Moss, 134 S. Ct. 2056, 188 L. Ed. 2d 1039 (2014) [2014 BL 145339]

Pagination
* S. Ct.
** L. Ed. 2d
*** BL

Majority Opinion >

U.S. Supreme Court

WOOD ET AL. v. MOSS ET AL.

No. 13-115

May 27, 2014

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

PDF of opinion[1041] [*2057] [*2058]**

Syllabus

No. 13-115. Argued March 26, 2014-Decided May 27, 2014

While campaigning for a second term, President George W. Bush was scheduled to spend the night at a Jacksonville, Oregon, cottage. Local law enforcement officials permitted a group of Bush supporters and a group of protesters to assemble on opposite sides of a street along the President's motorcade route. When the President made a last-minute decision to have dinner at the outdoor patio area of the Jacksonville Inn's restaurant before resuming the drive to the cottage, the protesters moved to an area in front of the Inn, which placed them within weapons range of the President. The supporters remained in their original location, where a two-story building blocked sight of, and weapons access to, the patio. At the direction of two Secret Service agents responsible for the President's security, petitioners here (the agents), local police cleared the area where the protesters had gathered, eventually moving them two blocks away to a street beyond weapons reach of the President. The agents did not require the guests already inside the Inn to leave, stay clear of the patio, or go through a security screening. After the President dined, his motorcade passed the supporters, but the protesters, now two blocks from the motorcade's route, were beyond his sight and hearing.

The protesters sued the agents for damages, alleging that the agents engaged in viewpoint discrimination in violation of the First Amendment when they moved the protesters away from the Inn but allowed the supporters to remain in their original location. The District Court denied the agents' motion to dismiss the

suit for failure to state a claim and on qualified immunity grounds, but on interlocutory appeal, the Ninth Circuit reversed. The court held that the protesters had failed to state a First Amendment claim under the pleading standards of Bell Atlantic Corp. v. Twombly, **550 U.S. 544** , and Ashcroft v. Iqbal, **556 U.S. 662** . Because those decisions were rendered after the protesters commenced suit, the Court of Appeals granted leave to amend the **[**1042]** complaint. On remand, the protesters supplemented the complaint with allegations that the agents acted pursuant to an unwritten Secret Service policy of working with the Bush White House to inhibit the expression of disfavored views at presidential appearances. The District Court denied the agents' renewed motion to dismiss. This time, the Ninth Circuit affirmed, concluding that viewpoint-driven conduct on the agents' part could be inferred from the absence of a legitimate security rationale for the different treatment accorded the two groups of demonstrators. The Court of Appeals further held that the agents were not entitled to qualified immunity because this Court's precedent made clear that the Government may not regulate speech based on its content.

Held: The agents are entitled to qualified immunity.

(a) Government officials may not exclude from public **[***2]** places persons engaged in peaceful expressive activity solely because the government actor fears, dislikes, or disagrees with the views expressed. See, *e.g.*, Police Dept. of Chicago v. Mosley, **408 U.S. 92** , 96. The fundamental right to speak, however, does not leave people at liberty to publicize their views " 'whenever and however and wherever they please.' " **[*2059]** United States v. Grace, **461 U.S. 171** , 177. In deciding whether the protesters have alleged violation of a clearly established First Amendment right, this Court assumes without deciding that Bivens v. Six Unknown Fed. Narcotics Agents, **403 U.S. 388** , which involved alleged Fourth Amendment violations, extends to First Amendment claims, see, *e.g.*, *Iqbal*, 556 U.S., at 675.

