

No. 25-594

IN THE
Supreme Court of the United States

ELIZABETH CROCKETT, ET AL.,
Petitioners,

v.

JOHN KRUEGER, INDIVIDUALLY AND AS
CO-ADMINISTRATOR OF THE ESTATE
OF JEFFERY KRUEGER, ET AL.
Respondents.

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

BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTIONS PRESENTED

1. Whether police officers are entitled to qualified immunity when they asphyxiate someone by standing and kneeling on the back of his body even though he is prone, handcuffed, and subdued, and he poses no significant risk of danger to himself or others.

2. Whether the Tenth Circuit evaluated the constitutional right at issue at too high a level of generality when it relied on a prior precedent with strikingly similar facts that raised the precise legal question at issue.

3. Whether this Court should grant certiorari to reconsider the Tenth Circuit's factual conclusion that a jury could reasonably find that Respondent Krueger was effectively subdued, even though this is an interlocutory appeal concerning qualified immunity and therefore limited to abstract questions of law.

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INTRODUCTION

This case arises out of Jeffery Krueger's asphyxiation by Petitioners Elizabeth Crockett, Matthew Lott, Tyler McFarland, and Drew Craig.¹

The fatal encounter began when Petitioners responded to a call for assistance from two other officers following a traffic stop. At the time Petitioners arrived on the scene, Krueger was prone, handcuffed, and pinned under the knees of an officer. His head was covered in blood from a grievous head wound, and his blood was streaked across the road. He was visibly exhausted and his cries for help were becoming increasingly unintelligible.

Although Petitioners had been trained that the use of prone restraints created a significant risk of asphyxiation, they piled onto Krueger's back, rather than rolling him on to his side so that he could breathe. Petitioner McFarland rested his full, 230-pound body weight squarely on Krueger's back for four minutes. Petitioner Craig kneeled on Krueger's upper back. Petitioner Crockett kneeled on the upper part of Krueger's buttocks and thigh. Petitioner Lott stood on Krueger's shoulder. And two additional officers rested on Krueger's legs. The officers ultimately applied several hundred pounds of pressure to Krueger's back, breaking many of his ribs, and suffocating him to death.

¹ Petitioners in this case—Crockett and Lott—are co-defendants and co-appellants with Petitioners McFarland, Craig, Nevitt, and Blair, who filed a separate petition for certiorari. *See* Case No. 25-604. Because the two petitions are largely copied and pasted from each other, Respondents' two briefs in opposition are similar.

Following Krueger's death, his estate sued Petitioners for excessive force, and Petitioners moved for summary judgment on qualified immunity grounds. The District Court denied Petitioners' motions, and the Tenth Circuit affirmed that judgment against every Petitioner. Of note, the Tenth Circuit's ruling determined that most Petitioners were liable for excessive force on two separate grounds: Petitioners Crockett, Lott, McFarland, and Craig used excessive force themselves, and all of the Petitioners failed to intervene in their colleagues' unconstitutional conduct.

Petitioners now ask this Court to grant certiorari to address a series of fact-bound questions, none of which implicate a circuit split, and each of which the Tenth Circuit correctly decided. This Court should deny the petition for the following reasons.

First, Petitioners assert that the Tenth Circuit conducted an impermissible group assessment of Petitioners' liability that disregarded Petitioners' individual conduct. Not so. Petitioners' argument simply ignores the Tenth Circuit's express determination that the summary judgment record supported a finding of individual liability for every Petitioner. And though the panel did conduct an alternative analysis that nominally addressed "group" liability, that analysis still included an individualized qualified immunity assessment that compared Petitioners' individual conduct to extant case law to ensure that Petitioners each had fair notice of their potential liability.

Second, the Tenth Circuit's qualified immunity analysis creates no conflict with any established precedent of this Court. In an effort to manufacture a

conflict, Petitioners cite general legal propositions from cases addressing unrelated legal issues and assert without explanation that these cases create a conflict. They do not.

Third, even if Petitioners' group analysis argument otherwise warranted certiorari, this case would be a poor vehicle to decide that issue because this Court's intervention would not change the judgment below. As mentioned above, the Tenth Circuit did not rely on a group liability analysis to hold Petitioners liable. Instead, it expressly found that they were each individually liable for excessive force, a ruling that would be unaffected by any alteration of its group analysis. Furthermore, the Tenth Circuit ruled that Petitioners were liable for excessive force on another separate basis: the failure to intervene. Petitioners do not challenge this determination.

Fourth, the Tenth Circuit's analysis of Respondent's excessive force claim creates no split with any other circuit. Rather than identifying cases that apply principles contrary to those applied by the Tenth Circuit, Petitioners seek to create the illusion of a split by citing broad statements of law from materially different factual contexts. Petitioners' error is further demonstrated by the fact that the same circuits that comprise their "split" have decided other cases applying the same legal approach as the Tenth Circuit.

Fifth, Petitioners purport to challenge the Tenth Circuit's analysis of when a suspect can be considered effectively subdued, but their true complaint is that the Tenth Circuit rejected Petitioners' view of the factual record below. This factual dispute presents an unsuitable ground for

certiorari, is inappropriate in an interlocutory qualified immunity appeal, and is factually mistaken.

The petition should be denied.

STATEMENT OF THE CASE**I. The Petitioners Asphyxiate Krueger²**

On the evening of July 1, 2019, Jeffrey Krueger was driving through Wagoner, Oklahoma when Deputy Kaleb Phillips pulled him over for a minor moving violation. Appx. 17a. For no apparent reason, Phillips and his colleague, Deputy Nicholas Orr,³ approached Krueger's car with guns drawn and shouted conflicting commands at him, including an order to stay in his car. Appx. 18a. Krueger heeded that order. Appx. 18a.

While Krueger tried to locate his driver's license and registration, and before he had a chance to comply with any additional commands, the deputies dragged him from the car by his hair and threw him to the ground with enough force to leave a bloody wad of hair in the street. Appx. 24a–25a. Krueger also “suffered a severe blow to the head, opening a gash in his forehead that covered the highway with blood.” Appx. 24a.

After the deputies threw Krueger to the ground, a struggle ensued as the officers sought to handcuff him. At this juncture, Orr and Phillips were the only officers on scene, and Petitioners had not yet arrived. The deputies repeatedly shouted at Krueger to roll over while preventing him from doing so, and Krueger asked them how he was supposed to comply with their orders, pleaded for help, Appx. 27a, and told

² This factual recitation reflects the summary judgment record viewed in the light most favorable to Krueger.

