NO. 21-533

In the Supreme Court of the United States

BRAD MARTIN, IN HIS INDIVIDUAL CAPACITY AND AS AN EMPLOYEE OF THE ARIZONA DEPARTMENT OF PUBLIC SAFETY; STATE OF ARIZONA,

Petitioners,

v.

CARLOS CASTRO,

Respondent.

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

BRIEF OF AMICUS CURIAE NATIONAL POLICE ASSOCIATION 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. Under Rule 37.2, *amicus curiae* states that Petitioners received timely written notice and have consented in writing to the filing of this amicus brief. *Amicus curiae* further states that Respondent has likewise received timely written notice and has consented in writing to the filing of this amicus brief. As such, under Rule 37.2(a), *amicus curiae* states that the written consent of all parties has been provided.

SUMMARY OF THE ARGUMENT

A little less than one month ago, in *Rivas-Villegas v. Cortesluna*, the Court granted certiorari to review a denial of qualified immunity from the Ninth Circuit. In summarily reversing the denial, the Court noted that the Ninth Circuit panel failed to identify an opinion of this Court and, "assuming that controlling Circuit precedent clearly establishes law for the purposes of § 1983," likewise failed to identify any Circuit precedent that give the officer notice that "his specific conduct was unlawful." Thus, per the Court, the officer's conduct merited qualified immunity. *Rivas-Villegas* was far from the first time this Court has had to rebuff a wayward qualified immunity analysis in the Circuits — especially the Ninth Circuit.

Now, despite this Court's repeated efforts to impress upon that Circuit the importance of following settled law, the Court is once again presented with a Ninth Circuit ruling in which the panel abjectly disregarded their obligation to identify rulings which would have put Officer Brad Martin on notice that his conduct was unlawful. Yet not only did the Circuit fail to do the case-identification task, but here, it is worse, for the panel failed to reason through Officer Martin's use-of-force at all.

In so failing, the Ninth Circuit ignores a key principle from the Court's governing precedent, *Graham v. Connor*: that the question of reasonableness must be analyzed from the perspective of a reasonable officer in the defendant-officer's shoes. Practically, this means a "reasonable officer" who holds the same

knowledge about the suspect in question that the defendant officer possessed at the time of the incident. The information an officer knows about the suspect they are confronting often, by necessity, shapes the officer's decision-making; an officer interacting with an individual the officer knows is unarmed, for example, will act in materially different ways when compared to an officer who encounters a suspect the officer knows is armed and, say, under the influence of methamphetamines. The Ninth Circuit's opinion impermissibly forgoes that analysis in favor of focusing on one slice of the overall totality of the circumstances.

For these reasons, and those explained in Petitioners' Petition for Writ of Certiorari, the Court should grant certiorari to (1) enforce its precedent in *Rivas-Villegas* and (2) impress upon the Circuits their obligation to, at the very least, evaluate the "totality of the circumstances" of each use of force that confronts them.

ARGUMENT

I. THE COURT SHOULD GRANT CERTIORARI TO REINFORCE THE REQUIREMENTS GOVERNING COURTS OF APPEAL IN ANALYZYING QUALIFIED IMMUNITY.

If anything in the Court's qualified immunity regime is set in stone, it is that a state actor's conduct can give rise to civil liability only when he or she violates "clearly established statutory or constitutional rights of which a reasonable person would have known," *White v. Pauly*, 137 S.Ct. 548, 551 (2017) (per curiam), and that a right is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates" it. *See Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam).

In the same vein as the Fourth Amendment's "reasonable officer" standard, *see infra*, at 13, the Court requires District and Circuit judges to assess a qualified immunity defense "in light of the specific context of the case, not as a broad general proposition." *Brosseau v. Hagen*, 543 U.S. 194, 198 (2004) (per curiam) (internal quotes omitted). Indeed, qualified immunity "shields an officer from suit when she makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances she confronted." *Ibid.* (emphasis added).