The doctrine of qualified immunity protects government officials from liability for civil damages "unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." Ashcroft v. al-Kidd, 563 U.S. ___, ___. The "dispositive inquiry . . . is whether it would [have been] clear to a reasonable officer" in the agents' position "that [their] conduct was unlawful in the situation [they] confronted." Saucier v. Katz, **533 U.S. 194** , 202. At the time of the Jacksonville incident, this Court had addressed a constitutional challenge to Secret Service actions only once. In Hunter v. Bryant, **502 U.S. 224** , the plaintiff challenged the lawfulness of his arrest by two Secret Service agents for writing and delivering a letter about a plot to assassinate President Reagan. Holding that the agents were shielded by qualified immunity, the Court stated that "accommodation for reasonable error . . . is nowhere more important than when the specter of Presidential assassination is raised." **Id., at 229.** This Court has recognized the overwhelming importance of safeguarding the President in other contexts as well. See Watts v. United States, **394 U.S. 705** , 707. Mindful that officers may be faced with unanticipated security situations, the key question addressed is whether it should have been clear to the agents that the security perimeter they established violated **[**1043]** the First Amendment.

(b) The protesters assert, and the Ninth Circuit agreed, that the agents violated clearly established federal law by denying them "equal access to the President." No decision of which the Court is aware, however, would alert Secret Service agents engaged in crowd control that they bear a First Amendment obligation to make sure that groups with conflicting views are at all times in equivalent positions. Nor would the maintenance of equal access make sense in the situation the agents here confronted, where only the protesters, not the supporters, had a direct line of sight to the patio where the President was dining. The protesters suggest that the agents could have moved the supporters out of the motorcade's range as well, but there would have been no security rationale for such a move.

(c) The protesters allege that, in directing their displacement, the agents acted not to ensure the President's safety, but to insulate the President from their message. These allegations are undermined by a map of the area, which shows that, because of the protesters' location, they posed a potential **[***3]** security risk to the President, while the supporters, because of their location, did not. The protesters' counterarguments are unavailing. They urge that, had the agents' professed interest in the President's safety been sincere, the agents would have screened or removed from the premises persons already at the Inn when the President arrived. But staff, other diners, and Inn guests were on the premises before the agents knew of the President's plans, and thus **[*2060]** could not have anticipated seeing the President, no less causing harm to him. The agents also could keep a close watch on the relatively small number of people already inside the Inn, surveillance that would have been impossible for the hundreds of people outside the Inn. A White House manual directs the President's advance team to "work with the Secret Service . . . to designate a protest area . . . preferably not in view of the event site or motorcade route." The manual guides the conduct of the political advance team, not the Secret Service, whose own written guides explicitly prohibit "agents from discriminating between anti-government and pro-government demonstrators." Even assuming, as the protesters maintain, that other agents, at other times and places, have assisted in shielding the President from political speech, this case is scarcely one in which the agents lacked a valid security reason for their actions. Moreover, because individual government officials "cannot be held liable" in a *Bivens* suit "unless they themselves acted [unconstitutionally]," *Iqbal*, 556 U.S., at 683, this Court declines to infer from alleged instances of misconduct on the part of particular agents an unwritten Secret Service policy to suppress disfavored expression, and then attribute that supposed policy to all field-level operatives.

711 F. 3d 941 , reversed.

GINSBURG, J., delivered the opinion for a unanimous Court.**[**1044]**

Opinion of the Court

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns a charge that two Secret Service agents, in carrying out their responsibility to protect the President, engaged in unconstitutional viewpoint-based discrimination. The episode in suit occurred in Jacksonville, Oregon, on the evening of October 14, 2004. President George W. Bush, campaigning in the area for a second term, was scheduled to spend the evening at a cottage in Jacksonville. With permission from local law enforcement officials, two groups assembled on opposite sides of the street on which the President's motorcade was to travel to reach the cottage. One group supported the President, the other opposed him.

The President made a last-minute decision to stop in town for dinner before completing the drive to the cottage. His motorcade therefore turned from the planned route and proceeded to the outdoor patio dining area of the Jacksonville Inn's restaurant. Learning of the route change, the protesters moved down the sidewalk to the area in front of the Inn. The President's supporters remained across the street and about a half block away from the Inn. At the direction of the Secret **[***4]** Service agents, state and local police **[*2061]** cleared the block on which the Inn was located and moved the protesters some two blocks away to a street beyond handgun or explosive reach of the President. The move placed the protesters a block farther away from the Inn than the supporters.

