No. 15-1485

In the

# Supreme Court of the United States

DISTRICT OF COLUMBIA, ANDRE PARKER,

AND ANTHONY CAMPANALE,

*Petitioners*,

v.

THEODORE WESBY, *et al.*,

*Respondents.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

## BRIEF FOR RESPONDENTS

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## QUESTIONS PRESENTED

A host invited several friends to a party, informing them that she just moved to a house on Anacostia Avenue in Washington, D.C. The friends invited a few friends of their own, and they all arrived expecting to enjoy an evening together. Instead, those attendees were arrested for unlawful entry, despite uncontroverted evidence that the attendees were invited by the host who represented herself as the tenant of the home. After spending an evening in prison, the unlawful entry charge was changed to disorderly conduct. All charges were subsequently dropped.

The questions presented are:

1. Does an officer fail to establish probable cause to arrest when faced with uncontroverted evidence of the suspect's innocent mental state?

2. Does an arrest violate a clearly established right when there is uncontroverted exculpatory evidence of the suspect's innocent mental state?

## PARTIES TO THE PROCEEDING

The District of Columbia, Officer Andre Parker, and Officer Anthony Campanale were defendants in the district court and appellants in the court of appeals.

Theodore Wesby, Alissa Cole, Anthony Maurice Hood, Brittany C. Stribling, Clarence Baldwin, Ethelbert Louis, Gary Gordon, James Davis, Joseph Mayfield, Jr., Juan C. Willis, Lynn Warwick Taylor, Natasha Chittams, Owen Gayle, Shanjah Hunt, Sidney A. Banks, Jr., and Stanley Richardson were plaintiffs in the district court and appellees in the court of appeals.

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## INTRODUCTION

The Fourth Amendment balances a person's interest in being free from government intrusion and a police officer's duty to enforce the laws. To strike this balance, the Fourth Amendment requires officers to establish probable cause prior to a search or an arrest. Understanding that these decisions are made in real-time, courts provide broad discretion to officers: they are not required to conduct a mini-trial when investigating an arrest, they can operate without a jurist's knowledge of every nuance of the law, and they are released from the standard of perfection in conduct. Officers must act only as a reasonably competent person would when assessing whether a crime is being or has been committed.

But probable cause must still provide some meaningful protection from police intervention. That protection is violated when an officer makes an arrest in the face of uncontroverted exculpatory evidence. This is not a novel or unsupported proposition. Rather, it is the only potential meaning of the Fourth Amendment's check on police intervention.

On March 16, 2008, Officers of the District of Columbia arrested twenty-one attendees of a party despite uncontroverted evidence that negated the Attendees' intent to commit a crime. In accordance with clearly established law governing probable cause, Officers and the District of Columbia should be held liable for their violations of the Fourth Amendment.

## STATEMENT

### I. FACTS PRESENTED

On the evening of Saturday, March 15, 2008, Peaches hosted a party at 115 Anacostia Avenue in Washington, D.C. Joint Appendix 50. Peaches invited several friends to the party, telling them that she had just moved to the house. J.A. 5. Those friends invited several others, resulting in twenty-one attendees to the party (sixteen of which are the respondents in this action) ("Attendees"). J.A. 5. By the next day, all twenty-one attendees would be arrested and charged with several crimes before being released from police custody. J.A. 51–52.

During the night, an unnamed neighbor called the police to complain about the party, under the impression that the house should be uninhabited. J.A. 233. In response, Officers Andre Parker and Anthony Campanale ("Officers") arrived at the house around 1:30 A.M. J.A. 50. They approached the house, and observed one attendee run upstairs. Officers were allowed entry to investigate the party. J.A. 202, 214.

Officer Campanale entered the house, and observed Attendees seated on the living room floor. J.A. 233. As with many newly rented apartments, Officers observed that the apartment's decorations and furnishings were sparse. J.A. 39. But the apartment had functioning electricity, appliances, chairs, bedding, and food in the refrigerator. J.A. 39. The police officers also noted that Attendees were drinking. J.A. 205. Officers thought that they smelled marijuana, but conducted a search and found no drugs. J.A. 205–06. The police officers found several women upstairs, wearing what they described as "provocative clothing," as well as an Attendee in the closet. J.A. 39, 62. Taking all these circumstances together, "the [O]fficers acknowledged that, other

than the ostensible unlawful entry, they did not see anyone engaging in illegal conduct." J.A. 18.

Officers gathered Attendees to collect statements to determine "who the owner of the house was, and where the owner was." J.A. 56. One of the Attendees told Officers that the host, Peaches, had invited them to the house. *Id*. While other Attendees did not specifically name Peaches, Officer Campanale testified that the other attendees all "stated that they were there at the invitation of somebody else." J.A. 237.

Peaches had just left the party, so Attendees called her to resolve the issue. J.A. 57. Attendees gave Officer Parker the phone. *Id.* Peaches told Officer Parker that she was renting the property and confirmed that she invited Attendees to the house that evening. J.A. 57. Further, Peaches gave Officer Parker the contact information for the owner of the home so that Officer Parker could speak with him directly. *Id.* Officer Parker spoke with Hughes, the property owner, and confirmed that he knew Peaches, but Hughes clarified that they were "in the process of working out a leasing arrangement, but they never reached an agreement." *Id.* Peaches later confirmed that she had not reached a formal agreement with the owner. She thought, albeit mistakenly, that "she had permission to be inside the residence because she was going to rent the place out." J.A. 53.

Upon learning that Peaches did not have a lease for the property, Officers made the decision to arrest all twenty-one attendees for unlawful entry. J.A. 51. The arresting officers thought, for the purposes of D.C.'s unlawful entry law, that "it did not matter whether or not [Attendees] believed . . . that they had a right to be there." J.A. 54. According to Officer Campanale, criminal unlawful entry occurs when "you're present inside a location that you do not have permission to be in." J.A. 185. At no point did

Officers receive statements from Hughes, Peaches, or any Attendee to indicate Attendees doubted the validity of Peaches' invitation or had reason to know she lacked a lease for the property. J.A. 15.