³ Phillips and Orr did not petition this Court for certiorari.

them he could not breathe. A.II-395.⁴ Over the course of several minutes, Phillips and Orr punched Krueger multiple times in the torso, struck him three times in the face, and Tased him at least eight times with 50,000 volts of electricity. Appx. 28a–29a. As this was happening, Phillips cursed at Krueger, “Goddamn! You motherfucker!” Appx. 20a.

Phillips and Orr handcuffed Krueger’s wrists behind his back with the assistance of two EMTs and continued to hold Krueger down “as [his] cries for help grew increasingly faint and unintelligible.” Appx. 28a. Meanwhile, nine additional officers arrived on scene, including Petitioners Elizabeth Crockett and Matthew Lott from this case, and Petitioners Drew Craig, Tyler McFarland, Ben Blair, and Corey Nevitt from Case No. 25-604. A.II-1575–76. Upon seeing Krueger, one of the newly arrived officers “called out, ‘God damn! There’s a lot of blood. He’s covered in blood!’” Appx. 28a.

Although the responding officers had been trained that prone restraints could cause asphyxiation and that they should place subjects in a “sitting position or laying on the side” to help them breathe “[o]nce the individual is... under control,” *see* A.VI-1580 at 81:15–82:1; A.VI-1616–17 at 52:24–53:5, Petitioners piled onto the back of Krueger’s body as he was prone, handcuffed, and suffering from obvious injuries. McFarland took over from Phillips and kneeled on Krueger’s back for four minutes, Appx. 37a; A.II-480, “rest[ing] his full weight on both knees.” Appx. 31a. Craig joined him, kneeling on the back of

⁴ Citations to the appellate record are presented in the format: A.[volume]-[page(s)]. Thus, a citation to page 395 of the second volume of the appendix would be A.II-395.

Krueger's right shoulder for approximately 45 seconds. Appx. 30a. McFarland and Craig had a combined weight of approximately 500 pounds, while Krueger was 6'3" and weighed 156 pounds. Appx. 36a. Together, McFarland and Craig applied so much force to Krueger's back that they broke seventeen of his ribs, including three consecutive ribs with multiple fractures (a flail chest), and further compromised his breathing. *See* Appx. 36a; *see also generally* A.V-1238, 1245, 1247.

When McFarland first placed his full body weight on Krueger's back, Krueger was still moving his legs to some degree, likely because the "prone restraint... caused Krueger to panic and struggle in an attempt to breathe." Appx. 36a. But Krueger "did not meaningfully resist or speak throughout the encounter," Appx. 37a, and for the last few minutes of his life, he did not move, struggle, or speak. Appx. 35a-36a; A.II-472.

A short time after McFarland knelt on Krueger, Petitioners Crockett and Lott joined him. Crockett, who weighed approximately 200 pounds, knelt on the "top portion of" Krueger's buttocks and thigh for more than one minute. A.VI-1619; Appx. 31a. Lott "put significant weight on Krueger's shoulder" for approximately one minute. Appx. 71a. And two additional officers, Cody Standifird and Travis Potts, knelt on Krueger's legs. *See* A.II-472.

During this period, an EMT performed a wellness check on Krueger. *See* A.II-472 at 2:15-2:38. The EMT asked Krueger if he was okay, but Krueger was unable to respond. Instead, he was "just grunting and moaning and not giving a reply." A.VIII-1927. As Plaintiffs' medical expert explained, "if you're not

responding and grunting and moaning, that's what happens when you're about to die." A.V-1266. Both Petitioner Lott and McFarland were immediately next to the EMT and within earshot during this exchange. *See* A.II-472 at 2:15–2:38.

Although Krueger was exhibiting signs that he was "about to die" and remained "unmoving," Appx. 67a n.21, 35a–36a, McFarland, Petitioner Lott, Petitioner Crockett, Potts, and Standifird stayed on top of him with Petitioner Crockett laughing. *See* A.II-472. McFarland would remain on Krueger's back for approximately two additional minutes until Krueger stopped breathing. *See id.* Craig and Petitioner Crockett eventually shackled Krueger's feet together, Appx. 31a, yet the officers continued to violate their training by leaving Krueger in a prone position with McFarland kneeling on his back. Approximately one minute later, McFarland and Craig connected Krueger's ankle shackles to his wrist shackles with a hobble chain as McFarland stayed on his back. Appx. 32a–33a. As all of this was happening, Blair and Nevitt watched Krueger asphyxiate without taking any action to stop their colleagues.

Soon thereafter, Blair noticed that Krueger had stopped breathing, and said, "He's still breathing, ain't he?" Appx. 33a. McFarland responded, "Yeah... hey... no, he ain't." A.II-472. By the time EMTs loaded Krueger into the ambulance, he had stopped breathing altogether, and his pupils were fixed and dilated, revealing a lack of brain activity. A.VIII-1893. His heart flatlined before he arrived at the hospital, and the EMTs could not administer lifesaving cardiac medication because his wrists remained shackled to

his ankles, making an IV impossible. A.VIII-1893, 1931.

The Estate’s medical expert explained that restraining Krueger in a prone position with the weight of the officers on his back broke many of his ribs and led to his death, with the broken ribs contributing to his asphyxiation. Appx. 36a. In the expert’s words, “[t]hese restraint procedures used against Krueger will predictably and foreseeably cause death or serious injuries,” and “[i]f [Krueger] was not restrained, he absolutely would be alive today.” A.VI-1454, 1456. “It is abundantly clear that the manner of death is a homicide,” A.VI-1455, and every officer who applied weight to Krueger’s back—including the back of his shoulder and near his waistline—contributed to his asphyxiation. A.V-1251.