Officials are sheltered from suit, under a doctrine known as qualified immunity, when their conduct "does not violate clearly established . . . constitutional rights" a reasonable official, similarly situated, would have comprehended. Harlow v. Fitzgerald, **457 U.S. 800** , **818** (1982). The **First Amendment** , our precedent makes plain, disfavors viewpoint-based discrimination. See Rosenberger v. Rector and Visitors of Univ. of Va., **515 U.S. 819** , **828** (1995). But safeguarding the President is also of overwhelming importance in our constitutional system. See Watts v. United States, **394 U.S. 705** , **707** (1969) (*per curiam*). Faced with the President's sudden decision to stop for dinner, the Secret Service agents had to cope with a security situation not earlier anticipated. No decision of this Court so much as hinted that their on-the-spot action was unlawful because they failed to keep the protesters and supporters, throughout the episode, equidistant from the President.

The United States Court of Appeals for the Ninth Circuit ruled otherwise. It found dispositive of the agents' motion to dismiss "the considerable disparity in the distance each group was allowed to stand from the Presiden[t]." Moss v. United States Secret Serv., **711 F. 3d 941** , **946** (2013). Because no "clearly established law" so controlled the agents' response to the motorcade's detour, we reverse the Ninth Circuit's judgment.

I
A

On October 14, 2004, after a nearby campaign appearance, President George W. Bush was scheduled to spend the night at a cottage in Jacksonville, Oregon. Anticipating the **[**1045]** visit, a group of individuals, including respondents (the protesters), organized a demonstration to express their opposition to the President and his policies. At around 6:00 p.m. on the evening the President's motorcade was expected to pass through the town, between 200 and 300 protesters gathered in Jacksonville, on California Street between Third and Fourth Streets. See *infra*, at 4 (map depicting the relevant area in Jacksonville). The gathering had been precleared with local law enforcement authorities. On the opposite side of Third Street, a similarly sized group of individuals (the supporters) assembled to show their support for the President. If, as planned, the motorcade had traveled down Third Street to reach the cottage, with no stops along the way, the protesters and supporters would have had equal access to the President throughout in delivering their respective messages.

This situation was unsettled when President Bush made a spur-of-the-moment decision to stop for dinner at the Jacksonville Inn before proceeding to the cottage. The Inn stands on the north side of California Street, on the block where the protesters had assembled. Learning of the President's change in plans, the protesters moved along the block to face the Inn. The respective positions of the protesters and supporters at the time the President arrived at the Inn are shown on the following map, which the protesters **[***5]** attached as an exhibit to their complaint: [1]

[*2062] [1046]** **Diagram A**

As the map indicates, the protesters massed on the sidewalk directly in front of the Inn, while the supporters remained assembled on the block west of Third Street, some distance from the Inn. The map also shows an alley running along the east side of the Inn (the California Street alley) leading to an outdoor patio used by the Inn's restaurant as a dining area. A six-foot high wooden fence surrounded the patio. At the location where the President's supporters gathered, a large two-story building, the U.S. Hotel, extended north around the corner of California and Third Streets. That structure blocked sight of, and weapons access to, the patio from points on California Street west of the Inn.

Petitioners are two Secret Service agents (the agents) responsible for the President's security during the Jacksonville visit. Shortly after 7:00 p.m. on the evening in question, the agents **[**1047]** enlisted the aid of local police officers to secure the area for the President's unexpected stop at the Inn. Following the agents' instructions, **[*2063]** the local officers first cleared the alley running from Third Street to the patio (the Third Street alley), which the President's motorcade would use to access the Inn. The officers then cleared Third Street north of California Street, as well as the California Street alley.

At around 7:15 p.m., the President arrived at the Inn. As the motorcade entered the Third Street alley, both sets of demonstrators were equally within the President's sight and hearing. When the President reached the outdoor patio dining area, the protesters stood on the sidewalk directly in front of the California Street alley, exhibiting signs and chanting slogans critical of the President and his policies. In view of the short distance between California Street and the patio, the protesters no longer contest that they were then within weapons range of the President. See Tr. of Oral Arg. 3-4, 35, 39-40; Brief for Petitioners 44.

