NO. 20-1668

In the Supreme Court of the United States

CITY OF TAHLEQUAH, OKLAHOMA;
BRANDON VICK; JOSH GIRDNER,

Petitioners,

v.

AUSTIN P. BOND, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF DOMINIC F. ROLLICE, DECEASED,

Respondent.

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

BRIEF OF THE NATIONAL POLICE ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICUS CURIAE[1]

The National Police Association is an Indiana non-profit corporation founded to provide educational assistance to supporters of law enforcement and support to individual law enforcement officers and the agencies they serve. The NPA seeks to bring important issues in the law enforcement realm to the forefront of public discussion in order to facilitate remedies and broaden public awareness.

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[1] Under Rule 37.6 of the Rules of this Court, *amicus curiae* states that no counsel for a party has written this brief in whole or in part and that no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Petitioners have been provided notice and have consented to the filing of this amicus brief. As noted in the foregoing *Motion*, Respondent has been provided notice but has not consented to the filing of this amicus brief.

SUMMARY OF THE ARGUMENT

Since *Graham v. Connor*, courts judge the force used by an officer in seizing a free citizen by the objective reasonableness standard. Part and parcel with this assessment is the lens through which courts views the facts: the eye of the officer on the scene. The Court's Fourth Amendment cases make clear that at no point does the officer's state of mind bear on whether he or she used excessive force. Yet the Tenth Circuit's holding in *Bond v. City of Tahlequah* requires courts to assess both an officer's intent and, worse, the citizen's intent in determining whether the officer used excessive force.

This is unworkable as a matter of law and fact. Legally, it flies in the face of the Court's Fourth Amendment excessive-force progeny, starting with *Graham*. Factually, officers cannot be expected to make a second-by-second evaluation of how the accused will respond to each and every one of the officer's actions, even the most minimal like, say, taking a step through a doorframe. This is a crucially important case because of the burdens the *Bond* rule, and its Ninth Circuit counterpart, place on officers charged with the policing of over 80 million people in their federal Circuits, a burden which is nonexistent for officers in numerous other Circuits. For these reasons, Amicus National Police Association urges the Court to grant Petitioners' Petition for Certiorari.

ARGUMENT

I. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE RULE AT ISSUE IS A VAST DEPARTURE FROM EXISTING LAW.

In *Graham v. Connor*, the Court held that all excessive force claims arising from the seizure of a free citizen fall under the Fourth Amendment and its "reasonableness" standard. *Graham*, 490 U.S. 386, 395 (1989). Reasonableness, in the Fourth Amendment context, is not a negligence inquiry; it is instead a measurement of "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the government interests alleged to justify the intrusion." *Tennessee v. Garner*, 471 U.S. 1, 8 (1985); *see also Bridges v. Wilson*, 996 F.3d 1094, 1100 (10th Cir. 2021) (noting the difference between state-law negligence and Fourth Amendment reasonableness).

Graham's re-distribution of free-citizen excessive force claims from the Fourteenth Amendment's substantive due process standard to the Fourth Amendment's reasonableness standard had two principal doctrinal effects on the use-of-force analysis. First, after *Graham*, courts examine uses of force through the eyes of a reasonable officer on the scene, accounting for what she or he observed and acted upon. *Graham*, 490 U.S. at 396; *see also Saucier v. Katz*, 533 U.S. 194, 207 (2001) ("Excessive force claims . . . are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred"). Second, the officer's subjective intent matters not because the

Fourth Amendment almost always commands a purely objective inquiry. *Whren v. United States*, 517 U.S. 806, 814 (1996) (noting that the Court has "been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers[.]"); *see also Graham*, 490 U.S. at 397. These well-tread doctrines stem from the reasonableness standard, the "touchstone of Fourth Amendment analysis." *County of Los Angeles v. Mendez*, 581 U.S. ___, 137 S.Ct. 1539, 1546 (2017).