II. Proceedings Below

Following Krueger’s homicide, his estate filed suit against numerous individuals involved in his death, including Petitioner Crockett, Petitioner Lott, Petitioner McFarland, Petitioner Craig, Petitioner Nevitt, Petitioner Blair, Deputy Phillips, Deputy Orr, and—in his official capacity—Sheriff Chris Elliott. Appx. 85a–86a. The complaint alleged that all Defendants used excessive force in violation of the Fourth Amendment, and that various Defendants committed other constitutional and state-law violations that are not relevant here. Appx. 86a–87a. Each Defendant—including Petitioners Lott and Crockett—moved for summary judgment. The District Court denied each Defendant’s summary judgment motion as to excessive force, denied summary judgment to the Sheriff on municipal liability

grounds, and granted summary judgment to the Defendants on the remaining grounds.⁵

When assessing the Defendants' liability for excessive force, the District Court conducted an "individualized analysis of each officer's behavior" and determined "that the record supports a finding of individual liability as to each Defendant," including Petitioners Lott and Crockett. Appx. 40a n.16. Specifically, it ruled that a reasonable factfinder could determine that Crockett and Lott (in addition to the other Defendants) were liable for their use of excessive force based on two separate theories: Crockett and Lott both used excessive force themselves when they "placed their weight on [Krueger]'s back... while he was in a handcuffed and prone position on his stomach," Appx. 114a, and Crockett and Lott also "observe[d] other deputies and officers" use excessive force and failed to intervene despite having a realistic opportunity to do so. Appx. 115a.

Following the District Court's summary judgment decision, every Defendant except Sheriff Elliott and Petitioner Crockett filed an immediate interlocutory appeal. Petitioner Lott filed an appeal together with Deputies Orr and Phillips. And Officers McFarland, Craig, Nevitt, and Blair filed a joint appeal.

Petitioner Crockett filed a motion for reconsideration, arguing, *inter alia*, that the District

⁵ The District Court decided Defendants' various summary judgment motions in two separate decisions, one of which resolved the motions of the County Sheriff and Deputy Sheriffs, and one of which resolved the motions of the Wagoner City police officers.

Court erroneously conducted a group liability analysis and that she had not used excessive force because she put weight on Krueger's buttocks instead of his upper back. Appx. 131a. The District Court rejected both arguments, stating that it had, in fact, made "an individual assessment" of her actions and that her substantive argument was "at best, disingenuous." Appx. 131a.

After the District Court rejected her motion, Petitioner Crockett filed her own appeal. In total, the Defendants filed three separate appeals, which the Tenth Circuit consolidated.

On appeal, the Tenth Circuit unanimously affirmed the District Court's decision for each appellant: "we conclude that although the district court's recitation of the facts was incomplete and, in some instances, not stated in the light most favorable to [Plaintiffs], the court reached the correct conclusion: Defendants are not entitled to qualified immunity. We therefore affirm the district court's denials of summary judgment." Appx. 5a.

The Tenth Circuit's affirmance rested on four separate bases of liability, two of which apply to Petitioners Crockett and Lott. Petitioner Crockett, Petitioner Lott, McFarland and Craig each used excessive force when they "continually applied weight to [Krueger] for up to four minutes while he did not meaningfully resist or speak." Appx. 37a. Additionally, all eight Defendants—including Petitioners Crockett and Lott—were separately liable for excessive force because they failed to intervene in the unconstitutional conduct of the other officers. Appx. 81a. Defendants Phillips and Orr were liable for pulling Krueger from the car by his hair and

slamming him to the ground. Appx. 62a. And Phillips and Orr were separately liable for “continu[ing] to punch and tase [Krueger] in stun mode after the point they became aware he was subdued.” Appx. 62a.

The Tenth Circuit made clear that the record supported a finding that Petitioners Crockett and Lott used excessive force whether the Court assessed their conduct individually or collectively. First, it expressly agreed with the District Court that “the record supports a finding of individual liability as to each Defendant.” Appx. 40a n.16. It explained that binding, materially indistinguishable case law “clearly established that putting substantial or significant pressure on a suspect’s back while that suspect is in a face-down prone position after being subdued and/or incapacitated constitutes excessive force.” Appx. 41a (citation modified). And the Tenth Circuit determined that each of the relevant Defendants individually did just that: “a reasonable jury could find that [Krueger] was handcuffed, prone, and subject to a prone restraint that lasted for approximately four minutes.” Appx. 66a. During this time, “Lieutenant Crockett applied weight to his left buttock and thigh, and Deputy Lott put weight on his shoulder,” while other officers applied weight to his back. Appx. 66a. Second, the panel ruled, in the alternative, that Petitioners were also liable under a collective analysis, citing Tenth Circuit case law that permitted this approach when officers “actively participated in a coordinated use of force.” Appx. 72a (citation modified).

The Tenth Circuit further found that Petitioners’ conduct amounted to unconstitutional deadly force because “a prone restraint can constitute deadly force,” and Krueger was “prone and unmoving”

and “no longer posed ‘a threat of serious physical harm’ to himself or to other officers that could justify deadly force.” Appx. 67a n.21 (citation modified).

Following the Tenth Circuit’s decision, all eight Appellants moved to stay the mandate, Doc. 81, which the panel unanimously denied without awaiting a response from Appellee. Petitioners Crockett and Lott then filed the instant petition for writ of certiorari, and Craig, McFarland, Nevitt, and Blair filed a separate petition. *See* Case No. 25-604. Appellants Orr and Phillips did not file a petition.

ARGUMENT

I. The Tenth Circuit relied on strikingly similar, binding case law in correctly determining that Petitioners violated Krueger’s clearly established rights.

This is an easy case that turns on an undisputed and specific legal principle. At the time that Petitioners Lott and Crockett participated in Krueger’s homicide, the Tenth Circuit had clearly established that “putting substantial or significant pressure on a suspect’s back while that suspect is in a face-down prone position after being subdued and/or incapacitated constitutes excessive force.” *Weigel v. Broad*, 544 F.3d 1143, 1155 (10th Cir. 2008) (citation modified). A “robust consensus of cases of persuasive authority,” *see District of Columbia v. Wesby*, 583 U.S. 48, 65 (2018), from the First, Fifth, Sixth, Seventh, and Ninth Circuits have reached the same conclusion. *See e.g., McCue v. City of Bangor, Maine*, 838 F.3d 55, 64 (1st Cir. 2016); *Timpa v. Dillard*, 20 F.4th 1020, 1036 (5th Cir. 2021); *Martin v. City of Broadview*

Heights, 712 F.3d 951, 961 (6th Cir. 2013); *Abdullahi v. City of Madison*, 423 F.3d 763, 771 (7th Cir. 2005); *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1056–59 (9th Cir. 2003).

Petitioners do not dispute that this principle represents clearly established law and, indeed, their police training mirrored the rule. As Crockett explained, Petitioners were trained that individuals “can die” if they are face down with an officer on top of them and thus officers must put the individual in a “sitting position or laying on the[ir] side” once the individual is “under control” to make sure “they don’t quit breathing.” A.VI-1616–17.

