NO. 24-886

In the Supreme Court of the United States

CHRISTOPHER SCHURR,

Petitioner,

v.

PETER LYOYA, AS THE PERSONAL REPRESENTATIVE FOR THE ESTATE OF PATRICK LYOYA, DECEASED,

Respondent.

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

BRIEF OF AMICUS CURIAE NATIONAL POLICE ASSOCIATION IN SUPPORT OF PETITIONER

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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(a), amicus curiae states that all parties received notice of its intention to file this amicus brief at least 10 days before the due date.

SUMMARY OF ARGUMENT

By permitting courts to leapfrog the first prong of qualified immunity analysis and decide only whether the right was clearly established, *Pearson v. Callahan* has bred a culture of not just constitutional avoidance, but stagnation. Courts all too often fail to answer whether a constitutional violation was committed at all, depriving law enforcement, civil rights plaintiffs, government officials, and the public of necessary guidance on what the Constitution demands. As several circuits have observed, this approach undermines the creation of robust legal precedent, particularly in areas where qualified immunity is frequently invoked.

The Court should grant Christopher Schurr's petition for the reasons set forth herein. Excessive force claims under the Fourth Amendment are precisely the sort of cases where clarity is most needed. Indeed, this Court and multiple lower courts have recognized that developing a rich body of case law in these matters is essential; not merely to resolve individual disputes, but to provide law enforcement officers with clear constitutional standards. By requiring lower courts to address the constitutional question first, this Court can and should provide much-needed guidance to police officers and the public about what acts violate the Constitution and why. This will, in time, foster more robust policing efforts on one hand and clear lines for constitutional litigation on the other; a two-for-one societal positive.

ARGUMENT

I. THE COURT SHOULD TAKE THIS CASE TO BREAK THE CYCLE OF CONSTITUTIONAL STAGNATION IMPOSED BY *PEARSON V. CALLAHAN*

In *Saucier v. Katz*, this Court provided a two-step inquiry for courts to follow in resolving government officials' qualified immunity claims, whereby they must decide (1) whether facts alleged or shown by plaintiff make out a violation of a constitutional right, and (2) if so, whether that right was clearly established at the time of the defendant's alleged misconduct. 533 U.S. 194, 201 (2001). Eight years later, in *Pearson v. Callahan*, this Court overruled "the *Saucier* rule," which mandated sequential adherence to the two-pronged inquiry. 555 U.S. 223, 236 (2009). Instead, this Court held that lower courts "should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Id.* This discretion is necessary, *Pearson* reasoned, as "the rigid *Saucier* procedure . . . sometimes results in a substantial expenditure of scarce judicial resources on difficult questions that have no effect on the outcome of the case." *Id.* at 236-37. Moreover, *Saucier*'s two-step protocol "departs from the general rule of constitutional avoidance[.]" *Id.* at 241.

Only two years later, in *Camreta v. Greene*, this Court revisited the two-step qualified immunity inquiry and recognized that *Saucier's* sequential approach provides needed clarity, observing that its usual policy

of constitutional avoidance "sometimes does not fit the qualified immunity situation because it threatens to leave standards of official conduct permanently in limbo." 563 U.S. 692, 706 (2011). Indeed, prior to *Pearson*, this Court has recognized that the "better approach to resolving cases in which the defense of qualified immunity is raised is to determine first whether the plaintiff has alleged a deprivation of a constitutional right at all." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 865 n.5 (1998). To this end, *Camreta* invoked a hypothetical scenario of a court repeatedly rejecting a novel constitutional claim on qualified immunity grounds, adhering to traditional principles of constitutional avoidance but potentially licensing a government official's unconstitutional conduct in perpetuity. *Camreta*, 563 U.S. at 706. Courts taking that approach "fail to clarify uncertain questions, fail to address novel claims, fail to give guidance to officials about how to comply with legal requirements." *Id.* Further, focusing solely on qualified immunity in such contexts "may frustrate the development of constitutional precedent and the promotion of law-abiding behavior." *Id.* (quoting *Pearson*, 555 U.S. at 237) (internal quotation marks omitted). Nevertheless, *Camreta* and *Pearson* purportedly sought to quell these concerns by "permitting" lower courts to determine whether a right exists before examining whether it was clearly established, though also cautioning that, "courts should think hard, and then think hard again, before turning small cases into large ones." *Id.* at 706-07. The ensuing years have shown that this malleable approach has led to an irreparable, severe diminution of constitutional precedent and, ultimately, constitutional stagnation.