The Tenth Circuit's ruling in *Bond v. City of Tahlequah*, however, marks a stark departure from this well-settled law. Under *Bond* and its Ninth Circuit counterparts, courts must examine whether an officer's "deliberate" or "reckless" conduct "created the need to use force." *Bond*, 981 F.3d 808, 816 (10th Cir. 2020) (citation omitted); *see also Nehad v. Browder*, 929 F.3d 1125, 1135 (9th Cir. 2019). This directive makes an officer's state of mind ("deliberate" or "reckless" conduct) a key component of the Fourth Amendment analysis. Worse, it also makes the citizen's state of mind a Fourth Amendment element. Courts cannot assess an officer's pre-seizure conduct without analyzing the citizen's implied decision to respond to the officer's conduct, *i.e.* the "need to use force" the officer "created." For those reasons, *Bond* and its counterparts divert from the Fourth Amendment's text and *Graham*'s well-settled framework.

This is a crucially important case for the reasons discussed at length in Petitioners' Petition for Certiorari. But beyond those cut-and-dried reasons for granting certiorari lies a set of considerations that strike at the fundamental nature of how laws are enforced. Policing is difficult by nature, but as things stand, it is doubly so in the Ninth and Tenth Circuits.

Here, not only must officers make split-second decisions in high-stress situations about their own conduct, but under *Bond*, they must also make split-second decisions about how suspects, many of whom are intoxicated or struggling with mental health issues, will react to even the most innocent acts. Like the step of a foot through a doorframe. That cannot possibly be the state of the law, and the Court should grant certiorari to say so.

A. The *Bond* Rule Puts at Issue the Officer's State of Mind.

The *Bond* rule takes the aforementioned well-settled law and adds a layer found nowhere in the Fourth Amendment's text nor the Court's Fourth Amendment excessive force precedent. In the manner the Tenth Circuit most often asserts it, the *Bond* rule requires courts to examine whether an officer's "own reckless or deliberate conduct during the seizure unreasonably created the need to use such force." *Bond v. City of Tahlequah*, 981 F.3d 808, 816 (10th Cir. 2020) (citation omitted). Thus, by its very text, *Bond* requires the fact-finder assess an officer's state of mind. *Graham*'s "objective reasonableness" standard says the opposite. Since *Graham*, an officer's state of mind has never been an element to be proved—or, really, relevant at all—in a Fourth Amendment excessive-force claim, for good reason. *Bond* itself acknowledges that "reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 815; *see also Graham*, 490 U.S. at 396-97.

Much can be gleaned from *Graham*. Before it, an officer's state of mind was relevant to a free-citizen excessive force claim, as courts divided on whether citizens could seek redress under the Fourth Amendment or the Fourteenth Amendment. *Graham*, 490 U.S. at 393. Those that applied the Fourteenth Amendment analyzed, as one of four factors, whether the officer applied force "in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973), *overruled in Graham*, 490 U.S. at 394. The "maliciously and sadistically" standard is a quintessential state-of-mind question, as shown by its continued application as a subjective element for prisoner plaintiffs to prove in Eighth Amendment excessive force cases. *See Farmer v. Brennan*, 511 U.S. 825, 835-36 (1994); *accord. Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010).

Yet *Graham* flatly rejected such a subjective component for free-citizen excessive force claims. 490 U.S. at 393-94. Instead, the Court concluded that substantive due process must give way if a more specific constitutional provision applied, and the Fourth Amendment provided explicit textual protection for free citizens in their interactions with law enforcement. *Id.* at 395. Thus *Graham* adopted the Fourth Amendment's "objective reasonableness" standard for "all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other "seizure" of a free citizen[.]" *Ibid.*

Thus, since 1989, the central question in free-citizen excessive force claims "is whether the officers' actions are 'objectively reasonable' in light of the facts

and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397. Yet though *Bond* quotes this exact language, *see* 981 F.3d at 816, the Tenth Circuit nonetheless puts into practice an inquiry that makes the officer's "underlying intent or motivation" a key Fourth Amendment component. That is to say:

> . . . the reasonableness of officers' actions depends both on whether the officers were in danger at the precise moment they used force and on whether their own *reckless* or *deliberate* conduct during the seizure unreasonably created the need to use force.