Additionally, *Weigel* placed Petitioners on unusually clear notice of their constitutional violation due to its factual similarity: in *Weigel*, as here, an individual was involved in a struggle with the police, the police effectively subdued the individual, and then the police killed the individual by applying significant pressure to his back and buttocks while he was face-down and effectively restrained. *See* 544 F.3d at 1143. The differences between *Weigel* and the instant case only underscore the clarity of the constitutional violation here: *Weigel* engaged in a far more violent struggle with the police than did Krueger; Krueger was more thoroughly restrained than *Weigel*; and officers applied much more weight to Krueger’s back than they did to *Weigel*’s.

Relying on *Weigel*, *inter alia*, the Tenth Circuit determined that the summary judgment record would allow a reasonable factfinder to find that Petitioners Crockett and Lott both violated clearly established law. Petitioners each individually applied significant weight to the back of Krueger’s body while he was

face-down and handcuffed: Petitioner Crockett, who weighed about 200 pounds, Appx. 36a, knelt on Krueger's left buttock and thigh, and Petitioner Lott stood on Krueger's shoulder, "put[ting] significant weight on it." Appx. 71a. While Crockett and Lott applied significant weight to the back of Krueger's body, he was "prone, handcuffed, and restrained by multiple officers," Appx. 35a–36a, and "did not meaningfully resist or speak." Appx. 37a. He also had "several broken ribs," which Plaintiffs' medical expert attributed to the prone restraint, Appx. 36a, and "was prone and unmoving." Appx. 67a n.21. At the time, the Defendants had "gained control over him," Appx. 70a, he posed no immediate threat to anyone, and he could not even attempt to flee. Appx. 66a.

In short, the Tenth Circuit determined that a reasonable jury could find that both Petitioners Crockett and Lott individually engaged in the precise activity that *Weigel* forbade. On this record, Petitioners Crockett and Lott have no serious argument that, as a matter of law, their conduct is protected by qualified immunity.

II. Petitioners have failed to identify any precedent of this Court that remotely conflicts with the ruling below, and even if such a conflict existed, this case would be a poor vehicle to address it.

Petitioners contend that the Tenth Circuit decided an important legal issue in a manner inconsistent with this Court's established case law, but their entire argument rests on the false premise that the panel eschewed an individual assessment of Petitioners' liability for an impermissible group analysis. *See, e.g.*, Pet. 11–12. On the contrary, the

panel specifically found that the record supported a finding of individual liability for Petitioners. Appx. 40a n.16, 62a–74a. The panel also determined, in the alternative, that Petitioners could be found liable because they “actively participated in a coordinated use of force.” Appx. 72a (citation modified). But even when conducting this nominally “collective” alternative analysis, the panel still focused on Petitioners’ individual conduct and whether prior case law had put them on notice that their own, specific conduct was unconstitutional. Appx. 71a–73a.

Petitioners have identified no precedents from this Court that conflict with the Tenth Circuit’s analysis and have resorted, instead, to citing general statements of law from two unrelated cases that have no bearing on the resolution of this case. These cases do not present even a hint of conflict, and even if they did, this case would present a poor vehicle through which to address it. This Court has long observed that it reviews judgments, not statements in cases, and the Tenth Circuit’s collective liability analysis has no bearing on the underlying judgment because it is also supported by two independent bases.

*a. The Tenth Circuit did not abandon an individual assessment of Petitioners’ liability for an impermissible group assessment.*⁶

Petitioners’ claim fails on three separate levels.

⁶ It is difficult to discern what, if anything, Petitioners are arguing in support of their second question presented. They do not dedicate a section to that question and advance no clear argument about it. To the extent they are arguing that the Tenth

First, Petitioners’ claim misdescribes the Tenth Circuit’s decision because the panel specifically determined that each of the Petitioners/Defendants was individually liable. Although the Tenth Circuit did observe that officer conduct could be considered together in some cases and provided an alternate holding to that effect, it expressly stated, “We agree with the district court that the record supports a finding of individual liability as to each Defendant,” and then proceeded to explain why. Appx. 40a n.16, 62a–74a. Petitioners fail to mention this independent ground supporting the Tenth Circuit’s judgment.

The Tenth Circuit first ruled, with no reference to group liability, that a reasonable jury could find the Petitioners and other Defendants all liable for excessive force, Appx. 67a, and it conducted an individualized analysis of each Defendant/Petitioner’s actions. Under Tenth Circuit law, officers were forbidden from putting significant weight on the back of a prone and subdued subject’s body, yet Petitioners Lott and Crockett did just that. Thus, the panel explained that Petitioner Lott was liable because he “put his foot on [Krueger]’s shoulder while he was prone, handcuffed, effectively restrained, and no

Circuit defined the right at issue at too high a level of generality by “engag[ing] in a collective qualified immunity analysis,” Pet. 12—an argument they also make in support of their first question presented—that argument fails for the same reasons described herein. *See infra* at II.a. To the extent they are arguing that the Tenth Circuit mis-defined the right because the panel rejected Petitioners’ preferred framing—a framing that ignores most of the relevant facts and incorrectly draws inferences on Petitioners’ behalf—then Petitioners’ true complaint is with the Tenth Circuit’s factual conclusions, not its qualified immunity analysis, which does not warrant a grant of certiorari. *See infra* at IV.

longer meaningfully resisting,” and “put significant weight on [Krueger] for up to a minute,” which is the conduct proscribed by *Weigel*. Appx. 71a. Similarly, the Court denied qualified immunity to Petitioner Crockett because she personally held him in his prone, compromised breathing position while “appl[ying] weight to his left buttock and thigh” at a time he was subdued. Appx. 66a. In so doing, she also personally violated the rule clearly established in *Weigel* and *Booker*. See Appx. 67a. Tellingly, a previous Tenth Circuit decision had found that an officer who engaged in the same conduct as Crockett violated *Weigel*’s clearly established law with no consideration of group liability. See *Waters v. Coleman*, 632 F. App’x 431, 441 (10th Cir. 2015) (unpublished).