Approximately 15 minutes later, the agents directed the officers to clear the protesters from the block in front of the Inn and move them to the east side of Fourth Street. From their new location, the protesters were roughly the same distance from the President as the supporters. But unlike the supporters, whose sight and access were obstructed by the U.S. Hotel, only a parking lot separated the protesters from the patio. The protesters thus remained within weapons range of, and had a direct line of sight to, the President's location. This sight line is illustrated by the broken arrow marked on the map below.[2]

[*2064] [1048] Diagram B**

After another 15 minutes passed, the agents directed the officers again to move the protesters, this time one block farther away from the Inn, to the east side of Fifth Street. The relocation was necessary, the agents told the local officers, to ensure that no demonstrator would be "within handgun or explosive range of the President." App. to Pet. for Cert. 177a. The agents, however, did not require the guests already inside the Inn to leave, stay clear of the patio, or go through any security **[***6]** screening. The supporters at all times retained their original location on the west side of Third Street.

After the President dined, the motorcade left the Inn by traveling south on Third Street toward the cottage. On its way, the motorcade passed the President's supporters. The protesters remained on Fifth Street, two **[**1049]** blocks away from the motorcade's route, thus beyond the President's sight and hearing.**[*2065]**

B

The protesters sued the agents for damages in the U.S. District Court for the District of Oregon. The agents' actions, the complaint asserted, violated the protesters' First Amendment rights by the manner in which the agents established a security perimeter around the President during his unscheduled stop for dinner. See Bivens v. Six Unknown Fed. Narcotics Agents, **403 U.S. 388** (1971) (recognizing claim for damages against federal agents for violations of plaintiff's Fourth Amendment rights).[3] Specifically, the protesters alleged that the agents engaged in viewpoint discrimination when they moved the protesters away from the Inn, while allowing the supporters to remain in their original location.

The agents moved to dismiss the complaint on the ground that the protesters' allegations were insufficient to state a claim for violation of the **First Amendment** . The agents further maintained that they were

sheltered by qualified immunity because the constitutional right alleged by the protesters was not clearly established.

The District Court denied the motion, see Moss v. United States Secret Serv., [**2007 BL 123425**], 2007 WL 2915608 , *1, 20 (D Ore., Oct. 7, 2007), but on interlocutory appeal,[4] the U.S. Court of Appeals for the Ninth Circuit reversed. See Moss v. United States Secret Serv., **572 F. 3d 962** (2009). The facts alleged in the complaint, the Court of Appeals held, were insufficient to state a First Amendment claim under the pleading standards prescribed in Bell Atlantic Corp. v. Twombly, **550 U.S. 544** (2007), and Ashcroft v. Iqbal, **556 U.S. 662** (2009). **572 F. 3d, at 974-975** .[5] Because *Twombly* and *Iqbal* were decided after the protesters filed their complaint, however, the Ninth Circuit instructed the District Court to grant the protesters leave to amend. **572 F. 3d, at 972.**

On remand, the protesters supplemented their complaint with allegations that the agents acted pursuant to an "actual but unwritten" Secret Service policy of "work[ing] with the White House under President Bush to eliminate dissent and protest from presidential appearances." App. to Pet. for Cert. 184a. Relying on published media reports, the protesters' amended complaint cited several instances in which other Secret Service agents allegedly engaged in conduct designed to suppress expression critical of President Bush at his public appearances. The amended complaint also included an excerpt from a White **[**1050]** House manual instructing the President's advance team to "work with the Secret Service and have them ask the local police department to designate a protest area where demonstrators can be placed; preferably not in view of the event site or motorcade route." *Id.*, at 219a. See also *id.*, at 183a.**[*2066]**

The agents renewed their motion to dismiss the suit for failure to state a claim and on qualified immunity grounds. The District Court denied the motion, holding that the complaint adequately alleged a violation **[***7]** of the First Amendment, and that the constitutional right asserted was clearly established. Moss v. United States Secret Serv., **750 F. Supp. 2d 1197** , **1216-1228** (Ore. 2010). The agents again sought an interlocutory appeal.

