

No. 17-67

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IN THE  
**Supreme Court of the United States**

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CITY OF FRESNO AND  
OFFICER GREG CATTON,

*Petitioners,*

v.

CHRIS WILLIS AND MARY WILLIS,  
INDIVIDUALLY AND AS SUCCESSORS  
IN INTEREST TO STEPHEN WILLIS,

*Respondents.*

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

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**BRIEF IN OPPOSITION**

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individually and as successors in interest to  
Stephen Willis*

### **QUESTIONS PRESENTED**

1. Would a reasonable police officer have known it was a clearly established constitutional violation to use deadly force by shooting in the back a man who is lying motionless on the ground and not reaching for a gun and thus poses no immediate threat to the officer or others?
2. Is the issue of attorneys' fees ripe for review when the final amount of attorneys' fees has not yet been determined because the Court of Appeals has remanded the case for further trial on additional damages to be awarded under 42 U.S.C. §1983?

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## INTRODUCTION

Neither question raised by the petition is worthy of certiorari.

The first question, relating to qualified immunity, is based on a factual account that is contradicted by the jury's verdict. Petitioners frame the issue based on the assumption that Officer Catton is entitled to qualified immunity because he shot respondents' decedent, Stephen Willis, while Willis was reaching for a gun that was "within inches" of his hand. (Pet. i.) Yet those were not the facts as determined by the jury. As the District Court concluded—and the Court of Appeals agreed—"[t]he jury's verdict does not permit a finding that Stephen Willis was reaching for his revolver. Indeed, the jury's verdict *necessarily* means the jury did not believe Stephen Willis was reaching for his revolver when Officer Catton fired the final shot(s)." (Pet. App. 30, italics in original.) There is no reason to grant certiorari to decide a hypothetical legal issue that is not supported by the facts of the case.

Petitioners next ask this Court to rule on a question of attorneys' fees when the amount of attorneys' fees awarded to respondents has not yet been finally determined in the District Court, so the question is not ripe for review. The Ninth Circuit Court of Appeals remanded this case back to the District Court for a trial on additional damages for Stephen Willis' pre-death pain and suffering. Those additional damages will affect the District Court's determination on attorneys' fees. The Ninth Circuit instructed the District Court to revisit the question of attorneys' fees after this new trial. There is no reason to grant

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