Second, Petitioners’ argument also rests on a misdescription of the panel’s alternative holding. Although the panel did state that it could analyze the officers’ culpability together, it did not treat the Petitioners “as a collective and undifferentiated whole,” or ignore their individual conduct as Petitioners complain. See, e.g., Pet. 17. Instead, the panel merely explained that Petitioners could each be liable “if they ‘actively participated in a coordinated use of force.’” Appx. 72a (citation modified). And even when the panel conducted this nominally collective assessment, it still focused on whether existing case law provided Petitioners Crockett and Lott with fair notice that their *individual* conduct violated the law. To wit, the panel identified the specific conduct that Petitioners engaged in, assessed that conduct against the Tenth Circuit’s prior precedent, and determined that its prior precedent put both Petitioner Lott and Petitioner Crockett on clear notice that their specific,

individual conduct was unconstitutional. Appx. 71a–73a.

Additionally, on the facts of this case, extant Fourth Amendment precedent requires that Petitioners’ conduct be considered together. It is a Fourth Amendment truism “[t]hat inquiry into the reasonableness of police force requires analyzing the ‘totality of the circumstances.’” *Barnes v. Felix*, 605 U.S. 73, 80 (2025) (citation modified). And here, the most relevant “circumstances” are the actions of the other officers. Neither Petitioner Crockett nor Petitioner Lott applied weight to the back of a restrained, motionless subject alone. They applied significant weight to the back of Krueger’s shoulder and buttocks *after* McFarland and Craig had already applied hundreds of pounds of pressure to his back for multiple minutes and *while* McFarland, Crockett (from Lott’s perspective), Lott (from Crockett’s perspective), and two additional officers also knelt on the back of Krueger’s legs, buttocks, back, and shoulder at the same time. Put simply, Petitioners Crockett and Lott’s actions were more unreasonable because they kneeled and stood on Krueger’s back when others were already doing so—the combination of officers meant that Petitioners’ weight was more likely to asphyxiate Krueger than if they acted alone while also serving less purpose than if they acted alone. Because of this, there is no meaningful difference on the facts of this case between performing an individualized analysis that considers the totality of the circumstances and “analyzing the culpability for the prone restraint together.” Appx. 71a.

Third, Petitioners are simply incorrect that collective consideration of defendants’ conduct is

always inappropriate. This Court has made clear that § 1983 claims are properly understood as claims of tort liability, which should be assessed in the context of principles of tort law. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 689 (1999). And tort law has long recognized that some circumstances require joint consideration of multiple tortfeasors' actions. One such circumstance applies where, as here, multiple people act in concert: "For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he (a) does a tortious act in concert with the other or pursuant to a common design with him...." Restatement (Second) of Torts § 876 (1979). This background principle closely mirrors the Tenth Circuit's statement that individuals "who actively participated in a coordinated use of force' on [a] decedent could be liable...." Appx. 72a (citation modified). It is found in the Section 1983 law of various other circuits. *See, e.g., Grandstaff v. City of Borger*, 767 F.2d 161 (5th Cir. 1985) (analyzing officers' liability collectively because they "acted in concert"); *Skrtich v. Thornton*, 280 F.3d 1295, 1302 (11th Cir. 2002), overruled on other grounds by *Pearson v. Callahan*, 555 U.S. 223 (2009) (same). And it is also consistent with the language of Section 1983, which extends liability to "[e]very person who, under color of [state law], subjects, or causes to be subjected, any... person... to the deprivation of any rights...." 42 U.S.C. § 1983 (emphasis added).

b. Petitioners have identified no established precedent from this Court that is inconsistent with the decision below regarding an important legal issue.

Petitioners claim that the Tenth Circuit’s decision conflicts with *Tolan v. Cotton*, 572 U.S. 650, 657 (2014), which states that “[i]n cases alleging unreasonable searches or seizures, we have instructed that courts should define the clearly established right at issue on the basis of the specific context of the case.” No such conflict exists.

First, although *Tolan* involves a qualified immunity appeal, this Court’s decision is not about qualified immunity. The single sentence quoted by Petitioners appears in a background legal section and plays no meaningful role in the decision because *Tolan* focused on a separate issue related to the Fifth Circuit’s misapplication of the summary judgment standard. *See id.* at 657. Indeed, the Tenth Circuit clearly followed *Tolan* because it made sure “to view the evidence at summary judgment in the light most favorable to” the plaintiff, *id.*, which is what the Court of Appeals failed to do in *Tolan* and what Petitioners fail to do here.

Second, Petitioners assert that the Tenth Circuit ignored *Tolan*’s general command—to define the relevant clearly established right based on “the specific context of the case”—because it did not cite case law “that it is objectively unreasonable to hold down a prone suspect’s legs in order to prevent him from kicking other officers until they can be placed in legal shackles.” Pet. 11. But the facts of *Tolan* had nothing to do with an appropriate response to a

kicking suspect. Petitioners do not and cannot explain why *Tolan* would require the Tenth Circuit to cite a case with Petitioners' preferred factual framing because those are not the operative facts in Krueger's case. Framing the "specific context" in the way that Petitioners have here ignores most of the relevant facts and incorrectly draws inferences in the Petitioners' favor—the very thing that *Tolan* warned against. Moreover, it is unclear why Petitioners would frame their actions as "hold[ing] down a suspect's legs" when two unrelated officers were the ones holding down Krueger's legs while Lott was standing on his shoulder, and Crockett was kneeling on his buttocks and upper thigh.

Third, the Tenth Circuit's analysis is fully consistent with the single sentence from *Tolan* that Petitioners invoke as inconsistent. The point of the quoted language from *Tolan* is that qualified immunity often requires "[p]recedent involving similar facts" in order to "provide an officer notice that a specific use of force is unlawful." *Kisela v. Hughes*, 584 U.S. 100, 105 (2018). But there is no dispute that the Tenth Circuit provided just that. This is not a case where the panel "proceeded to find fair warning in the general tests set out in *Graham* and *Garner*." See *Brousseau v. Hogan*, 543 U.S. 194, 198 (2004). Instead, it's a case where—as quoted by Petitioners—the facts are "strikingly similar to *Weigel*" and where, in particular, "it is hard to imagine a case that could have put Lieutenant Crockett on clearer notice that her participation in the prone restraint made her subject to an excessive force claim." Pet. 11 (quoting Appx. 72a–73a). In short, *Tolan* is in perfect harmony with the Tenth Circuit's decision, and Petitioners have identified no inconsistency between the two.

Petitioners claim one additional conflict with this Court's precedent: that the Tenth Circuit's decision "flies in the face of this Court's established precedent" in *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). Pet. 16. Petitioners contend that the Tenth Circuit violated *Ashcroft's* requirement that "a defendant may only be held liable for their own misconduct" "for claims under 42 U.S.C. § 1983," because the panel "engaged in a collective qualified immunity analysis and considered the aggregate actions of multiple officers at the scene." Pet. 16.

