SUPREME COURT OF THE UNITED STATES

RICARDO SALAZAR-LIMON *v.* CITY OF HOUSTON, TEXAS, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16–515. Decided April 24, 2017

The petition for a writ of certiorari is denied.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in the denial of certiorari.

Every year the courts of appeals decide hundreds of cases in which they must determine whether thin evidence provided by a plaintiff is just enough to survive a motion for summary judgment or not quite enough. This is one such case. Officer Thompson stated in a deposition that he shot Salazar-Limon because he saw him turn toward him and reach for his waist in a movement consistent with reaching for a gun. Record, Doc. 39–2, pp. 29–30, 33. Remarkably, Salazar-Limon did not state in his deposition or in an affidavit that he did not reach for his waist, and on that ground the Court of Appeals held that respondents were entitled to summary judgment. 826 F. 3d 272, 278–279 (CA5 2016).

The dissent disagrees with that judgment. The dissent acknowledges that summary judgment would be proper if the record compelled the conclusion that Salazar-Limon reached for his waist, but the dissent believes that, if the case had gone to trial, a jury could have reasonably inferred that Salazar-Limon did not reach for his waist—even if Salazar-Limon never testified to that fact. The dissent's conclusion is surely debatable. But in any event, this Court does not typically grant a petition for a writ of certiorari to review a factual question of this sort, see this Court's Rule 10, and I therefore concur in the denial of

review here.

I write to put our disposition of this petition in perspective. First, whether or not one agrees with the grant of summary judgment in favor of Officer Thompson, it is clear that the lower courts acted responsibly and attempted faithfully to apply the correct legal rule to what is at best a marginal set of facts.

Second, this Court applies uniform standards in determining whether to grant review in cases involving allegations that a law enforcement officer engaged in unconstitutional conduct. We may grant review if the lower court conspicuously failed to apply a governing legal rule. See this Court's Rule 10. The dissent cites five such cases in which we granted relief for law enforcement officers, and in all but one of those cases there was no published dissent. *White* v. *Pauly*, 580 U. S. ___ (2017) (*per curiam*); *Mullenix* v. *Luna*, 577 U. S. ___ (2015) (*per curiam*); *Taylor* v. *Barkes*, 575 U. S. ___ (2015) (*per curiam*); *Carroll* v. *Carman*, 574 U. S. ___ (2014) (*per curiam*); *Stanton* v. *Sims*, 571 U. S. ___ (2013) (*per curiam*). The dissent has not identified a single case in which we failed to grant a similar petition filed by an alleged victim of unconstitutional police conduct.

As noted, regardless of whether the petitioner is an officer or an alleged victim of police misconduct, we rarely grant review where the thrust of the claim is that a lower court simply erred in applying a settled rule of law to the facts of a particular case. See this Court's Rule 10. The case before us falls squarely in that category.

This is undeniably a tragic case, but as the dissent notes, *post*, at 8 (opinion of SOTOMAYOR, J.), we have no way of determining what actually happened in Houston on the night when Salazar-Limon was shot. All that the lower courts and this Court can do is to apply the governing rules in a neutral fashion.