Id. at 816 (emphasis added) (quoting *Sevier v. City of Lawrence*, 60 F.3d 695, 699 (10th Cir. 1995)). The use of these two terms, "deliberate" and "reckless," places the specific officer's state of mind squarely in the fact-finder's crosshairs. To analyze each—and whether they played a role in the use-of-force encounter—the fact-finder must assess what a specific officer intended (deliberate) or knew and disregarded (reckless). In requiring this analysis of courts under its ambit, the Tenth Circuit creates an excessive-force inquiry that is akin to the subjective component of denial-of-medical care claims. *See Farmer*, 511 U.S. at 836-37 (discussing constitutional definitions of deliberate and reckless conduct).

This inquiry finds no footing in the Fourth Amendment or the Court's *Graham* framework, and the Court has already said as much in the analogous *Mendez* case. Petitioners discuss *Mendez* in great detail, which amicus needs not repeat. It suffices to say that the Court described and then rejected a Ninth Circuit rule which permitted a Fourth Amendment

excessive force claim "where an officer intentionally or recklessly provoke[ed] a violent confrontation, if the confrontation is an independent Fourth Amendment violation." *Mendez*, 137 S.Ct. at 1546 (quoting *Billington v. Smith*, 292 F.3d 1177, 1189 (9th Cir. 2002)). In doing so, the Court singled out the rule's "intentional" or "reckless" requirement as incompatible with the Fourth Amendment principles. *Id.* at 1548. "While the reasonableness of a search or seizure is almost always based on objective factors . . . the provocation rule looks to the subjective intent of the officers who carried out the seizure." *Id.* For that and other reasons, the Court rejected the Ninth Circuit's provocation rule. The *Bond* rule, by virtue of its insistence on an officer's "deliberate" or "reckless" conduct, suffers from precisely the same issue. But "evenhanded law enforcement" cannot be best achieved by the application of "standards that depend on the subjective state of mind of the officer." *Kentucky v. King*, 563 U.S. 452, 464 (2011). For that reason, the Court should grant certiorari to remedy this indisputable constitutional problem.

B. Even Worse, the *Bond* Rule Puts at Issue the Citizen's State of Mind.

However, an even more problematic issue lurks below the *Bond* rule's surface. Though it doesn't mention "provocation" by name, *Bond* and its predecessors require fact-finders to determine whether an officer "unreasonably created the need" to use force. *Bond*, 918 F.3d at 816; *see also Sevier*, 60 F.3d at 699. While perhaps a way to avoid using the term "provocation," make no mistake: the *Bond* rule is about provocation, as at least one predecessor indicates. *See Estate of Ceballos v. Husk*, 919 F.3d 1204, 1218 (10th Cir. 2019)

(discussing how a jury could find a reasonable officer would have considered the decedent's condition before "provoking" the need to use force).

As a rule of provocation, therefore, *Bond* suffers from a unique problem. Black's Law Dictionary defines provocation as "the act of inciting another to do something[,]" or "something (such as words or actions) that affects a person's reason and self-control[.]" *Provocation*, BLACK'S LAW DICTIONARY (11th ed. 2019). Implicit in this definition is that provocation, like the tango, takes two. One must first act, but a provocation occurs only when another responds.[2] Applying that concept to the Fourth Amendment context, the officer must act, but the citizen must *react*. If the citizen does not react, then definitionally, a provocation did not occur. *Bond* thus requires the fact-finder to assess not only the officer's "deliberate" or "reckless" act but also the *citizen*'s decision *vel non* to respond. In short: the citizen's state of mind.

Analysis of a non-governmental actor's state of mind is mostly foreign to the Fourth Amendment's application, which focuses wholly on government conduct. For that reason, the Court should grant certiorari and consider whether *Bond*'s extra-textual expansion of the Fourth Amendment passes constitutional muster. And, in so doing, the Court should decline to adopt such an expansive view. Endorsing the Tenth Circuit's *Bond* rule would pose at least two dangerous problems for law enforcement officers.

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[2] Not to belabor the point, but provocation is self-defining. "The act" is defined by the phrase "do something." In other words, the provocative act is only a provocation if someone indeed "do[es] something" in response.