This argument fails because the cited language in *Ashcroft* is making a separate point that has no bearing on this case. In *Ashcroft*, the respondent urged the Court to hold a supervisor responsible under a theory of vicarious liability. *Ashcroft*, 556 U.S. at 677. This Court rejected the respondent's argument "[b]ecause vicarious liability is inapplicable to *Bivens* and § 1983 suits" so "petitioners may not be held accountable for the misdeeds of their agents." *Id.* *Ashcroft* has no relevance here because the Tenth Circuit did not rely on a theory of vicarious liability. The Tenth Circuit's analysis made clear, at all times, that Petitioners Crockett and Lott faced potential liability because they actively, individually participated in the use of excessive force, not because the other officers qualified as their agents.

c. This case represents a poor vehicle to resolve any questions related to the Tenth Circuit's collective analysis because the judgment below is supported by alternate holdings.

This Court has long held that it "reviews judgments, not statements in opinions." *Black v.*

Cutter Laboratories, 351 U.S. 292, 297 (1956); *see also Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) (this Court’s “power is to correct wrong judgments, not revise opinions”). Therefore, the Court must consider whether “the judgment[was] correct, not the ground on which the judgment professes to proceed.” *McClung v. Silliman*, 19 U.S. 598, 603 (1821); *see also Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984) (“[S]ince this Court reviews judgments, not opinions, we must determine whether the Court of Appeals’ legal error resulted in an erroneous judgment...”).

In *California v. Rooney*, for example, this Court dismissed certiorari as improvidently granted because the petitioner was not challenging the judgment of the court below, only a holding in the opinion supporting that judgment. 483 U.S. 307 (1987). The *Rooney* Court reasoned: “The fact that the [lower court] reached its decision through analysis different than this Court might have used does not make it appropriate for this Court to rewrite the [lower] court’s decision.” *Id.* at 311.

As in *Rooney*, Petitioners’ arguments about the Tenth Circuit’s purported collective liability analysis challenge only an alternate holding in the panel’s opinion and not a judgment. The Tenth Circuit’s judgment below is supported by two additional holdings—namely, that Petitioners are liable for their individual use of force, and that they are separately liable for their failure to intervene. Even if this Court were to side with Petitioners regarding the Tenth Circuit’s views on group liability, the ultimate judgement would be unaffected and would render any decision advisory. *See Herb*, 324 U.S. at 126 (“We are

not permitted to render an advisory opinion, and if the same judgment would be rendered... our review would amount to nothing more than an advisory opinion.”); *F.C.C. v. Pacifica Found.*, 438 U.S. 726, 735 (1978) (“[F]ederal courts have never been empowered to issue advisory opinions”). This case is therefore a poor vehicle to decide the questions presented.

First, the Tenth Circuit affirmed that Petitioners were liable for their individual use of force in violation of Krueger’s constitutional rights. Appx. 39a n.16; *supra* at 21. Thus, even if this Court vacated the lower court’s aggregate force analysis, the same result would obtain based on Petitioners’ individual conduct.

Second, the Tenth Circuit affirmed that a reasonable jury could find that Petitioners failed to intervene. Appx. 72a n.25. The court explained that Tenth Circuit law clearly establishes that an officer is liable for failing to intervene in another officer’s use of excessive force, even if they did not “actually participate in the use of excessive force,” so long as they were “present at the scene... and fail[ed] to take reasonable steps to protect the victim of another officer’s use of excessive force.” Appx. 78a–80a (citations modified). The Tenth Circuit found Petitioners were each liable under this theory, holding that both Lott and Crockett “were sufficiently ‘present’ and ‘observ[ing]’ the prolonged prone restraint to be liable for failing to intervene in the use of it.” Appx. 79a. Moreover, this alternate holding is unchallenged as Petitioners do not dispute that if one of the officers used excessive force, the other officers present would be liable for failure to intervene.

Because the judgment against Petitioners Crockett and Lott rests on two grounds that are unrelated to and unaffected by the panel's group liability analysis, any ruling by this Court would be merely advisory, and certiorari is unwarranted.

III. There is no circuit split to resolve.

Petitioners next contend that certiorari should be granted to resolve a purported split among the circuits. They assert that several circuits require an individualized analysis of each defendant's entitlement to qualified immunity, whereas the Tenth Circuit, they claim, has parted ways by permitting a court to consider whether an officer's active participation in a coordinated group use of force can defeat qualified immunity at summary judgment. As discussed immediately above, this case represents a poor vehicle to consider any potential circuit split because the Tenth Circuit's decision rests on multiple independent grounds.

But more importantly, Petitioners' argument is meritless. In most circumstances, as in the cases cited by Petitioners, the Tenth Circuit requires an individualized assessment of qualified immunity. *See, e.g., Pahls v. Thomas*, 718 F.3d 1210, 1233 (10th Cir. 2013). In certain Fourth Amendment excessive force cases, however, the Tenth Circuit permits a limited form of group analysis if a group of defendants are actively participating in a coordinated effort with each other. *See* Appx. 40a n.16. For these cases, a court may consider the force used by the group of defendants together.⁷ Rather than point to cases that apply

⁷ As discussed above, *see supra* at II.a, the panel's alternate collective analysis still focused on whether prior case

principles contrary to those articulated by the Tenth Circuit in this subset of cases, Petitioners instead cite broad statements regarding individual analysis from materially different factual and legal circumstances to prop up their illusory split between the “individualized” versus “collective” analysis circuits. These cases (only one of which involves excessive force) indicate no circuit split and, indeed, each circuit that supposedly splits with the Tenth has applied the very same “group” principle that the Tenth Circuit articulated here.

When put into proper context, none of the cases that Petitioners cite evince any split among the circuits. For instance, *Poe v. Leonard*, which Petitioners point to as evidence that the Second Circuit departs from the Tenth on the necessity of “individualized” analysis, concerns the standard for assessing qualified immunity for a supervisor sued under a theory of vicarious liability for the unconstitutional conduct of her supervisee that allegedly happened outside of the supervisor’s presence. 282 F.3d 123 (2d Cir. 2002). In holding that both the supervisee’s constitutional violation *and* the relevant supervisory liability doctrine must be clearly established to deny the supervisor qualified immunity, the Second Circuit stated the elementary point that “[t]he qualified immunity analysis depends upon an individualized determination of the misconduct alleged.” *Id.* at 134. Neither that statement, nor *Poe*’s analysis or holding, are contrary to the Tenth Circuit’s conclusion that officers can be denied qualified immunity for actively participating

law provided Petitioners with fair notice that their specific, individual conduct violated the law.

in a coordinated use of force that violates clearly established law.