This time, the Ninth Circuit affirmed, **711 F. 3d 941** , satisfied that the amended pleading plausibly alleged that the agents "sought to suppress [the protesters'] political speech" based on the viewpoint they expressed, **id., at 958.** Viewpoint-driven conduct, the Court of Appeals maintained, could be inferred from the absence of a legitimate security rationale for "the differential treatment" accorded the two groups of demonstrators. See **id., at 946.** The Court of Appeals further held that the agents were not entitled to qualified immunity because this Court's precedent "make[s] clear . . . 'that the government may not regulate speech based on its substantive content or the message it conveys.' " **Id., at 963** (quoting *Rosenberger*, **515 U.S., at 828**).

The agents petitioned for rehearing and rehearing en banc, urging that the panel erred in finding the alleged constitutional violation clearly established. Over the dissent of eight judges, the Ninth Circuit denied the en banc petition. See **711 F. 3d, at 947** (O'Scannlain, J., dissenting from denial of rehearing en banc). We granted certiorari. **571 U.S. ___** (2013).

II
A

It is uncontested and uncontestable that government officials may not exclude from public places persons engaged in peaceful expressive activity solely because the government actor fears, dislikes, or disagrees with the views those persons express. See, *e.g.*, Police Dept. of Chicago v. Mosley, **408 U.S. 92** , **96**

(1972). It is equally plain that the fundamental right to speak secured by the **First Amendment** does not leave people at liberty to publicize their views " 'whenever and however and wherever they please.' " United States v. Grace, **461 U.S. 171** , **177-178** (1983) (quoting Adderly v. Florida, **385 U.S. 39** , **48** (1966)). Our decision in this case starts from those premises.

The particular question before us is whether the protesters have alleged violation of a clearly established First Amendment right based on the agents' decision to order the protesters moved from their original location in front of the Inn, first to the block just east of the Inn, and then another block farther. We note, initially, an antecedent issue: Does the **First Amendment** give rise to an implied right of action for damages against federal officers who violate that Amendment's guarantees? In *Bivens**[**1051]*** , cited supra, at 8, we recognized an implied right of action against federal officers for violations of the Fourth Amendment. Thereafter, we have several times assumed without deciding that *Bivens* extends to First Amendment claims. See, *e.g.*, *Iqbal*, **556 U.S., at 675** . We do so again in this case. See Tr. of Oral Arg. 10-11 (counsel for petitioners observed that the implication of a right to sue derived from the **First Amendment** itself was an issue "not preserved below" and therefore "not presented" in this Court).

The doctrine of qualified immunity protects government officials from liability for civil damages "unless a plaintiff **[*2067]** pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time **[***8]** of the challenged conduct." Ashcroft v. al-Kidd, **563 U.S. ___** , ___ (2011) (slip op., at 3). And under the governing pleading standard, the "complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, **556 U.S., at 678** (internal quotation marks omitted). Requiring the alleged violation of law to be "clearly established" "balances . . . the need to hold public officials accountable when they exercise power irresponsibly and 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). The "dispositive inquiry," we have said, "is whether it would [have been] clear to a reasonable officer" in the agents' position "that [their] conduct was unlawful in the situation [they] confronted." Saucier v. Katz, **533 U.S. 194** , **202** (2001).