The Court has explained these tenets many times, both when affirming or reversing a denial of qualified immunity. *See Taylor v. Riojas*, 141 S.Ct. 52, 54 (2020) (citing *Brosseau* in affirming a denial of qualified

immunity because "no reasonable officer" could have believed housing an inmate in "such deplorably unsanitary conditions for such an extended period of time" was constitutional); *cf. City of Escondido v. Emmons*, 139 S.Ct. 500, 503-04 (2019) (discussing settled qualified immunity principles in reversing a denial of qualified immunity because the Ninth Circuit failed to properly assess the underlying case).

But the message, it seems, is not getting through. In Officer Brad Martin's case, the Ninth Circuit once again dispensed with a genuine qualified immunity analysis in favor of a short, near-unexplained affirmance that focused wholly on one piece of the much larger Fourth Amendment excessive-force "totality of the circumstances" pie. *See Graham v. Connor*, 490 U.S. 386, 396 (1989) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). Petitioners thoroughly set forth the factual circumstances in the Opening Brief, and save for where discussed below they needn't be repeated. It suffices to say that in a fast-moving situation involving a suspect Officer Martin knew (1) had an immediate history of violence, (2) knew could possess a weapon, and (3) knew could be under the influence of methamphetamines, the Ninth Circuit panel failed to assess any other component of the use-of-force save for the point that Officer Martin's K-9 companion, did not release the subject until "12 to 26" seconds after the subject was handcuffed. *See Castro v. Martin*, 854 F.App'x. 888, 890 (9th Cir. 2021) (Mem.) ("Although the parties make various arguments about the legality of the entire exercise of force, this appeal turns solely on the 12 to 26 seconds that passed between when Castro was 'handcuffed and subdued' and when the K9 released its bite"). This *amicus curiae* writes now

to emphasize two points in the qualified immunity realm.

First, the Court's recent decision in *Rivas-Villegas v. Cortesluna* — decided after Petitioners filed their opening brief — emphasizes the requirement for lower courts to cite on-point precedent from this Court. The Ninth Circuit did not do this. *Second*, the Court has emphasized before the general principle that Circuits and District Courts should perform an inquiry that "clearly attends" to the facts and circumstances in a use-of-force case under the Fourth Amendment. Again, the Ninth Circuit did not do this. For both reasons, the Court should grant certiorari to review this case.

A. The Ninth Circuit Failed to Identify On-Point Precedent from This Court.

A week or so after Petitioners filed their opening brief in this case, the Court decided *Rivas-Villegas v. Cortesluna*, No. 20-1539, ___ S.Ct. ___, 2021 WL 4822662 (2021) (per curiam), reversing the Ninth Circuit's denial of qualified immunity to a California police officer. That opinion holds significant implications for the merits of Officer Martin's appeal.

In *Rivas-Villegas*, the Court confronted a situation wherein officers responded to a home following a 911 call. *Id.* at *1. The caller reported that they were hiding in a bedroom from a potential assailant who was wielding a chainsaw and "was always drinking," "had anger issues," and "was really mad." *Id.* Upon arrival, the officers learned from dispatch that the would-be assailant might be using the chainsaw to break into the room where the caller was hiding. *Id.*

The officers approached the door of the home, announced their presence, and told the suspect to come to the door. *Id.* As he did, one officer prepared a beanbag shotgun while others ordered the suspect to drop a "weapon" he was holding (later identified as a "metal tool"), which he did. *Id.* The suspect then emerged from the home, following officers' commands to keep his hands up. *Id.* One officer noticed that the suspect had a knife in his pocket, causing officers to order the suspect to stop and to keep his hands raised. *Id.* The suspect began lowering his hands, so one officer shot him twice with the beanbag shotgun. *Id.* The suspect then raised his hands once more, and followed officer commands to get down. Officer Rivas-Villegas proceeded to straddle the suspect's back with his left knee, while another officer removed the knife from the suspect's pocket. *Id.* at *2. The officers then handcuffed the suspect, who later sued Officer Rivas-Villegas claiming he'd violated the Fourth Amendment's ban on excessive force. *Id.*

The District Court granted Rivas-Villegas summary judgment on qualified immunity grounds, but the Ninth Circuit reversed. *Id.* Citing only to *LaLonde v. County of Riverside*, 204 F.3d 946 (9th Cir. 2000), the Circuit panel, drawing a dissent, concluded that Rivas-Villegas was on notice that it was excessive to lean with a knee on the back of a "suspect[] who w[as] lying face-down on the ground and w[as] not resisting either physically or verbally." *Rivas-Villegas*, 2021 WL 4822662, at *2.