Petitioners have similarly failed to identify any cases in the Fifth, Sixth, Seventh, Eighth, and Eleventh Circuits that present a true split from the Tenth. *See Spikes v. McVea*, 12 F.4th 833 (5th Cir. 2021) (per curiam); *Stoudemire v. Michigan Department of Corrections*, 705 F.3d 560 (6th Cir. 2013); *Est. of Williams by Rose v. Cline*, 902 F.3d 643 (7th Cir. 2018); *Manning v. Cotton*, 862 F.3d 663 (8th Cir. 2017); *Alcocer v. Mills*, 906 F.3d 944 (11th Cir. 2018). Again, Petitioners cling to a single sentence from each cited case, articulating the general principle of law that qualified immunity requires an individualized analysis, to demonstrate the putative split. But even a cursory analysis of the legal claims at issue and factual circumstances of each case shows that there is no such disagreement.

In *Stoudemire*, for example, the Sixth Circuit was simply reaffirming the necessity of conducting an individualized assessment of a defendant's subjective mental state before denying qualified immunity on an Eighth Amendment deliberate indifference claim. 705 F.3d at 570–71. That holding—regarding how to assess the mental state required for any finding of liability for an Eighth Amendment claim—does not demonstrate any departure from the Tenth Circuit's objective analysis of a Fourth Amendment excessive force claim. *See also Spikes*, 12 F.4th at 833 (stating in a three-sentence order that it was essential on remand to analyze the conduct and mental culpability of defendant medical staff individually, rather than collectively, to determine their entitlement to qualified immunity on Eighth Amendment deliberate

indifference claim brought by incarcerated person for medical treatment). Nothing in the Tenth Circuit's decision would relieve courts of the obligation to ensure that a defendant acted with the requisite mental state.

And in *Williams*, *Manning*, and *Alcocer*, cases raising Fourth Amendment claims other than excessive force, the courts of appeals took issue with the district courts' failure to account for the defendants' differing knowledge and conduct, which directly bore on their entitlement to qualified immunity for the claims at issue. *See Williams*, 902 F.3d at 651–52 (in case raising Fourth Amendment claim for failure to adequately address plaintiff's medical needs, underscoring the need for individualized analysis when assessing qualified immunity for eleven different officers who had played different roles in apprehension, struggle, and monitoring of plaintiff in multiple locations and at differing times during prolonged encounter); *Alcocer*, 906 F.3d at 951–52 (same, in case raising Fourth Amendment unreasonable seizure claim, where district court's denial of qualified immunity depended on facts that would not have been known to two defendant jail officials at the time they refused to release plaintiff); *Manning*, 862 F.3d at 668–71 (same, in case raising Fourth, Fifth, and Fourteenth Amendment claims where district court's denial of qualified immunity was explained in a single paragraph that failed to differentiate at all between two defendant officers' roles in allegedly planting evidence on plaintiff and testifying falsely against her).

None of these cases, arising outside of the excessive force context, undermine the Tenth Circuit's analysis here. Indeed, in many of these cases, the courts of appeals emphasized the need for individualized qualified immunity analyses when the district court orders under review fully collapsed the determination for different defendants who were not privy to the same information or who did not actively engage in coordinated conduct.

Even the one excessive force case on which Petitioners rely provides no evidence of the purported split. In *Cunningham v. Gates*, the Ninth Circuit admonished the district court for failing to distinguish at all between officers who had been involved in the alleged use of excessive force (shooting the plaintiffs) from those who had not—including officers who were not even present at the scene of the shootings at issue. 229 F.3d 1271, 1289 (9th Cir. 2000). Requiring a court to distinguish between the “shooting officers” and “non-shooting officers” when assessing their entitlement to qualified immunity does not demonstrate a split from the Tenth Circuit's analysis here, which considered how each officer actively contributed to a coordinated use of excessive force.

Indeed, rather than a circuit split, the converse is true. All the circuits that Petitioners point to embrace the same principle that the Tenth Circuit applied here: when assessing whether force was reasonable or excessive under the totality of circumstances, a court may consider the force used together by a group of officers working in concert. *See, e.g., Brown v. City of New York*, 798 F.3d 94, 103 (2d Cir. 2015); *Moore v. LaSalle Management Company, L.L.C.*, 41 F.4th 493, 506 (5th Cir. 2022); *Simpson v.*

Hines, 903 F.2d 400, 403 (5th Cir. 1990); *Martin*, 712 F.3d at 960; *Phillips v. Community Ins. Corp.*, 678 F.3d 513, 526 (7th Cir. 2012); *Ryan v. Armstrong*, 850 F.3d 419, 427–28 (8th Cir. 2017); *Martinez v. City of Pittsburg*, 809 Fed. App’x 439, 440 (9th Cir. 2020); *Blankenhorn v. City of Orange*, 485 F.3d 463, 479–81 (9th Cir. 2007); *Skrtech*, 280 F.3d at 1302. This reflects the cornerstone principle that underlies the analysis of excessive force claims—that “[t]hat inquiry into the reasonableness of police force requires analyzing the ‘totality of the circumstances.’” *Barnes*, 605 U.S. at 80.

In sum, the circuits are not split on Petitioners’ first question presented. Certiorari is not warranted.

IV. This Court should reject Petitioners’ request to engage in fact-bound error correction that is wholly unsupported by the record at summary judgment.

Petitioners next contend that this Court should grant certiorari because existing Tenth Circuit law provides officers with insufficient guidance as to when a suspect is effectively subdued. *Pet. ii*. But a closer examination of Petitioners’ argument reveals that their true complaint lies not in the Tenth Circuit’s legal analysis but in its assessment of the factual record. Petitioners’ argument is that the Tenth Circuit’s analysis is arbitrary *if* one accepts a view of the summary judgment record that Petitioners advanced below and the Tenth Circuit rejected as inconsistent with the record viewed most favorably to the non-moving party. This fact-bound argument is inappropriate in an interlocutory appeal of a qualified immunity decision, unworthy of this Court’s consideration, and wholly without merit.