At the time of the Jacksonville incident, this Court had addressed a constitutional challenge to Secret Service actions on only one occasion.[6] In Hunter v. Bryant, **502 U.S. 224** (1991) (*per curiam*), the plaintiff sued two Secret Service agents alleging that they arrested him without probable cause for writing and delivering to two University of Southern California offices a letter referring to a plot to assassinate President Ronald Reagan. We held that qualified immunity shielded the agents from claims that the arrest violated the plaintiff's rights under the **Fourth** , **Fifth** , **Sixth** , and **Fourteenth Amendments** . "[N]owhere," we stated, is "accommodation for reasonable error . . . more important than when the specter of Presidential assassination is raised." **Id., at 229.**

In other contexts, we have similarly recognized the Nation's "valid, even . . . overwhelming, interest in protecting the safety of its Chief Executive." *Watts*, **394 U.S., at 707** . See also Rubin v. United States, **525 U.S. 990** , **990-991** (1998) (BREYER, J., dissenting from denial of certiorari) ("The physical security of the President of the United **[**1052]** States has a special legal role to play in our constitutional system."). Mindful that "[o]fficers assigned to protect public officials must make singularly swift, on the spot, decisions whether the safety of the person they are guarding is in jeopardy," Reichle v. Howards, **566 U.S. ___** , ___ (2012) (GINSBURG, J., concurring in judgment) (slip op., at 2), we address the key question: Should it have been clear to the agents that the security perimeter they established violated the **First Amendment** ?

B

The protesters assert that it violated clearly established **First Amendment** law to deny them "equal access to the President," App. Pet. for Cert. 175a, during his dinner at the Inn and subsequent drive to the cottage, *id.*, at 185a.[7] The Court of Appeals **[*2068]** agreed, holding that the agents violated clearly established law by moving the protesters to a location that "was in relevant ways not comparable to the place where the pro-Bush group was allowed to remain." **711 F. 3d, at 946** (internal quotation marks and ellipsis omitted). The Ninth Circuit did not deny that security concerns justified "mov[ing] the anti-Bush protesters *somewhere*." ***Ibid.*** But, the court determined, no reason was shown for "the considerable disparity in the distance each group was allowed to stand from the Presidential party." ***Ibid.*** The agents thus **[***9]** offended the **First Amendment** , in the Court of Appeals' view, because their directions to the local officers placed the protesters at a "comparativ[e] disadvantag[e] in expressing their views" to the President. ***Ibid.***

No decision of which we are aware, however, would alert Secret Service agents engaged in crowd control that they bear a First Amendment obligation "to ensure that groups with different viewpoints are at comparable locations at all times." **Id., at 952** (O'Scannlain, J., dissenting from denial of rehearing en banc). Nor would the maintenance of equal access make sense in the situation the agents confronted.

Recall that at the protesters' location on the north side of California Street, see *supra*, at 4, they faced an alley giving them a direct line of sight to the outdoor patio where the President stopped to dine. The first move, to the corner of Fourth and California Streets, proved no solution, for there, only a parking lot stood between the protesters and the patio. True, at both locations, a six-foot wooden fence and an unspecified number of local police officers impeded access to the President. Even so, 200 to 300 protesters were within weapons range, and had a largely unobstructed view, of the President's location. See Tr. of Oral Arg. 41 (counsel for respondents acknowledged that "in hindsight, you could . . . conclude" that "proximity [of the protesters to the President] alone . . . is enough to create a security [risk]"). See also Eggen & Fletcher, FBI: Grenade Was a Threat to Bush, Washington Post, May 19, 2005, p. A1 (reporting that a live grenade thrown at President Bush in 2005, had it detonated, could have injured him from 100 feet away).**[**1053]**

The protesters suggest that the agents could have moved the President's supporters further to the west so that they would not be in range of the President when the motorcade drove from the Inn to the cottage where the President would stay overnight. See App. Pet. for Cert. 178a. As earlier explained, however, see *supra*, at 4-5, there would have been no security rationale for such a move. In contrast to the open alley and parking lot on the east side of the Inn, to the west of the Inn where the supporters stood, a large, two-story building blocked sight of, or weapons access to, the patio the agents endeavored to secure.[8] No clearly established law, we **[*2069]** agree, required the Secret Service "to interfere with even more speech than security concerns would require in an attempt to keep opposing groups at roughly equal distances from the President." Brief for Petitioners 32. And surely no such law required the agents to attempt to maintain equal distances by "prevail[ing] upon the President not to dine at the Inn." Oral Arg. Audio in No. 10-36152 (CA9) 42:22 to 43:36 (argument by protesters' counsel), available at http://www.ca9.uscourts.gov/media/view.php?pk_id=0000008129 . (as visited May 19, 2014, and in Clerk of Court's case file) (argument tendered by protesters' counsel).