Attendees were escorted to the police station and placed in a prison cell. J.A. 165. At 5:00 A.M., when the day watch commander Lieutenant Netter arrived, Attendees were still in the cell. J.A. 167. Lieutenant Netter heard the circumstances of the arrest and said that Attendees should never have been arrested. *Id.*

As Lieutenant Netter prepared to release Attendees, a representative from the District Attorney's Office told the watch commander to "[l]ock them up for disorderly conduct, loud voices." J.A. 165. A supervising officer testified that other officers once again jailed Attendees, who "at this time . . . had already [been] released, and [were] getting their stuff at the front counter." J.A. 166. The police officers "got everybody back, brought them back to the cell, processed them for disorderly conduct, let them pay out, and that was it." *Id.*

## II. PROCEDURAL HISTORY

Sixteen of the twenty-one arrested attendees sued the police officers involved in the arrest, including Officers Parker and Campanale, as well as the District of Columbia, in the District Court of the District of Columbia. J.A. 49, *Wesby* v. *District of Columbia*, 841 F. Supp. 2d 20 (D.D.C. 2012). Attendees sued the defendants under 42 U.S.C. § 1983 and the corresponding state law, claiming false arrest for unlawful entry and disorderly conduct. *Id.* Attendees also alleged negligent supervision against the District of Columbia. *Id.*

In district court, the plaintiffs and defendants cross-motioned for summary judgment. The court granted partial summary judgment on behalf of all

police officers in their individual capacities except Officers Parker and Campanale and against all officers in their official capacities. J.A. 103–04. The court granted Attendees' summary judgement motion with respect to Officers Parker and Campanale ("Officers") in their personal capacities under 42 U.S.C. § 1983 and related state law claims. The district court also granted summary judgment against the District of Columbia for state law false arrest and negligent supervision. *Id.* At a trial on damages, the jury awarded each Attendee between $35,000 to $50,000 in damages. J.A. 6.

Officers and the District of Columbia appealed the district court's findings of liability. J.A. 6, *Wesby* v. *District of Columbia*, 765 F.3d 13 (D.C. Cir. 2014) (hereafter "*Wesby II*"). The Court of Appeals for the D.C. Circuit affirmed, holding that the arresting officers failed to establish probable cause because "it was undisputed that the arresting officers knew the [Attendees] had been invited to the house by a woman that they reasonably believed to be its lawful occupant." J.A. 5. The D.C. Circuit further held that Officers were not entitled to qualified immunity, concluding "[d]efendants are simply incorrect to suggest that [O]fficers could not have known that uncontroverted evidence of an invitation to enter the premises would vitiate probable cause for unlawful entry." J.A. 27.

The Court of Appeals for the D.C. Circuit granted petitioner's motion to be heard en banc, and again affirmed, noting that "an officer could not conclude—not even reasonably, though mistakenly—that the partygoers had a culpable state of mind." J.A. 116, *Wesby* v. *District of Columbia*, 816 F.3d 96 (D.C. Cir. 2016) (en banc) (Pillard, J., concurring).

On June 8, 2016, Officers and the District of Columbia petitioned for certiorari, which this Court granted.

## SUMMARY OF ARGUMENT

1. To establish probable cause, an officer must consider the "totality of circumstances" to determine if a "reasonably prudent" person would believe that the suspect is committing or has committed a crime. *Brinegar* v. *United States*, 338 U.S. 160, 175–76 (1949). In evaluating all the facts and circumstances surrounding an event, an officer does not meet the probable cause requirement if he ignores uncontroverted exculpatory evidence. Especially if a lawful explanation for the suspect's behavior exists, an officer cannot assume a culpable mental state. *Adams* v. *Williams*, 407 U.S. 143, 148–49 (1972). If an officer wishes to discredit a lawful explanation backed by evidence, he must further investigate and justify that suspicion with evidence.

2. Petitioners, in reaching the conclusion that an officer can discredit uncontroverted evidence of an innocent mental state, incorrectly interpret this Court's holding in *Maryland* v. *Pringle*, 540 U.S. 366 (2003). *Pringle* does not permit officers to ignore uncontroverted exculpatory evidence if the evidence negates the mens rea of an offense. Rather, *Pringle* must be read to allow an officer to make reasonable inferences based on the totality of circumstances, including to discredit plainly unreasonable pleas of innocence. And, if probable cause has not been established based on *all* the evidence, arresting officers must investigate further or decide not to arrest.

3. Here, Officers plainly ignored uncontroverted exculpatory evidence. Some Attendees were invited by the tenant and host, Peaches. Others were invited by friends. *All Attendees* were invited under Peaches' purported lawful authority to be in the house. Attendees categorically informed the police that they

were invited to the house, only to find out later that Peaches was not a tenant. Officers do not suggest, nor do they disclose, any evidence to rebut Attendees' statements that they were all invited to the party. As a result, Attendees lacked the required mental state to commit the crime of unlawful entry. There is no evidence in the record that shows Officers further investigated the Attendees' lawful explanations. Taking the undisputed facts to be true, Officers arrested the twenty-one attendees without probable cause.

4. Officers are not entitled to qualified immunity because they violated a clearly established right. The law is well-established in the District of Columbia that an innocent mental state is exculpatory for crimes that require a culpable mental state, as is the law declaring that unlawful entry is one of those crimes. Officers failed to collect evidence of any culpable knowledge. Rather, all the information they knew indicated the Attendees' belief that they were properly invited. The Officers' mistake in arresting Attendees' was therefore unreasonable—it was contrary to all known evidence of the suspects' mental states, dissipating probable cause for arrest. By ignoring and unreasonably discounting exculpatory evidence, Officers violated the Attendees' clearly established right to be free from arrest without probable cause and can be held personally liable for the harm.

## ARGUMENT

### I. OFFICERS FAILED TO ESTABLISH PROBABLE CAUSE TO ARREST ATTENDEES.

An officer has an inescapable duty to establish probable cause prior to making an arrest. U.S. CONST. amend. IV. When exercising this duty, an officer must consider all the facts made available or reasonably known to him or her at the time of the arrest. *Henry* v. *United States*, 361 U.S. 98, 101 (1959). If, after considering the "totality of the circumstances," the evidence would lead a "reasonably prudent man" to find that the suspect is committing or has committed a crime, then the officer has established probable cause. *Brinegar* v. *United States*, 338 U.S. 160, 175–76 (1949); *Beck* v. *Ohio*, 379 U.S. 89, 91 (1964). At the heart of this analysis lies the same objective inquiry that a magistrate undertakes when issuing a warrant for probable cause. *See Beck*, 379 U.S. at 96 (holding that officers "surely cannot be less stringent than where an arrest warrant is obtained").