1. Inherent Unpredictability.

First, endorsing *Bond* would cede a portion of the Fourth Amendment analysis to the states of mind of individuals interacting with police. These individuals are often struggling with mental health issues or who are under the influence of foreign substances. A 2016 study of all individuals arrested in Marion County, Indiana (the Indianapolis metropolitan area) concluded that 31.3% of arrestees had a mental health diagnosis in the two years prior to the arrest. *See* Lauren A. Magee, et al., *Two-year Prevalence Rates of Mental Health and Substance Use Disorder Diagnoses Among Repeat Arrestees*, HEALTH AND JUSTICE 1, 4 (January 7, 2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7789256/pdf/40352_2020_Article_126.pdf. The same study found 27.7% of arrestees had a substance-use disorder (SUD). *Id.* In fact, 22.5% of all arrestees had both a mental health and SUD diagnosis in the two years before arrest. *Id.* And, as this Court recently observed, police officers conduct approximately 29,000 arrests *per day*. *Nieves v. Bartlett*, 139 S.Ct. 1715, 1725 (2019).

These numbers tell a general story: officers often encounter individuals with altered mental states. Were that the whole story, *Bond*'s requirement that officers and courts assess a citizen's mental state would still pose inherently difficult evaluation problems because of the near-impossible task of assessing how an MHD-or SUD-afflicted individual responds to a particular situation. But compounding this issue is the reality that individuals with altered mental states—especially those influenced by substances—are more susceptible to react aggressively to neutral triggers than the average person, especially in high-stress sit-

uations. A 2018 study found that even low doses of alcohol revealed a significant relationship between prefrontal cortex activity and aggression. *See* Thomas F. Denson et al., *The Neural Correlates of Alcohol-Related Aggression*, 18 COGNITIVE, AFFECTIVE & BEHAVIORAL NEUROSCIENCE, 203, 214 (January 8, 2018), https://link.springer.com/content/pdf/10.3758/s13415-017-0558-0.pdf. This conclusion, the authors noted, "corroborate[d] the predictions of many of the major theories of intoxicated aggression." *Id.* Such as, for example, that when combined with hostile situations or dispositional aggressiveness, alcohol can promote aggressive behavior. *Id.* at 203.

The suggestion that individuals who interact with law enforcement have, generally, an increased propensity for aggression is not limited to those with SUD diagnoses, however. In a 2006 article discussing neuroscientific components of the legal insanity defense, Professor Richard E. Redding described a meta-analysis of studies that reached the following conclusions:

> Indeed, a recent meta-analysis of thirty-nine studies (totaling 4,589 participants) concluded that persons who exhibit antisocial, criminal, or delinquent behavior perform significantly poorer than normal individuals on neuropsychological tests of the planning, decision making, self-monitoring, and judgment skills that reflect frontal-lobe functioning. Even minimal frontal lobe dysfunction may cause impulsive aggression, as studies have found relationships between sub-clinical frontal lobe deficits and aggression in normal populations.

See Richard E. Redding, *The Brain-Disordered Defendant: Neuroscience and Legal Insanity in the Twenty-*

First Century, 56 AM. U. L. REV. 51, 61–62 (2006). Thus, whether SUD-related or not, there is support for the conclusion that citizens interacting with officers are more likely to possess altered mental states and/or react aggressively to simple conduct.

The upshot of this information is two-fold as it concerns *Bond*. One, the case requires officers, and then courts, to assess the state of mind of individuals with an increased propensity to have an altered mental state—an ask that is often beyond a layperson's comprehension. Two, individuals with an altered mental state are more susceptible to react aggressively to environmental triggers than the average person. If these individuals' states of mind are a component of a court's Fourth Amendment analysis, *Bond* stands as a *massive* expansion of liability for government officers. A § 1983 plaintiff could assert that they perceived routine behavior as a provocation and thereby "dress up" routine behavior as constitutionally deficient. *Mendez*, 137 S.Ct. at 1548. As the Court recently recognized, the Fourth Amendment simply does not operate this way. *Torres v. Madrid*, 141 S.Ct. 989, 999 (2021) (in discussing the Fourth Amendment seizure inquiry, noting that a seizure does not "depend on the subjective perceptions of the seized person"); *see also Nieves*, 139 S.Ct. at 1725 ("In the Fourth Amendment context . . . 'we have almost uniformly rejected invitations to probe subjective intent.") (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 737 (2011)).