Per the Court, the dissenting judge argued that *LaLonde*'s facts were "materially distinguishable" from Rivas-Villegas's case and could not have given notice that his conduct was unlawful. *Id.*; *see also*

Cortesluna v. Leon, 979 F.3d 645, 664 (9th Cir. 2020) (Collins, J., *concurring in part and dissenting in part*). This Court agreed. *Id.* The Court noted that the officers in *LaLonde*, while responding to a noise complaint, used force on a man in his underwear and a t-shirt holding a sandwich in his home, spraying him with pepper spray and "deliberately d[igging]" a knee into his back with force that caused serious injury. *Id.* (citing *LaLonde*, 204 F.3d at 951-52). On the other hand, Officer Rivas-Villegas and his colleagues were responding to an alleged serious domestic violent incident possibly involving a chainsaw, and a suspect who also possessed a knife in his pocket that he'd just attempted to reach contrary to officer orders. *Id.* As such, the Court found *LaLonde* materially distinguishable from Rivas-Villegas's case. That, coupled with the fact that the Ninth Circuit panel failed to identify "any Supreme Court case that addresses facts like the ones at issue" in Rivas-Villegas's case, caused the Court to grant Rivas-Villegas's petition for certiorari and reverse the Ninth Circuit's determination. *Id.*

The Ninth Circuit's decision that was overturned in *Rivas-Villegas* is remarkably similar to the Ninth Circuit's opinion in this case, at least as far as they fall into the same pool of mistaken analysis, and thus the same result should obtain. The Court was clear in that *Rivas-Villegas*, as it has been clear in nearly every qualified immunity opinion for years, that clearly-established rights cannot be established at a high level of generality. *Id.* at *2 (citing *White v. Pauly*, 137 S.Ct. 548, 551 (2017) (per curiam) (Though "this Court's case law does not require a case directly on point for a right to be clearly established, existing

precedent must have placed the statutory or constitutional question beyond debate.”))

As Petitioners thoroughly explained, the Ninth Circuit's opinion relies on two cases, *Hernandez v. Town of Gilbert*, 989 F.3d 739 (9th Cir. 2021) and *Watkins v. City of Oakland*, 145 F.3d 1087 (9th Cir. 1998), that are distinguishable from the underlying facts of Officer Martin's conduct such that they did not give Officer Martin notice his actions were unlawful. *See* Petition for Writ of Certiorari, at 26-32. And just like it did in *Rivas-Villegas*, the Ninth Circuit panel failed to cite any other Supreme Court precedent that would have given Officer Martin the required notice. *See Rivas-Villegas*, 2021 WL 4822662, at *3. This would have merited review even had *Rivas-Villegas* never existed, but after that case, it mandates the Court accept this case and reverse the Ninth Circuit's opinion.

B. The Ninth Circuit Failed to Assess the Circumstances Underlying the Use of Force.

Additionally, were this Court to deny review, it would stand as a tacit acceptance of the panel's decision to disavow their obligation to the public to provide reasoned, thorough evaluations of the legal questions before them. For the next problem with the Ninth Circuit's decision is that it completely disregards the general principle that courts, District or Circuit, should strive to inquire into the facts and circumstances of the cases before them in reaching a decision.