III

The protesters allege that, when the agents directed their displacement, the agents acted not to ensure the President's safety from handguns or explosive devices. Instead, the protesters **[***10]** urge, the agents had them moved solely to insulate the President from their message, thereby giving the President's supporters greater visibility and audibility. See Tr. of Oral Arg. 35-36. The Ninth Circuit found sufficient the protesters' allegations that the agents "acted *with the sole intent* to discriminate against [the protesters] because of their viewpoint". **711 F. 3d, at 964** . Accordingly, the Court of Appeals "allow[ed] the protestors' claim of viewpoint discrimination to proceed." **Id., at 962.**

It may be, the agents acknowledged, that clearly established law proscribed the Secret Service from disadvantaging one group of speakers in comparison to another if the agents had "no objectively reasonable security rationale" for their conduct, but acted solely to inhibit the expression of disfavored views. See Tr. of Oral Arg. 28-29; Brief for Petitioners 52 (entitlement to relief might have been established if, for example, "the pro-Bush group had . . . been allowed to move into the nearer location that the anti-Bush had vacated"). We agree with the agents, however, that the map itself, reproduced *supra*, at 4, undermines the protesters' allegations of viewpoint discrimination as the sole reason for the agents' directions. The map corroborates that, because of their location, the protesters posed a potential security risk to the President, **[**1054]** while the supporters, because of their location, did not.

The protesters make three arguments to shore up their charge that the agents' asserted security concerns are disingenuous. First, the protesters urge that, had the agents' professed interest in the President's safety been sincere, the agents would have directed all persons present at the Inn to be screened or removed from the premises. See Brief for Respondents 27. But staff, other diners, and Inn guests were there even before the agents themselves knew that the President would dine at the Inn. See Brief for Petitioners 47. Those already at the Inn "could not have had any expectation that they would see the President that evening or any opportunity to premeditate a plan to cause him harm." Reply Brief 16. The Secret Service, moreover, could take measures to ensure that the relatively small number of people already inside the Inn were kept under close watch; no similar surveillance would have been possible for 200 to 300 people congregating in front of the Inn. See *ibid.*

The protesters also point to a White House manual, which states that the President's advance team should "work with the Secret Service . . . to designate a protest area . . . preferably not in view of the event site or motorcade route." App. to Pet. for Cert. 219a. This manual guides the conduct of the President's political advance team. See *id.*, at 220a (distinguishing between the political role of the **[*2070]** advance team and the security mission of the Secret Service).[9] As the complaint acknowledges, the Secret Service has its own "written guidelines, directives, instructions and rules." *Id.*, at 184a. Those guides explicitly "prohibit Secret Service agents from discriminating between anti-government and pro-**[***11]** government demonstrators." *Ibid.*

The protesters maintain that the Secret Service does not adhere to its own written guides. They recite several instances in which Secret Service agents allegedly engaged in viewpoint discrimination. See *id.*, at 189a-194a. Even accepting as true the submission that Secret Service agents, at times, have assisted in shielding the President from political speech, this case is scarcely one in which the agents acted "*without* a valid security reason." Brief for Respondents 40. We emphasize, again, that the protesters were at least as close to the President as were the supporters when the motorcade arrived at the Jacksonville Inn. See *supra*, at 5. And as the map attached to the complaint shows, see *supra*, at 4, when the President reached the patio to dine, the protesters, but not the supporters, were within weapons range of his location. See *supra*, at 14. Given that situation, the protesters cannot plausibly urge that the agents "had no valid security reason to request or order the[ir] eviction." App. to Pet. for Cert. 186a.