As the Court has already pointed out in the custodial context, an objective test is designed to avoid this entire problem. In *J.D.B. v. North Carolina*, the Court affirmed that courts must conduct an objective analysis to determine whether a suspect was in

custody and thus warranted a *Miranda* reading. *J.D.B.*, 564 U.S. 261, 271 (2011). The whole point of this "objective reasonableness" test was to "give clear guidance to the police." *Id.* The Court reasoned that an objective analysis "avoids burdening the police with the task of anticipating the idiosyncrasies of every individual subject and divining how those particular traits affect each person's subjective state of mind." *Id.* (citation omitted). In stark contrast to *Graham* and other objective-inquiry cases like *J.D.B.*, *Bond*'s state-of-mind emphasis muddies the objective-reasonableness water in a way that will force officers and courts to assess "the idiosyncrasies of each individual subject." This is a difficult request to judges sitting in chambers, but an almost impossible ask of officers in the midst of high-stress, fast-paced encounters. The unfairness of it is amplified by the fact that officers in the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Circuits *do not* have to make such an evaluation. *See* Pet'rs. Br., pgs. 17-20. The long and short, therefore, is that the Ninth and Tenth Circuits make it more difficult, and therefore more dangerous, to engage with citizen-actors because of a rule with no constitutional basis. The Court should grant certiorari to address and rectify this significant issue.

2. Deconstruction of Qualified Immunity.

Bond's "citizen-state-of-mind" inquiry poses more than factual problems, however. A second issue arises when considered through the qualified immunity lens. Were the Court to endorse *Bond*'s view of the Fourth Amendment excessive force analysis, it would throw the qualified immunity doctrine into disarray. Courts could not give, and law enforcement could not possibly glean, constitutional guidance from a discussion of

an officer-citizen interaction if that same interaction could turn out differently solely because Citizen B reacts differently than Citizen A. A different Dominic Rollice responds to a different Officer Girdner's single step through the garage doorway by staying put, and this case never occurs. What, then, does *Bond* teach officers in the Tenth Circuit? Don't take a single step towards a suspect, ever? Surely not.

Qualified immunity exists to protect government officials when their duties require them to act in an area where clearly established rights are not implicated. *Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982). The limit on such protection is found "where an official could be expected to know that certain conduct would violate statutory or constitutional rights." *Id.* But the problem introduced by *Bond* is that officers could never again be "expected to know" what conduct would or would not be unreasonable because *the citizen*, by his response to an officer's conduct, can now define unreasonableness. And given the discussion about how unreliable citizen-actors often are, allowing their reactions to define unreasonableness brings down the entire house.

Bond is, in so many ways, a perfect example. As Petitioners explain, the Tenth Circuit held a reasonable jury could find that the Petitioners' act of "cornering" Rollice in the garage "recklessly or deliberately escalate[d] the situation." *See* Petr.'s Br., pgs. 24-25, n. 4; *see also Bond*, 981 F.3d at 826. This "reckless" or "deliberate" behavior, according to the Tenth Circuit, was Petitioner Girdner taking one step towards Rollice, Rollice then stepping back, Girdner walking towards Rollice, Rollice going to the back of the garage, and then the other officers entering the garage. *Id.* at 813.

That is it. Had Rollice not reacted to Girdner taking *one step* into the garage, this case could have turned out differently. Rollice's single decision to move to the back of the garage effectively transformed this case from a reasonable use of force to an allegedly unreasonable one.

It confounds the mind to figure out what constitutional instruction a law enforcement official can divine from *Bond*. Is it that the Fourth Amendment bars officers from approaching a suspect for whom they were called to remove from property that does not belong to the suspect? Is it that the Fourth Amendment bars approaching a suspect *at all*, lest the suspect react to escalate the situation and then claim the officer's slight footstep enflamed him? These questions show why the *Bond* rule makes qualified immunity nearly unworkable. Actually, if anything, *Bond* strengthens qualified immunity to Respondent's detriment. Following *Bond*, the average law enforcement officer in the Ninth and Tenth Circuits would be remiss if they failed to argue that the law wasn't clearly established in every situation where a suspect reacts to officer conduct in an unexpected manner. For that reason, it is in the best interest of law enforcement *and* the public at large for the Court to grant certiorari and provide clarity on this issue.