As Judge Don Willett of the Fifth Circuit aptly observed,

> "Forgoing a knotty constitutional inquiry makes for easier sledding, no doubt. But the inexorable result is "constitutional stagnation"—fewer courts establishing law at all, much less clearly doing so. Section 1983 meets Catch-22. Plaintiffs must produce precedent even as fewer courts are producing precedent. Important constitutional questions go unanswered precisely because those questions are yet unanswered. Courts then rely on that judicial silence to conclude there's no equivalent case on the books. No precedent — no clearly established law — no liability. An Escherian Stairwell. Heads defendants win, tails plaintiffs lose."

Zadeh v. Robinson, 902 F.3d 483, 499 (5th Cir. 2018) (Willett, J., concurring *dubitante*) (opinion withdrawn on separate grounds). The same confusion cuts in the other direction too. At the time of this filing, this Court is considering a complex factual scenario that reflects the need for clear guidance for officers as to what categories of actions are or are not constitutionally permissible. *See Barnes v. Felix*, 91 F.4th 393 (5th Cir. 2024). Indeed, several courts have recently begun to question *Pearson*'s guidance, recognizing both the ambiguity in qualified immunity analysis and the "vicious cycle" created by *Pearson*'s approach.

For example, in his concurrence in *Eves v. LePage*, joined by Judges Torruella and Barron, the First Circuit's Judge Thompson wrote that,

> [w]hat can break the cycle, however, is starting with step (1) — the constitutional-violation step, an approach courts should take in cases involving a recurring fact pattern where (a) help on the constitutionality of the contested practice is needed and (b) the practice is likely to be contested only in the qualified-immunity context . . . [I]f not resolved, the First Amendment issues pressed here could arise again and again[.]

927 F.3d 575, 591 (1st Cir. 2019) (Thompson, J., Torruella, J., Barron, J., concurring) (internal citations omitted).

The Second Circuit in *Francis v. Fiacco* addressed *Pearson* at length. 942 F.3d 126 (2nd Cir. 2019). While acknowledging *Pearson*'s concerns regarding judicial efficiency and constitutional avoidance, the Court emphasized that "there remains a role for courts to rule on constitutional questions even in cases where qualified immunity ultimately determines the result." *Id.* at 140. Despite its finding that the law was not clearly established on the point at issue, the Court nevertheless reviewed the factual merits of the plaintiff's alleged violation of his constitutional rights. *Id.* at 141. The Court reasoned that, "[w]ere we to proceed directly to the qualified immunity question, and confine our entire analysis to that subject, the State Defendants could continue to [engage in the complained-of conduct]—and thus continue to violate the Constitution—*ad infinitum*." *Id.* Likewise, the Eleventh Circuit in *Gilmore v. Hodges*, addressing a claim of deliberate indifference to a serious medical need, elected to begin its analysis with the first prong, although it

"could resolve the case on the second prong alone." 738 F.3d 266, 273 (11th Cir. 2013). As *Gilmore* concluded,

> [w]e see precious little reason to delay the resolution of the constitutional question until a later date, since any later case raising this question will almost surely be decided in the same context of qualified immunity. As we see it, addressing the first prong of qualified immunity in this case promotes the development of constitutional precedent, and has the salutary effect of giving clear guidance to those officials entrusted with the important charge of providing medical care to incarcerated individuals.