#### A. Officers must consider uncontroverted exculpatory evidence when assessing the totality of circumstances.

This Court has stressed that the determination of probable cause is a "nontechnical" standard. *Illinois* v. *Gate*s, 462 U.S. 213, 238 (1983). Because decisions of probable cause are made in real-time, the test is described as fluid rather than rigid. *Id.* The fact that probable cause is a fluid test, however, does not permit an officer to rely on "unparticularized suspicion or hunch." *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry* v. *Ohio*, 392 U.S. 1, 27 (1968)). Rather, an officer still must obtain evidence and reach a sensible conclusion based on that evidence. *Brinegar* v. *United States*, 338 U.S. 160, 177

(1949). Even a "'strong reason to suspect' is insufficient." *Henry* v. *United States*, 361 U.S. 98, 101 (1959).

Because an officer must examine the totality of circumstances and hunches alone are insufficient, uncontroverted evidence is often decisive when an officer assesses probable cause. *See Stansbury* v. *Wertman*, 721 F.3d 84, 95 (2d Cir. 2013) (relying on uncontroverted circumstantial evidence to determine that Wertman had probable cause to arrest Stansbury); *United States* v. *McKenzie-Gude*, 671 F.3d 452 (4th Cir. 2011) (holding that the officer, faced with uncontroverted evidence, had probable cause). Uncontroverted evidence's power to inculpate corresponds with a power to exculpate. *See Kuehl* v. *Burtis*, 173 F.3d 646, 650 (8th Cir. 1999) ("An officer contemplating an arrest is not free to disregard plainly exculpatory evidence, even if substantial inculpatory evidence (standing by itself) suggests that probable cause exists."); *Womack* v. *City of Bellefontaine Neighbors*, 193 F.3d 1028, 1031 (8th Cir. 1999) (finding that officers ignored "plainly exculpatory evidence" showing that Plaintiff lacked intent to commit a crime); *cf. Logsdon* v. *Hains*, 492 F.3d 334, 342 (6th Cir. 2007) (holding that officers cannot exclude from the "known facts and circumstances information that might bear on the accuracy, reliability, or trustworthiness" of the evidence). This is sensible: an officer cannot treat uncontroverted evidence as decisive in one circumstance but indecisive in others. *Harte* v. *Bd. of Comm'rs of Cty. of Johnson, Kans.*, 864 F.3d 1154, 1182 (10th Cir. 2017) ("As a corollary . . . of the rule that the police may rely on the totality of facts available to them in establishing probable cause, they also may not disregard facts tending to dissipate probable cause."); *United States* v. *Lopez*, 482 F.3d 1067, 1073 (9th Cir. 2007) (holding that new

information can eliminate an initial finding of probable cause).

An officer, of course, can doubt the credibility of exculpatory evidence, but that doubt must be supported by evidence as well. Otherwise, an officer's decision to selectively ignore or discredit evidence fails to assess the totality of circumstances. *Brinegar*, 338 U.S. at 177; *see also BeVier* v. *Hucal*, 806 F.2d 123, 128 (7th Cir. 1986) ("The continuation of even a lawful arrest violates the Fourth Amendment when the police discover additional facts dissipating their earlier probable cause."). An officer presented with exculpatory evidence has two options: (1) find, as a reasonably prudent person would, that probable cause does not exist; or (2) investigate further to verify the credibility of the evidence presented. Officers rejected both options, and arrested Attendees for unlawful entry in the face of uncontroverted evidence of an innocent mental state.

### B. Officers' proposal that no "direct evidence" of a mental state is necessary to establish probable cause runs counter to this Court's articulation of totality of the circumstances.

This Court has made clear that an officer is not required to find probable cause for each element of the offense. *Illinois* v. *Gates*, 462 U.S. 213, 228 (1983) (abrogating *Spinelli* v. *United States*, 393 U.S. 410 (1969)). Despite the Officers' suggestion, Attendees do not advocate a return to such an inflexible and unworkable standard. On the contrary, Attendees only request adherence to the standard iterated above: that an officer consider all facts and circumstances when determining whether a crime has been or is being committed.

An inescapable feature of this analysis involves evidence related to intent. When uncontroverted evidence is uncovered that proves an innocent mental state, there is no difficulty in determining a suspect is not committing or has not committed a crime. At this point, probable cause cannot be established without further investigation.

Officers, in place of the totality of the circumstances test, propose "where the actus reus of an offense has been established, officers do not need direct evidence for the mens rea element in order to establish probable cause." Brief for the Petitioners 19 ("Pet. Br."). A fair reading of Officers' "direct evidence" proposed rule would permit officers to selectively consider evidence of intent if the actus reus for a crime has been established. Such a selective-totality of the circumstances test contradicts the Court's requirement that Officers make reasonable inferences based on all evidence presented.

In reaching the conclusion that officers do not need "direct evidence," Officers incorrectly interpret this Court's decision in *Maryland* v. *Pringle*, 540 U.S. 366 (2003). In *Pringle*, the defendant was one of three passengers in a car stopped by police officers for speeding. *Id.* at 367–68. Officers searched the car, and found "$763 of rolled-up cash in the glove compartment directly in front of Pringle [and] [f]ive plastic glassine baggies of cocaine [] behind the back-seat." *Id.* at 371–72. No "direct evidence" established Pringle as the owner of the cocaine, but, in the context of cocaine in a car, it is hard to imagine what else direct evidence of ownership would look like. *Id.* at 372.

The officers arrested Pringle knowing two things. First, probable cause for criminal possession is established when cocaine is present because there are no innocent explanations for the presence of

cocaine. *Pringle*, 540 U.S. at 371–72. Second, officers could reasonably infer that Pringle "either solely or jointly" possessed the cocaine. Pringle was a passenger in the car, within arm's reach of the cocaine, and sat behind a large amount of cash in the glove compartment. *Id.* at 372.