It, of course, is not enshrined that lower courts must provide detailed written findings except in specific situations, which do not include on dispositive motions. *See*, *e.g.,* Fed. R. Civ. P. 52(a). But when they do not,

especially on dispositive motions, lower courts deprive the appellate courts of their "tools of review," *see Clay v. Equifax, Inc.*, 762 F.2d 952, 957 (11th Cir. 1985), and reduce the appellate courts to the plight of "the proverbial blind hog, scrambling through the record in search of an acorn." *Id*. Indeed, this Court has empowered Circuit courts to set aside District Court grants of summary judgment when the subject order is "opaque and unilluminating as to either the relevant facts or the law with respect to the merits of appellants' claim." *Carter v. Stanton*, 405 U.S. 669, 671 (1972); *accord. Iascone ex rel. Isacone v. Conejo Valley Unified School District*, 15 F.App'x. 401, 404 (9th Cir. 2001) (unpublished).

The need for thorough evaluation is all the more pressing in qualified immunity appeals due to the often fact-intensive nature of the question the court system must answer, and the fact that officers "are entitled to a thorough determination of their claim[s] of qualified immunity if that immunity is to mean anything at all." *Solomon v. Petray*, 699 F.3d 1034, 1039 (8th Cir. 2012); *see also Norris v. Williams*, 776 F.App'x. 619, 621-22 (11th Cir. 2019) (unpublished) (remanding a denial of qualified immunity because the district court failed to conduct an individualized qualified immunity analysis); *Distiso v. Town of Wolcott*, 352 F.App'x. 478, 481-82 (2d Cir. 2009) (unpublished) (remanding denial of qualified immunity for failure to consider the scope of the defense); *Harris v. Morales*, 231 F.App'x 773, 777 (10th Cir. 2007)

(unpublished) (remanding for failure to consider the clearly-established question).[2]

Of course, these persuasive authorities mostly deal with the Circuit-District Court relationship, but the fundamental concerns apply here with equal force. Officer Martin did suffer by virtue of the Ninth Circuit's failure to seriously inquire into the facts (as found by the District Court) and circumstances at issue, in the same way that the state actors in the above-listed cases suffered by their respective District Courts' failure to assess the qualified immunity defense in the first instance. That alone merits the Court intervening to reverse, or at least review, the Ninth Circuit panel's decision. But, as it were, this Court has not shied away from remanding cases back to the Circuit Courts for more thorough factual evaluations. Indeed, the Court did so last term in an excessive force case, *Lombardo v. City of St. Louis*, 141 S.Ct. 2239 (2021).

In *Lombardo*, the Eighth Circuit affirmed a District Court's grant of summary judgment where the District Court found the officers' use of force not excessive. *Id.* at 2241. The Court granted certiorari to review, taking particular note that the Eighth Circuit appeared to conclude that, based on Circuit precedent, the use of a prone restraint was "*per se* constitutional so long as an individual appears to resist officers' efforts to subdue him." *Ibid.* Given that this apparent holding seemed to minimize facts that could have

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[2] Many of these cases involve a complete dereliction of the qualified-immunity assessment. *Amicus curiae* is not saying they are direct apples-to-apples comparisons. That said, as to evaluating the key Fourth Amendment question at issue here, the panel basically did nothing at all. So perhaps they are red-apples to pink-apples comparisons.

distinguished the relied-on precedent and appeared important under the Court's latest excessive-force case (*Kingsley v. Hendrickson*, 576 U.S. 389 (2015)), the Court vacated the judgment and remanded the case to give the Eighth Circuit "the opportunity to employ an inquiry that clearly attends to the facts and circumstances in answering" the Court's questions. *Id.* at 2242; *see also City of Escondido*, 139 S.Ct. at 503-04 (vacating a denial of qualified immunity where the Circuit Court failed to "ask[] whether clearly established law prohibit the officers from stopping and taking down a man in these circumstances") (emphasis added).