C. Any Version of the *Bond* Rule That Doesn't Put State of Mind at Issue Creates a Constitutional Negligence Standard.

Even a watered-down version of the *Bond* rule, one that does not call for an examination of an officer's "intentional or reckless" conduct but merely examines whether pre-seizure conduct was unreasonable, does

not pass constitutional muster. Such a rule would require an assessment of what the officer, as the Tenth Circuit put it, "knew or should have known," *Bond*, 981 F.3d at 816, or, in other words, whether the officer was negligent.

This concept of the *Bond* rule fails too, as "injuries inflicted by governmental negligence are not addressed by the United States Constitution." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). It is difficult to conceive how such a rule would be anything but a negligence inquiry. Expanding the Fourth Amendment analysis to include pre-seizure conduct would improperly make some non-search, non-seizure conduct a topic of Fourth Amendment contemplation. The Fourth Amendment applies to "searches" or "seizures." A seizure has only occurred upon the application of physical force or a show of authority that in some way restrains the liberty of a person. *Terry v. Ohio*, 392 U.S. 1, 19, n. 16 (1968); *see also Torres*, 141 S.Ct. at 995. But *Bond*, by its terms, requires an examination of officer conduct that created the need to use force. This could, in theory, sweep into the Fourth Amendment's ambit conduct that is not an "application of physical force" or a "show of authority" with "intent to restrain." In so doing, *Bond* turns the Fourth Amendment microscope on conduct that may be neither a search nor a seizure. But since the Fourth Amendment, by its text, does not apply to such conduct, the only gauge left by which to measure that conduct is the common-law concept of reasonableness, also called negligence.

Notably, the Tenth Circuit itself acknowledged as recently as 2017 that such a pre-use negligence rule fails to meet constitutional standards. *Pauly v. White*, 874 F.3d 1197, 1220 (10th Cir. 2017) ("The officer's

conduct prior to a suspect threatening force 'is only actionable if it rises to the level of recklessness'. . . . 'mere negligence will not suffice'") (citation omitted). Given the apparent self-awareness of the problems with such a rule, it is inexplicable why *Bond* nonetheless insinuates that an officer could be liable for conduct that they "knew or should have known" would create the need to use force. 961 F.3d at 816. This effectively constitutionalizes negligence as actionable conduct. But this Court has never read the Constitution to punish such behavior.

To the contrary, the Court has advised that negligence is not a matter for constitutional consideration. *See*, *e.g.*, *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) ("We have accordingly rejected the lowest common denominator of customary tort liability as any mark of sufficiently shocking conduct . . . liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process"); *Daniels*, 474 U.S. at 331 ("injuries inflicted by governmental negligence are not addressed by the United States Constitution"); *Davidson v. Cannon*, 474 U.S. 344, 347 (1986) ("[W]here a government official is merely negligent in causing the injury, no procedure for compensation is constitutionally required"). As these cases indicated, even a watered-down version of *Bond* does not pass constitutional standards.

As Petitioners note—and as this Court pointed out in *Mendez*—policy rationales for *Bond*-like rules may be anchored in a desire to hold officers accountable for missteps. But, like the *Mendez* rule, *Bond* is simply not necessary to achieve those ends. The Fourth Amendment bars unreasonable government-involved searches and seizures and § 1983 makes violations

thereof actionable. In a similar vein, state tort law may provide redress for mistakes officers make, including behavior that unnecessarily raises risks for citizens involved in police encounters. *See, e.g., Morales v. City of Oklahoma City ex rel. Oklahoma City Police Dep't.*, 230 P.3d 869, 880 (Okla. 2010) (discussing a police officer's state-law duty of care in making an arrest). If it is true that "there is no need to dress up every Fourth Amendment claim as an excessive force claim," *Mendez*, 137 S.Ct. at 1548, then it is also true that there is no need to dress up every negligence claim as a Fourth Amendment claim.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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JUNE 30, 2021