Unlike defendants that have uncontroverted exculpatory evidence, the defendant in *Pringle* lacked a lawful explanation for the possession of cocaine. This Court and the D.C. Circuit have observed that a lawful explanation for an act significantly alters the probable cause analysis. In *Adams* v. *Williams*, the Court upheld an arrest for unlawful possession of a firearm because "the surrounding circumstances[] certainly suggested *no lawful explanation* for possession of the gun." 407 U.S. 143, 148–49 (1972) (emphasis added). In *United States* v. *Christian*, the D.C. Circuit Court of Appeals interpreted *Williams* to hold that, "[g]iven the possibility of a lawful purpose, and the absence of any evidence whatsoever that [the suspect] possessed the knife for an unlawful one, the officers lacked probable cause to believe a crime had been committed." 187 F.3d 663, 667 (D.C. Cir. 1999). There is a critical difference between a reasonable inference of intent when no lawful explanation exists (as in *Pringle*) and an unreasonable inference that ignores a lawful explanation corroborated by uncontroverted evidence.

Officers' interpretation of *Pringle* is further limited by the Court's discussion of *United States* v. *Di Re*. *Pringle*, 540 U.S. at 373–74. In *Di Re*, the Court considered whether an officer had probable cause to arrest defendant for a felony that required knowingly possessing false coupons. *United States* v. *Di Re*, 332 U.S. 581, 592 (1948). The Court held that officers did not establish probable cause for the felony, because officers possessed uncontroverted evidence from an

informant that implicated someone else as the culprit. The officers, left only with the actus reus of the crime, "had no information hinting further at the knowledge and intent required as elements of the felony." *Id.* at 592. From this, the Court held that there was no probable cause for arrest, as there was uncontroverted evidence that the defendant did not meet the required knowledge element. At its core, Officers' claim that no "direct evidence of mens rea" is necessary to make an arrest confuses unreasonable pleas of innocence with uncontroverted substantiated evidence of an innocent mental state.

Rather than Officers' reading of the cases, *Pringle*, *Di Re*, and *Williams* together:

(1) permit officers to make reasonable inferences of mental state when no lawful explanation for behavior exists, e.g., cocaine in a car;

(2) require officers to provide more evidence for an arrest when a lawful explanation for a behavior exists; and

(3) deny officers probable cause in the face of uncontroverted evidence of an innocent mental state.

Officers are, of course, free to investigate further to establish probable cause. But it would be counter to "totality of circumstances" to permit officers to rebut uncontroverted evidence without any "direct evidence."

### C. Officers failed to establish probable cause for an unlawful entry arrest.

In the District of Columbia, it is a misdemeanor for any person to "enter, or attempt to enter, any private dwelling . . . against the will of the lawful occupant or of the person lawfully in charge thereof."

D.C. CODE § 22-3302 (2008). The D.C. Circuit has interpreted the statute to require the government to prove that: (1) the suspect entered or attempted to enter the property; (2) he did so without lawful authority; (3) he did so in violation of the express will of the lawful occupant or owner; and (4) he had the general intent to enter. *Culp* v. *United States*, 486 A.2d 1174, 1176 (D.C. 1985). It is undisputed that Attendees voluntarily entered the house and lacked lawful authority to be in the house. However, Attendees did not violate the third *Culp* factor because they entered the home on a bona fide belief that they were authorized to be there.

The D.C. courts have consistently interpreted the unlawful entry statute to require that a person knew or should have known that he entered without the authorization of the owner. A person can be made aware of the owner's authorization or lack of authorization through a variety of statements or indications, e.g., signs, locked doors, or the express statement of the owner. *See*, *e.g.*, *Ronkin* v. *Vhin*, 71 F. Supp. 3d 124, 134 (D.D.C 2014) (concluding that, after the host told the trespasser to "leave and take a cab," her subsequent reentry was unlawful); *Ortberg* v. *United States*, 81 A.3d 303, 310–11 (D.C. 2013) (indicating that signs of a private event at a hotel meant that defendant should have known he was there unlawfully); *Smith* v. *United States*, 281 A.2d 438, 439–40 (D.C. 1971) (highlighting that the gate was locked and topped with barbed wire). A person lacks the requisite mens rea, then, for unlawful entry if (1) he enters the home with a belief in his right to enter, and (2) the evidence to make the person aware of the owner's intent is insufficient. *See Ortberg*, 81 A.3d at 309 ("[T]he existence of a reasonable, good faith belief is a valid defense precisely because it precludes the government from proving what it must—that a defendant knew or should have known

that his entry was against the will of the lawful occupant.").

On March 15, 2008, Officers entered the home to find a party. Upon investigation, all Attendees said they were invited to the party by Peaches, the home's presumptive tenant, or by one of her friends. One Attendee even called Peaches for Officers, leading to a phone call that corroborated Attendees' invitation. After speaking to Peaches, Officers learned that Peaches purported to be leasing the house and that she gave Attendees permission to be there. Peaches then cooperated with Officers by providing the landlord's number. The landlord informed Officers that Peaches lacked permission to be there while they negotiated the lease but said nothing to affect Peaches' (albeit illusory) invitation to Attendees. As soon as Officers received word from Peaches that she did not have permission to be there, Officers arrested Attendees.

Three pieces of evidence are uncontroverted: (1) Peaches invited Attendees to come to the home on Anacostia Avenue; (2) Attendees consistently stated that they were invited there for a party; and (3) the landlord did not give Peaches permission to be in the home. J.A. 13.

These three facts, standing alone and undisputed, would not lead a "reasonably prudent man" to believe a crime has been committed. First, Attendees had no reason to doubt the validity of Peaches' invitation, and no evidence was uncovered to suggest they doubted its validity. J.A. 30. Second, all Attendees were there for a party—an innocent motive. J.A. 18–19. And third, the landlord's statements to Officers only negated Peaches' apparent authority to permit Attendees to be in the home (creating the actus reus). It had no bearing on whether Attendees "knew or should have known" that

they were not allowed to be in the home (the mens rea).

Officers attempt to create an aura of misconduct and suspicion to rebut these three uncontroverted exculpatory facts. Officers, first, allege that individuals engaged in "furtive behavior" because one individual went upstairs upon observing police officers and one Attendee (perhaps the same Attendee) was found in the closet. Pet. Br. 20–21. To be clear: this is not a case of flight from the scene. All Attendees remained in the home and upon request from Officers, convened in the main room. J.A. 233. Even if the actions of a few Attendees constituted "furtive behavior," flight must be coupled with additional facts to reach probable cause. *See Sibron* v. *New York*, 392 U.S. 40, 66–67 (1968) (stating that flight, standing alone, does not amount to probable cause); *Wesby II*, J.A. 19 (citing *Illinois* v. *Wardlow*, 528 U.S. 119, 124 (2000)) (holding that "unprovoked flight 'is not necessarily indicative of wrongdoing'"). As the court below noted, "it is hardly surprising that participants would retreat as officers entered off the street." J.A. 19. After the initial "furtive behavior," all Attendees remained in the house, cooperated with Officers, and provided consistent evidence that they were there for a party, dissipating the initial furtive behavior's effect on probable cause. *Wesby II*, J.A. 15. Taking all this together, Officers attempt to paint the furtive behavior of, at most, two people onto the nineteen other Attendees who made efforts to resolve the issue. *See Maryland* v. *Pringle*, 540 U.S. 366, 371 (2003) (citing *Ybarra* v. *Illinois*, 444 U.S. 85, 91 (1979)) (requiring probable cause to be particularized to each person).