The five-page Ninth Circuit opinion here in no sense fulfills the court system's obligation to thoroughly assess Officer Martin's qualified immunity defense. Though the opinion summarizes the District Court's factual findings, it does not seriously apply the Court's settled excessive-force legal framework to those facts. *See* App.3-5. Incredibly, in an opinion discussing a state actor's qualified immunity defense to an excessive force claim, the opinion never once mentions the Fourth Amendment, it does not cite or discuss *Graham v. Connor*, it does not mention the Fourth Amendment "objective reasonableness" standard, and it certainly does not examine the "totality of the circumstances" involved. *See* Section II, *infra*, at 13. As such, it cannot be that the Ninth Circuit's opinion satisfies the Court's hinted-at preference for lower courts to thoroughly evaluate and discuss the questions before them. *See Lombardo*, 141 S.Ct. at 2422.

The requirement for clear-throated legal opinions is fundamentally important in the qualified immunity context. It is as important for the public to have a

robust qualified immunity regime—including what is and what is constitutional—as it for law enforcement. The Eleventh Circuit once aptly stated that "a court must craft its orders so that those who seek to obey may know precisely what the court intends to forbid." *American Red Cross v. Palm Beach Blood Bank, Inc.*, 143 F.3d 1407, 1411 (11th Cir. 1998). That was in the context of preliminary injunctions, but in a realm where adjudications of immunity operate in the same conduct-defining way, the sentiment makes just as much sense. As such, the Court should grant certiorari and, at the very least, vacate the Ninth Circuit's ruling and remand it for further consideration.

II. THE COURT SHOULD GRANT CERTIORARI TO REINFORCE THE IMPORTANCE OF ASSESSING *WHAT* AN OFFICER KNEW AT THE MOMENT FORCE WAS USED.

In keeping with the Ninth Circuit's theme of unspoken conclusions, *amicus curiae*'s final point of emphasis is the panel's abject failure to undertake any part of the *Graham v. Connor* analysis. 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. *See* 490 U.S. at 395. *Graham* also emphasized the lens through which courts must review uses-of-force, that being the eyes of a reasonable officer on the scene, accounting for what she or he observed and acted upon. *Id.* 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").

This "lens" is crafted from the concept of "reasonableness," the "touchstone of Fourth Amendment analysis." *County of Los Angeles v. Mendez*, 581 U.S. ___, 137 S.Ct. 1539, 1546 (2017). Reasonableness, in the Fourth Amendment context, is not a negligence inquiry; instead, it is considered by balancing "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." *Garner*, 471 U.S. at 8; *see also Bridges v. Wilson*, 996 F.3d 1094, 1100 (10th Cir. 2021) (discussing the difference between state-law negligence and Fourth Amendment reasonableness).

Baked into the reasonable-officer standard is the reality, now doctrinal, that how the reasonable office would act in any given case is framed by what the actual officer knew when force was used. In other words, the better but more laborious way to put it would be to call an officer, say, the "reasonable officer who is aware the suspect has a knife in his pocket and is wanted for aggravated assault and battery." Courts often describe officers this way when conducting the excessive-force evaluation.[3] More than anything,

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[3] *See*, *e.g.*, *Tillis on behalf of Wuenschel v. Brown*, 12 F.4th 1291, 1301 (11th Cir. 2021) (referring to a "reasonable officer who had nearly been struck by a suspect's moving vehicle"); *Helm v. Rainbow City, Ala.*, 989 F.3d 1265, 1279 (11th Cir. 2021) (referring to a "reasonable officer who is told that someone is suffering from medical seizures"); *Estate of Coale v. Frost*, 967 F.3d 978, 995 (10th Cir. 2020) (referring to a "reasonable officer—who would have perceived that any threat . . . had abated"); *Baker v. City of Trenton*, 936 F.3d 523, 531 n. 6 (6th Cir. 2019) (discussing a reasonable officer who "received the information from a dispatch"); *U.S. v. Hill*, 752 F.3d 1029, 1036 (5th Cir. 2014) (referring to a "reasonable officer who happens upon a couple sitting in a car in an apartment complex parking lot on a weekend night");

these descriptors drive home the point that a genuine Fourth Amendment analysis at least considers the officer's point of view and what they knew in interacting with the suspect. Just as the standard in common-law medical negligence claim is what a reasonable physician in that physician's specialty, with that physician's knowledge of the patient's condition, would have done, so it is here. There simply is no other way to view officer conduct that fits within the language of the Fourth Amendment and this Court's precedent.