We note, moreover, that individual government officials "cannot be held liable" in a *Bivens* suit "unless they themselves acted [unconstitutionally]." *Iqbal*, **556 U.S., at 683** . We therefore decline to infer from alleged **[**1055]** instances of misconduct on the part of particular agents an unwritten policy of the Secret Service to suppress disfavored expression, and then to attribute that supposed policy to all field-level operatives. See Reply Brief 20.

* * *

This case comes to us on the agents' petition to review the Ninth Circuit's denial of their qualified immunity defense. See Tr. of Oral Arg. 10 (petitioners' briefing on appeal trained on the issue of qualified immunity). Limiting our decision to that question, we hold, for the reasons stated, that the agents are entitled to qualified immunity. Accordingly, we reverse the judgment of the Court of Appeals.

It is so ordered.

Argued by Mr. Ian H. Gershengorn for the petitioners and by Mr. Steven M. Wilker for the respondents.

Brief for respondents filed 2/10/14, by Steven M. Wilker of Tonkon Torp LLP, Portland, Ore., Kevin Diaz of ACLU Foundation of Oregon, Inc., Portland, Ore., Arthur B. Spitzer of American Civil Liberties Union of the Nation's Capital, Washington and Steven R. Shapiro and Ben Wizner, both of American Civil Liberties Union Foundation, New York. Brief for petitioners filed 1/10/14, by U.S. Solicitor General Donald B. Verrilli Jr., Stuart F. Delery, Ian Heath Gershengorn, Eric J. Feigin, Barbara L. Herwig, Edward Himmelfarb and Jeremy S. Brumbelow, all of the attorney general's office, Washington.

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fn 1

App. to Brief for Petitioners (Diagram A).

fn 2

This map appears as an appendix to the agents' opening brief. See App. to Brief for Petitioners (Diagram B). Except for the arrow, Diagram B is identical to the map included in the protesters' complaint.

fn 3

The protesters' complaint also asserted claims against local police officers for using excessive force in violation of the **Fourth Amendment** . Those claims were dismissed for failure to state a claim, see Moss v. United States Secret Serv., **711 F. 3d 941** , **954** (CA9 2013), and are not at issue here.

fn 4

We have repeatedly "stressed the importance of resolving immunity questions at the earliest possible stage [of the] litigation," Hunter v. Bryant, **502 U.S. 224** , **227** (1991) (*per curiam*).

fn 5

In ruling on a motion to dismiss, we have instructed, courts "must take all of the factual allegations in the complaint as true," but "are not bound to accept as true a legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, **556 U.S. 662** , **678** (2009) (internal quotation marks omitted).

fn 6

Subsequent to the incident at issue here, we held in Reichle v. Howards, **566 U.S. ___** , __ _ (2012) (slip op., at 1), that two Secret Service agents were "immune from suit for allegedly arresting a suspect in retaliation for [negative comments he made about Vice President Cheney], when the agents had probable cause to arrest the suspect for committing a federal crime."

fn 7

The protesters, however, do not maintain that "the **First Amendment** entitled them to be returned to their original location after the President's dinner and before his motorcade departed." Brief for Respondents 39-40, n. 7. They urge only that "it was constitutionally improper to move them in the first place." *Id.*, at 40, n. 7; see Tr. of Oral Arg. 50 (same).

fn 8

Neither side contends that the presence of demonstrators along the President's motorcade route posed an unmanageable security risk, or that there would have been a legitimate security rationale for removing the protesters, but not the supporters, from the motorcade route. The President's detour for dinner, however, set the two groups apart. "[T]he security concerns arising from the presence of a large group of people near the open-air patio where the President was dining were plainly different from those associated with permitting a group . . . to remain along Third Street while the President's [armored limousine] traveled by." Brief for Petitioners 46.

fn 9

"An 'advance man' is '[o]ne who arranges for publicity, protocol, transportation, speaking schedules, conferences with local government officials, and minute details of a visit, smoothing the way for a political figure.' " See **711 F. 3d, at 950** , n. 2 (O'Scannlain, J., dissenting from denial of rehearing en banc) (quoting W. Safire, Safire's Political Dictionary 8 (5th ed. 2008)).