Officers also allege that Attendees made inconsistent statements. At no point do Officers indicate any inconsistent statements that Attendees

*had been invited* to the house for a party, as independently confirmed both by Attendees and by Peaches. J.A. 7–8. Instead, Officers rely on the fact that some Attendees didn't know what *kind* of party they were attending. Pet. Br. 21. Because this was a collection of friends and acquaintances, the fact that some Attendees did not know the exact nature of the party is unsurprising. Officers' heightened scrutiny of the kind of party, at the expense of the statement's relevant content, only confuses the question at hand.

Officers dubiously allege that there was a finding of THC, the active ingredient of marijuana, on a window ledge. Pet. Br. 22. Petitioners base this on a summary police report stating Officer Parker found and tested a substance on the scene. J.A. 214; Pet. Br. 38. Officers do not address, however, Officer Parker's sworn testimony refuting that record and stating he did not find drugs at the scene. J.A. 206. Beyond ignoring testimony, Officers fail to claim that there is any link between marijuana's presence and a presumptive knowledge that the host's invitation was illegitimate. In a footnote, Officers attempt to characterize this as a crime, but consumption of marijuana is legal for adults twenty-one years or older within the District of Columbia. D.C. Act 20-565 (2015).

Finally, Officers emphasize that the furniture was sparse within the house, implying that the house looked uninhabited. Pet. Br. 22. This conclusion misstates their observations, as the house had electricity, food in the refrigerator, plumbing, bedding, and furniture. J.A. 68. This is consistent with the fact that the apartment, according to Peaches, was newly rented. J.A. 5.

To defend their conclusion that this nonculpable behavior amounts to probable cause, Officers rely on *Illinois* v. *Gates* to suggest that

"innocent behavior frequently will provide the basis for a showing of probable cause." Pet. Br. 22 (quoting *Illinois v. Gates*, 462 U.S. 213, 244 (1983)). In *Gates*, however, the "innocent behavior"—driving to Florida—was only suspicious because an informant told the officers that Gates was trafficking drugs from Florida to Illinois. *Id.* at 225.

Here, no such match between the innocent behavior and the commission of the crime exists. By implication, Officers suggest that, because women were dressed promiscuously and Attendees were drinking beer, they must have unlawfully entered the home. Yet, these activities—though perhaps not the Officers' typical Saturday night—are common among bachelor parties and support the Attendees' uncontroverted evidence that they were invited for a party. J.A. 18–19. In no way do the "suspicious circumstances" presented bear on the question of whether Attendees knew or should have known that they were there without the express will of the owner.

Officers had a variety of options besides arresting Attendees. Officers could have investigated further to determine if Attendees knew that Peaches did not have a lease. Alternatively, Officers could have told Attendees that they do not have the right to be in the house and arrest them if they refuse to leave. Instead, Officers, in the face of uncontroverted exculpatory evidence, arrested twenty-one attendees, forced them to spend a night in prison, and violated their Fourth Amendment right to be free from arrest without probable cause.

## II. OFFICERS ARE NOT ENTITLED TO QUALIFIED IMMUNITY BECAUSE THEY VIOLATED THE ATTENDEES' CLEARLY ESTABLISHED RIGHTS BY ARRESTING THEM WITHOUT PROBABLE CAUSE.

Under qualified immunity, the actor is immune from personal liability under § 1983 unless the actor violated a "clearly established" constitutional or statutory right. *Ziglar* v. *Abbasi*, 137 S.Ct. 1843, 1866 (2017). "An officer is not entitled to a qualified immunity defense . . . where exculpatory evidence is ignored that would negate a finding of probable cause." *Broam* v. *Bogan*, 320 F.3d 1023, 1032 (9th Cir. 2003). Here, Officers did just that—they violated the Attendees' right to be free from an arrest without probable cause under the Fourth Amendment. "[A]n officer who ignored exculpatory evidence that negated the mens rea required for [the crime is] not entitled to qualified immunity for arrest without probable cause." *Williams* v. *Alexander, Ark.*, 772 F.3d 1307, 1312 (8th Cir. 2014) (citing *Kuehl* v. *Burtis*, 173 F.3d 646 (8th Cir. 1999)).

Determining whether an arresting officer violated a clearly established right includes two questions: (1) whether the law establishing the right is well established and (2) whether any reasonable officer could believe that the arrest violated the suspect's right. *Ornelas* v. *United States*, 517 U.S. 690, 696–97 (1996) (citing *Pullman–Standard* v. *Swint*, 456 U.S. 273, 289 n.19 (1982)) ("[T]he issue is whether the facts satisfy the relevant statutory or constitutional standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.") (brackets omitted). This framework ensures that officers are not "expected to be aware" of a right "that had not been previously declared." *Procunier* v. *Navarette*, 434 U.S. 555, 565

(1978) (citing *Wood* v. *Strickland*, 420 U.S. 308, 322 (1975)).

First, settled District of Columbia law demonstrates both that an innocent mental state is exculpatory in crimes requiring particular mental states and that unlawful entry is one of those crimes, as it requires a knowledge element.

Second, an officer's probable cause determination can reasonably justify an arrest *only if* the known facts can lead sensibly to the conclusion that the crime has been committed. Therefore, the presence of *uncontroverted exculpatory evidence* means that there are no facts leading sensibly to a conclusion of guilt. Uncontroverted evidence of an innocent mental state cannot reasonably justify an officer's conclusion that probable cause for culpable behavior exists. If an officer nonetheless makes an arrest, he cannot hide behind the shield of qualified immunity.