Petitions for certiorari are “rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” Sup. Ct. R. 10; *see also* Stephen M. Shapiro et al., Supreme Court Practice § 5.12(c)(3) at 352 (10th ed. 2013) (“[E]rror correction... is outside the mainstream of the Court’s functions and... not among the ‘compelling reasons’... that govern the grant of certiorari”). A question that “turns entirely on an interpretation of the record in one particular case... is a quintessential example of the kind that [this Court] almost never review[s].” *Taylor v. Riojas*, 592 U.S. 7, 11 (2020) (Alito, J., concurring). Furthermore, factual grievances are inappropriate fodder for an interlocutory appeal of a qualified immunity issue, which is “limited to cases presenting neat abstract issues of law.” *Johnson v. Jones*, 515 U.S. 304, 317 (1995) (citation modified).

Yet fact-bound error correction is exactly what Petitioners are seeking. At no point do Petitioners contest the settled legal standard that officers commit “excessive force when they apply a prolonged prone restraint and put weight on a suspect’s back when that suspect is handcuffed, is subject to a leg restraint, and is effectively subdued.” Appx. 67a. They do not dispute that it represents clearly established law or that the Tenth Circuit applied it correctly in *Weigel*, *Teetz*, and *Lynch*. Pet. 22–23. Instead, Petitioners complain that the Tenth Circuit’s analysis is “inconsistent at best and incoherent and arbitrary as *applied*” to Petitioners, Pet. 20, because, in their view of the record facts, “no reasonable jury could find that [Krueger] was effectively subdued.” Pet. 25.

The question at the heart of Petitioners' grievance—whether a suspect was effectively subdued—is a question of “fact in the excessive force analysis,” not a question of law. Appx. 35a. Thus, even if Petitioners' factual allegations were correct, they can only contend that though the Tenth Circuit “applied all the correct legal standards,” Petitioners “simply disagree[e] with the... application of those tests to the facts in a particular record.” *Taylor*, 592 U.S. at 11 (Alito, J., concurring). This is not a question worthy of a grant of certiorari, and Petitioners may not use an interlocutory qualified immunity appeal to argue their preferred factual inferences.

Further, no error occurred. The Tenth Circuit conducted “a cumbersome review of the record” precisely to determine how “how effectively [Krueger] was subdued by the officers throughout the encounter,” Appx. 34a, and found that the record at summary judgment showed “[Krueger] was not meaningfully struggling during much of the prone restraint, and... was effectively subdued.” Appx. 69a. Under this factual context and the prevailing legal standard, Petitioners were on clear notice that their prolonged prone restraint of and application of weight on Krueger constituted excessive force. Appx. 73a–74a.

Petitioners' argument simply asserts, without basis, that the Tenth Circuit's detailed factual conclusions are incorrect. Their central contention is that Krueger was “actively resisting arrest,” and thus was not effectively subdued, when the entirety of the record, including videotape footage, clearly support the Tenth Circuit's determination that a reasonable jury could find otherwise. Pet. 20.

Petitioners support this false characterization by contradicting or entirely disregarding the summary judgment record. First, their representation of Krueger as actively resisting arrest directly conflicts with the Tenth Circuit’s careful review of body camera footage that shows Krueger “not visibly moving, struggling, or speaking” for most of his restraint, as multiple officers crush him into the ground., Appx. 35a–36a. They then incorrectly claim that the Tenth Circuit did not analyze whether Petitioner Lott applied substantial weight to Krueger’s prone body, when the court both explicitly considered this claim and acknowledged the district court’s finding that that body camera video could support Lott placing “significant weight on [Krueger] for up to a minute.” Appx. 71a. Finally, Petitioners characterize their use of force as “minor and brief,” Pet. 25, omitting the factual reality of their encounter with Krueger: that they, along with five other officers, applied enough weight to a “prone, handcuffed, and... not visibly moving” Krueger to break his ribs, suffocate him, and end his life. Appx. 35a–36a.

The record plainly would allow a reasonable jury to determine that Krueger was effectively subdued during his fatal encounter with Petitioners. Petitioners found Krueger “on the ground exhausted, barely moving,” and “covered in blood,” Appx. 28a, having “suffered a severe blow to the head [that] open[ed] a gash in his forehead.” Appx. 24a. Krueger could barely speak – his earlier “beg[s] for help,” Appx. 53a, had grown “increasingly faint and unintelligible.” Appx. 28a. After Petitioners and the other arriving officers “confirmed they had control of Krueger,” *id.*, they then applied weight continuously for up to four minutes to Krueger’s “prone, handcuffed, and

restrained” body while he was largely motionless, 35a–37a. To the extent that Krueger initially kicked his feet, body camera footage, as analyzed by the Tenth Circuit, shows Krueger “not visibly moving, struggling, or speaking” for up to three minutes of the four minutes he was restrained. Appx 35a–36a.⁸

Despite this, Petitioner Lott stood on Krueger’s shoulder and placed “significant weight” on him for “up to a minute.” Appx. 71a. Petitioner Crockett placed her weight on Krueger’s buttock and upper thigh for up to one minute as she secured his legs in shackles. Appx. 31a. And both Petitioners placed their weight on a prone, handcuffed, and listless Krueger while McFarland simultaneously “rested his full weight on both knees,” *id.*, on Krueger’s back and Craig pressed his weight on Krueger’s shoulder, while two other officers straddled Krueger’s legs. Appx. 66a; A.II-472. Petitioners continued to apply their weight to Krueger’s body even as he was unable to respond to an EMT who performed a wellness check on him to ask if he was okay. *See* A.II-472 at 2:15–38. Petitioners and the other officers applied a combined weight of 665 pounds—more than four times Krueger’s body weight—onto Krueger’s prone body, causing him to asphyxiate. Appx. 36a. Their collective weight broke several of Krueger’s ribs, which contributed to his suffocation. *Id.*

Petitioners’ factual contentions prove to be nothing more than a misrepresentation of the record.

⁸ Additionally, a medical expert testified that the prone restraint would have led to Krueger to “panic and struggle in attempt to breathe.” Appx. 36a. Officers came to Krueger when he was already prone, “handcuffed and face down on the pavement.” Appx. 30a.

Accordingly, the Tenth Circuit's conclusion that a jury could reasonably determine that Krueger was effectively subdued, and its application of the appropriate legal standard, present no questions deserving of this Court's review.

CONCLUSION

The petition for writ of certiorari should be denied.

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