Id.

The Fourth Circuit has explicitly endorsed "the better approach," exercising its discretion to follow *Saucier*'s two-step procedure when doing so clarifies the legal standards governing public officials. *Est. of Armstrong ex rel. Armstrong v. Vill. of Pinehurst*, 810 F.3d 892, 898 (4th Cir. 2016); *See also E.W. by and through T.W. v. Dolgos*, 884 F.3d 172, 178-79 (4th Cir. 2018). Similarly, the Fifth Circuit has advised that, "we think it better to address both steps in order to provide clarity and guidance for officers and courts[,]" rather than "leapfrog the merits." *Joseph on behalf of Est. of Joseph v. Bartlett*, 981 F.3d 319, 331 (5th Cir. 2020).

The problem, however, is that courts should not have to justify taking on the initial constitutional inquiry, nor should they be permitted to avoid the hard work of making necessary factual determinations. The benefits of clarifying constitutional standards

plainly outweigh any theoretical costs or concerns about judicial resources or adherence to the doctrine of constitutional avoidance. Courts, public officials, and citizens generally, need direction on what conduct violates the constitution in order to alleviate or prevent constitutional harms. By deciding whether the alleged conduct actually offends the Constitution before turning to the "clearly established" prong, the decisions referenced above help to prevent the perpetual constitutional stagnation that arises when courts consistently bypass the first step in the name of judicial efficiency. For district courts facing recurring fact patterns or novel claims likely to reappear, addressing the merits at step one supplies crucial guidance to both plaintiffs and public officials, while fostering the development of constitutional precedent so that it may evolve in a meaningful and instructive manner.

What are our judicial resources for if not to help define the parameters of our constitutional rights? A balanced approach exists—one that respects the doctrine of constitutional avoidance without leading to constitutional stagnation. *Pearson* does not reflect that balance.

II. THE UNDERLYING CASE IS OF THE SORT THAT REFLECTS THE BENEFIT IN DEVELOPING CONSTITUTIONAL PRECEDENT

The underlying case was brought under 42 U.S.C. § 1983, alleging excessive force in violation of the Fourth Amendment. In *Plumhoff v. Rickard*, this Court opted to address the merits of the plaintiff's excessive force claim first, reasoning that doing so would be "beneficial in developing constitutional precedent" in Fourth Amendment jurisprudence—"an

area that courts typically consider in cases in which the defendant asserts a qualified immunity defense." 572 U.S. 765, 766 (2014). By clarifying the constitutional boundaries of law enforcement conduct, the Court provided needed direction in a context frequently shaped by qualified immunity concerns. Circuit courts have followed a similar approach in excessive force cases. *See Joseph*, 981 F.3d at 347 n.40 ("We have found the merits analysis particularly appropriate in Fourth Amendment cases, which frequently involve qualified immunity."); *see also Armstrong*, 810 F.3d at 899 ("Though this sequence is no longer regarded as mandatory, it is often beneficial, and is especially valuable with respect to questions that do not frequently arise in cases in which a qualified immunity defense is available. Because excessive force claims raise such questions, we exercise our discretion to address the constitutional question presented by this appeal first.") (internal citations omitted). As this Court is aware, avoiding the first prong in excessive force cases can lead to underdeveloped precedent and, potentially, incorrect outcomes. *See Lombardo v. City of St. Louis*, 594 U.S. 464 (2021).

Here, taking this case to return qualified immunity to its pre-*Pearson* roots will not only help to resolve the immediate dispute, but will also supply critical guidance to law enforcement officers, lower courts, and future litigants. By squarely confronting whether the actions at issue constituted excessive force, this Court can provide much-needed clarity in an area where qualified immunity defenses often arise. Doing so will ensure that all parties, including public officials, understand the precise contours of acceptable conduct, thereby fulfilling the very purpose of § 1983 and

promoting adherence to constitutional standards moving forward.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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