In this case, Officers had no evidence controverting Attendees' uniform testimony that they had been invited there for a party. Officers, instead, indicate inconsistencies in the kind of party, misstate the record to incorrectly allege there were drugs present, and pin suspicion on a suspect hiding *within the house*. None of the evidence put forth controverts or undermines the Attendees' good faith, bona fide belief that they had been authorized to enter the house. Although it turned out that the host did not have authority to invite them into the house, there is still no evidence to justify the Officers' arrest because the only evidence available to them showed that Attendees did not meet the requirements for probable cause.

### A. An officer cannot receive qualified immunity when (1) the law defining the right is well established and (2) any reasonable officer would believe that the conduct would violate the victim's protected rights.

Under qualified immunity doctrine, a police officer can be immune for violating a plaintiff's rights only if the right in question was not "clearly established." *Pearson* v. *Callahan*, 555 U.S. 223, 232 (2009) (citing *Saucier* v. *Katz*, 533 U.S. 194 (2001)); *Brosseau* v. *Haugen*, 543 U.S. 194, 205 (2004). For the purposes of qualified immunity, the "relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be *clear to a reasonable officer that his conduct was unlawful* in the situation he confronted." *Saucier*, 533 U.S. at 202 (emphasis added); *see also Ziglar* v. *Abbasi*, 137 S.Ct. 1843, 1867 (2017) (reiterating the *Saucier* standard).

A reasonable officer, by definition, is aware of well-established law governing his conduct. *Harlow* v. *Fitzgerald*, 457 U.S. 800, 815 (1982) (citing *Wood* v. *Strickland*, 420 U.S. 308, 322 (1975)) (A reasonable officer must have "a presumptive knowledge of and respect for 'basic, unquestioned constitutional rights.'"). For an officer to be held liable under § 1983, "the defendant [is] entitled to 'fair warning' that his conduct deprived his victim of a constitutional [or statutory] right." *Hope* v. *Pelzer*, 536 U.S. 730, 739–40 (2002) (citing *United States* v. *Lanier*, 520 U.S. 259, 272 (1997)). "[T]he standard for determining the adequacy of that warning [is] the same as the standard for determining whether a constitutional right was "clearly established" in civil litigation under § 1983." *Id.* at 740. "[S]ince a reasonably competent public official should know the law governing his conduct," *Harlow*, 457 U.S. at 818–19, requiring

reasonable officers to be aware of well-established law in their jurisdiction certainly addresses the Officers' concern that "officers are on notice that their conduct is unlawful." *Hope*, 536 U.S. at 731.

The second part of the qualified immunity analysis governs the application of law to the facts known to the officer at the time of his conduct. If there is well-established law governing a right and no reasonable officer would believe that the conduct does not violate the victim's right under the circumstances, then qualified immunity does not shield the conduct. *Ziglar*, 137 S.Ct. at 1867 (defining the functional test for qualified immunity attaches is "whether it would have been clear to a reasonable officer that the alleged conduct "was unlawful in the situation he confronted"); *Ornelas* v. *United States*, 517 U.S. 690, 696–97 (1996).

Officers claim that qualified immunity applies to all police actions unless they were "plainly incompetent" or "knowingly violate[d] clearly established law." Pet. Br. 24. This statement is correct, but the Court recently defined the test for those two standards: If "it would have been clear to a reasonable officer that the alleged conduct 'was unlawful in the situation he confronted.' . . . then the defendant officer must have been either incompetent or else a knowing violator of the law, and thus not entitled to qualified immunity." *Ziglar*, 137 S.Ct. at 1867. Accordingly, Officers' test is only a restatement of the Court's long-standing "reasonable officer" standard.

**B. In the District of Columbia, the law was well established that a lack of knowledge was exculpatory for unlawful entry at the time of the 2008 arrest.**

The Fourth Amendment declares the clearly established right to be free from arrest without probable cause. U.S. CONST. amend. IV. This right includes the right to be free from arrest when there is uncontroverted exculpatory evidence, which includes evidence of an innocent mental state in the District of Columbia. *See, e.g.*, *United States* v. *Christian*, 187 F.3d 663, 667 (D.C. Cir. 1999); *Carr* v. *District of Columbia*, 587 F.3d 401, 410–11 (D.C. Cir. 2009). This right is well established because the presiding D.C. courts have long declared it binding, an argument strengthened by the broad cross-section of persuasive authority that has applied the same right.

Furthermore, D.C. law has long established unlawful entry as a crime that has a requisite mental state—the suspect must be aware (or should reasonably be aware) that the owner does not want him on the property. Accordingly, unlawful entry is well established as one of the District of Columbia's crimes for which uncontroverted evidence of an innocent mental state is exculpatory. Based on the jurisdiction's strong history of requiring probable cause of a required mental state, no reasonable D.C. police officer would believe an unlawful entry arrest is lawful in the presence of uncontroverted exculpatory evidence.

i. A law is well established if the courts of controlling authority for the jurisdiction have declared the rule with reasonable specificity.

Officers cannot "reasonably [be] expected to be aware" of a law that establishes a right "that had not yet been

declared," *Procunier* v. *Navarette*, 434 U.S. 555, 565 (1978), but if the law is well established, then the officers have fair notice. *See Hope* v. *Pelzer*, 536 U.S. 730, 740 (2002) (declaring that the test for fair notice is the same as "clearly established" under § 1983 doctrine); *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818–19 (1982) ("[A] reasonably competent public official should know the law governing his conduct."). "[T]he salient question . . . is whether the state of the law" at the time of an incident provided "fair warning" to the defendants "that their alleged [conduct] was unconstitutional." *Tolan* v. *Cotton*, 134 S.Ct. 1861, 1866 (2014) (citing *Hope*, 536 U.S. at 741).