The officer-knowledge part of *Graham* is fundamental, and its absence here is loud, for what Officer Martin knew about Carlos Castro is significant. As the District Court acknowledged, and Petitioners note, but the Ninth Circuit basically ignored,[4] at the time Officer Martin deployed his K-9 Companion on Castro, he knew (1) Carlos Castro was a member of a local gang

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Rabin v. Flynn, 725 F.3d 628, 636 (7th Cir. 2013) (referring to a "reasonable officer who was aware of [the suspect]'s medical conditions"); *Broadway v. Gonzales*, 26 F.3d 313 (2d Cir. 1994) (referring to a "reasonable officer who found the stove and cans, and who heard the plaintiff's implausible explanation for possessing them"); *see also Haywood v. Hough*, 811 F.App'x 952, 961 (6th Cir. 2020) (unpublished) (referring to a "reasonable officer who confined a suspect to a room for forty minutes").

[4] The only reference to Officer Martin's knowledge in the Opinion is that Martin, "who was observing the encounter, later testified that he believed Castro presented a danger to officers because Castro was allegedly resisting arrest and because Martin thought Castro might be concealing a firearm in his pants." *See* App.3; *Castro*, 854 F.App'x. at 889. This, to put it mildly, is an extreme narrowing of the District Court's findings of fact. *See* App.12-16; *see also Castro v. Arizona Dep't of Public Safety*, No. CV 18-00753-PHX-SRB (ESW), 2020 WL 9600817, at *3-7 (D. Ariz. Apr. 30, 2020), *aff'd sub nom. Castro*, 854 F.App'x 888 (9th Cir. 2020).

called "Dog Town," (2) Castro had past felony convictions—including one for an aggravated assault on a law enforcement officer; (3) Castro had "absconded" from community supervision after his release from prison; (4) Castro had an outstanding arrest warrant; (5) Castro was suspected of committing an aggravated assault with a firearm a week before; (6) Castro was suspected of committing an assault and robbery that day; (7) Castro fled his location when law enforcement arrived; and (8) possible methamphetamines were found in the home from which Castro had just fled. *See* Petition for Writ of Certiorari, at 5-8; *see also* App.12-15; *Castro*, 2020 WL 9600817, at *3-7.

This is the exact type of information that shapes an officer's view of how to conduct herself or himself in arresting a suspect. It is inexcusable that the Ninth Circuit ignored it in reaching its conclusion. *See* App.1-5. To paint the picture, what the officers knew about their suspects when apprehending them played a large role in the Fifth, Sixth, and Eighth Circuit decisions granting qualified immunity to officers in similar scenarios. *See Escobar v. Montee*, 895 F.3d 387, 394 (5th Cir. 2018) (emphasizing facts within the defendant officer's knowledge as the basis for reversing a denial of qualified immunity); *Kuha v. City of Minnetonka*, 365 F.3d 590, 600-01 (8th Cir. 2003), *abrogated on other grounds by Szabla v. City of Brooklyn Park*, 486 F.3d 385 (8th Cir. 2007) (pointing to factors the officers knew or could anticipate at the scene); *Zuress v. City of Newark, Ohio*, 815 F.App'x 1 (6th Cir. 2020) (unpublished) (noting several facts within the officer's knowledge in evaluating whether the plaintiff was resisting arrest).

The truth is, under *Graham* and its progeny, the Ninth Circuit's opinion should have contained references to what, for example, a reasonable officer who was familiar with the members of the gang "Dog Town" would have done. Or how an officer who knew that Castro had committed a violent felony that very morning would have proceeded. Or how an officer who knew Castro was fleeing police and suspected he was under the influence of methamphetamines would have acted. Something of that nature was required to lift the Ninth Circuit's opinion from reversible error to acceptable review. As it stands, however, the opinion contains nothing of the sort. For that reason, in addition to those discussed elsewhere above and in Petitioners' Petition for Writ of Certiorari, the Court should grant Petitioners' request and review this matter.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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