To define a right as well established, one must look to the Supreme Court's precedent, "cases of controlling authority in their jurisdiction at the time," or "a consensus of cases of persuasive authority" concerning the establishment of the right. *Wilson* v. *Layne*, 526 U.S. 603, 617 (1999); *see also Pearson* v. *Callahan*, 555 U.S. 223, 244 (2009) (looking to persuasive authority from other courts *after* determining that the presiding circuit had not spoken to the existence of the right). A law is well established and fair notice exists if the court of controlling authority or a consensus of persuasive authority has previously defined the law with "reasonable specificity." *McEvoy* v. *Spencer*, 124 F.3d 92, 97 (2d Cir. 1997) (citing *Jermosen* v. *Smith*, 945 F.2d 547, 550 (2d Cir. 1991)).

ii. <u>It was well established in the District of Columbia at the time of the 2008 arrest that unlawful entry crimes required a particular mens rea—knowingly violating the owner's wishes.</u>

A broad consensus of D.C. cases demonstrates that an unlawful entry crime requires a particular

mens rea—that the suspect is or should reasonably be aware that he is entering the property against the owner's wishes. *See United States* v. *Thomas*, 444 F.2d 919, 926 (D.C. Cir. 1971) (finding that the criminal element of "entry against the will of the lawful owner" is supported because the suspect should have known he was there against the owner's wishes); *Darab* v. *United States*, 623 A.2d 127, 136 (D.C. 1992) (citing *Smith* v. *United States*, 281 A.2d 438, 439 (D.C. Cir. 1971)) (A person with a reasonable and bona fide belief in his right to enter "lacks the requisite criminal intent for unlawful entry."); *McGloin* v. *United States*, 232 A.2d 90, 91 (D.C. 1967) (Suspect should have known he was unwelcome on the roof of an apartment building). In *Ortberg* v. *United States*, the D.C. Circuit surveyed the District of Columbia's state and federal court decisions and found that the "*cases make clear* that the mental state with respect to acting against the will of the owner [requires] the government to establish that the defendant knew or should have known that his entry was unwanted." 81 A.2d 303, 308 (D.C. 2013) (emphasis added).

Officers attempt to distinguish this long line of cases by classifying them as affirmative defense cases rather than as "negation of required element" cases, Pet. Br. 29. This is both inaccurate and an attempt to make the law appear more convoluted than it is. A bona fide belief in one's right to enter is an affirmative defense *and* negates an element of the underlying crime. "[T]he existence of a reasonable, good faith belief is a valid defense precisely because it precludes the government from proving what it must—that a defendant knew or should have known that his entry was against the will of the lawful occupant." *Ortberg*, 81 A.3d at 309; *cf. Estate of Dietrich* v. *Burrows*, 167 F.3d 1007, 1012 (6th Cir. 1999) (Officers' knowledge that the suspect had a legitimate, exculpatory

purpose for carry a weapon negated an element and dissipated probable cause.).

This straightforward rule has been declared by both state and federal courts in the District of Columbia as binding law since at least 1971, over a quarter of a century before the 2008 arrests. There is a strong consensus of controlling authority and significant specificity to the rule that unlawful entry, under D.C. law, requires that the suspect know or should know he is present on a property without the owner's permission.

iii. It was well established in the District of Columbia at the time of the 2008 arrest that an innocent mental state is exculpatory for crimes requiring a particular mens rea.

The courts of the District of Columbia have held that an innocent mental state exculpates a suspect if the crime in question has a required mental state. "The law in [D.C.] has been well established for decades that probable cause to arrest requires at least some evidence that the arrestee's conduct meets . . . any state-of-mind element." *Wesby II*, J.A. 26. The courts' consensus certainly confirms the establishment of this doctrine.

There is binding D.C. law to clearly establish that a showing of innocent mental state negates probable cause for the overall charge—both the district and circuit courts of the District of Columbia have demonstrated this rule. The D.C. Circuit's clearest statement of this standard came in *United States* v. *Christian*, where the court declared that there was no probable cause for an arrest because "there was a 'lawful explanation' for [the suspect's] possession of the dagger." 187 F.3d 663, 667 (D.C. Cir. 1999) "Given the possibility of a lawful purpose, and

the absence of any evidence whatsoever that [the suspect] possessed the knife for an unlawful one, the officers lacked probable cause to believe a crime had been committed." *Id.* Because there was *uncontroverted evidence* of the suspect's innocent mental state, the court held that "there was no probable cause for arrest." *Id.*

The Officers' analysis of *Carr* v. *District of Columbia*, Pet. Br. 31, contravenes their statement that the District of Columbia requires a probable cause determination only for specific intent crimes. Officers' concede that the required mental state at question in *Carr* was knowledge. *Id.* ("The offense discussed in *Carr* requires that suspects . . . '*know*[] no permit was granted.'").

*Carr* demonstrates that the District of Columbia requires a probable cause analysis of mental state for more than just specific intent crimes. In *Carr*, the circuit court rejected police officers' arguments that they had probable cause to make a group arrest for parading without a permit, a crime that requires the suspect's knowledge that no permit was issued. 587 F.3d 401, 410–11 (D.C. Cir. 2009). An arrest for parading without a permit requires that the police have reason to suspect the marchers were aware their conduct was unauthorized. *Id.* at 410. Because the arresting officers had no evidence that the suspects had the requisite knowledge for the crime, there was no probable cause for the arrest. *Id* at 410–11.

The requirement of probable cause to suspect the culpable mental state is established in the District of Columbia. The federal district court of the District of Columbia stated that "the law is *well established*" that, to establish probable cause for a crime with a requisite mental state, "[t]here must be evidence of [the required] intent." *United States* v. *Vinton*, 2007

WL 495799 at *2 (D.D.C., Feb. 12, 2007) (emphasis added).

Other circuits also apply the same policy that the D.C. Circuit abides by—there is no probable cause when there is uncontroverted evidence of the suspect's innocent mental state.[1]

An innocent mental state exculpates crimes with a particular mens rea requirement. Binding decisions in the District of Columbia and supportive persuasive authority all affirm that this doctrine was well established at the time Officers arrested Attendees.

### C. Any reasonable officer would believe that an arrest violates the suspect's rights if there is uncontroverted exculpatory evidence.

The Supreme Court has consistently stated that the existence of probable cause is a mixed

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[1] *See Williams* v. *Alexander, Ark.*, 772 F.3d 1307, 1312 (8th Cir. 2014) ("For probable cause to exist, there must be probable cause for all elements of the crime, including mens rea."); *United States* v. *Joseph*, 730 F.3d 336, 342 (3d Cir. 2013) ("To make an arrest based on probable cause, the arresting officer must have probable cause for each element of the offense."); *United States* v. *Lopez*, 482 F.3d 1067, 1072–73 (9th Cir. 2007) (When a particular mental state "is a required element of the offense, the arresting officer must have probable cause for that element."); *United States* v. *Two Parcels of Real Property located in Russell Cty., Ala.*, 92 F.3d 1123, 1128 (11th Cir. 1996) ("[S]ummary judgment for claimants would be proper if they offered uncontroverted evidence that . . . they were innocent owners unaware of the property's connection with drug sales."); *see also Adams* v. *Williams*, 407 U.S. 143, 148–49 (1972) (upholding a conclusion of probable cause because the officer had reason to assume the requisite intent); *Krause* v. *Bennett*, 887 F.2d 362, 371 (2d Cir. 1989) (applying *Williams* to find that prison officer made a reasonable inference to justify a stop and frisk search).

question of law and fact: "[T]he issue is whether the facts satisfy the relevant statutory or constitutional standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated." *Ornelas* v. *United States*, 517 U.S. 690, 696–97 (1996) (brackets omitted). Police officers, in assessing probable cause, may act on all the facts known to them, whether those facts support or dissipate probable cause. *Compare Florida* v. *Harris*, 568 U.S. 237, 244 (2013) (Officers must consider "the totality of the circumstances."), *with Ornelas*, 517 U.S. at 696-97, *and Harte* v. *Bd. of Comm'rs of Cty. of Johnson, Kans.*, 864 F.3d 1154, 1182 (10th Cir. 2017) ("As a corollary . . . of the rule that the police may rely on the totality of facts available to them in establishing probable cause, they also may not disregard facts tending to dissipate probable cause.").

Probable cause cannot exist if the known facts do not support a conclusion of guilt. Probable cause determinations give broad discretion to police officers, but their "mistakes must be those of reasonable men." *Heien* v. *North Carolina*, 135 S.Ct. 530, 536 (2014) (citing *Brinegar* v. *United States*, 338 U.S. 160, 176 (1949)). The Court's deference to police officers on interpretation only extends so far—officers must "act[] on *facts leading sensibly to their conclusions*. . . [t]o allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." *Brinegar*, 338 U.S. at 176 (emphasis added); *Beck* v. *Ohio*, 379 U.S. 89, 91 (1964) (An arrest is supported by probable cause if the officers "had reasonably trustworthy information . . . sufficient to warrant a prudent man in believing that the [suspect] had committed or is committing a crime."). If the only evidence available is uncontroverted evidence indicating an exculpatory mental state, then there is no evidence leading sensibly to a conclusion of probable cause.

Without contravening evidence that an officer could use to discount exculpatory evidence, there are simply no *facts leading sensibly* to the conclusion of probable cause. No reasonable police officer would make an arrest when presented with uncontroverted exculpatory evidence because there is no sensible basis to conclude the suspect's guilt. *See, e.g.*, *United States* v. *Two Parcels of Real Property*, 92 F.3d 1123, 1128 (11th Cir. 1996) ("[S]ummary judgment for claimants would be proper if they offered uncontroverted evidence that . . . they were innocent owners unaware of the property's connection with drug sales."); *BeVier* v. *Hucal*, 806 F.2d 123, 128 (7th Cir. 1986) ("The continuation of even a lawful arrest violates the Fourth Amendment when the police discover additional facts dissipating their earlier probable cause."). Instead, the police officers must find countervailing evidence to override the exculpatory facts, or at least enough to justify their skepticism of them. *See, e.g.*, *Wesby II*, J.A. 15 n.4 (listing authorities).

In this case, there was no probable cause because "[a]ll of the information . . . made clear that Plaintiffs had every reason to think that they had entered the house with the [owner's] express consent." *Wesby II*, J.A. 15 n.4. "Multiple officers . . . did not observe anything leading them to believe that the [Attendees] had any reason to think they lacked the right to be in the house." *Id.*

When there is *uncontroverted exculpatory evidence*, there are no facts to lead sensibly to a conclusion of probable cause, so no reasonable officer would believe that an arrest would not violate the suspect's Fourth Amendment right.

### D. Officers are liable for damages for arresting Attendees without probable cause because there was uncontroverted exculpatory evidence of the Attendees' innocent mental states.

In 2008, it was well established in the District of Columbia that a suspect is not guilty of the crime of unlawful entry if he does not have knowledge that he is there against the owner's will. It was also well established that an innocent mental state is exculpatory for crimes requiring a particular mental state. Therefore, a reasonable officer would have been aware that a suspect's bona fide belief in his right to enter negates the mens rea for an unlawful entry charge.

As discussed in the previous section, there were no facts to controvert the evidence that Attendees believed that they were in the property pursuant to the tenant's invitations. Although their belief in the legitimacy of the invitation was incorrect, there was no evidence to demonstrate that Attendees knew or should have known they were entering the property against the wishes of the owner. Officers cite several facts that they classify as "suspicious," Pet. Br. 11, but fail to produce any evidence to controvert that one central element of the case: whether Attendees had a good faith belief that they were legitimately invited into the home.

Officers simply did not have any evidence with which they could dispute or discount the Attendees' statements that they were in the house under the presumption that Peaches had legitimately invited them there. "All of the information . . . made clear that Plaintiffs had every reason to think that they had entered the house with the [owner's] express consent." *Wesby II*, J.A. 15. "Multiple officers on the scene testified that they did not observe anything leading

them to believe that the Plaintiffs had any reason to think they lacked the right to be in the house." *Id.* at 15 n.4. Officers did not question Attendees' belief that they were legitimately invited into the house, but "[h]ad they asked such questions," Officers may have had reason to doubt their belief. *Id.*

Because there was uncontroverted exculpatory evidence, there was no evidence to support the Officers' inference that Attendees knew that the owner of the house did not want them there—they thought they were legitimately invited. Based on that information, no facts led sensibly to a conclusion of guilt and, therefore, no reasonable officer would believe there was probable cause for an arrest. Accordingly, Officers cannot claim the protection of qualified immunity.

A finding here that Officers violated the clearly established rights of Attendees would not unduly hamper police officers' ability to perform their jobs. Officers never even asked *anyone* whether Attendees were aware that the invitation was not legitimate, despite being at the house for hours. *Wesby II*, J.A. 15 n.4. A denial of qualified immunity would not burden officers to an unfeasible extent. It would remind the police that they have a duty to take reasonable efforts to know the laws they enforce and that suspects cannot be arrested just for seeming suspicious. "To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." *Brinegar* v. *United States*, 338 U.S. 160, 176 (1949).

## CONCLUSION

The Court should affirm the D.C. Circuit Court of Appeals decision to hold Officers liable for the false arrest of Attendees.

Respectfully Submitted,

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