

No. 19-1042

IN THE SUPREME COURT OF THE UNITED STATES

EUNICE J. WINZER,
Cross-Petitioner

v.

KAUFMAN COUNTY, TEXAS; MATTHEW HINDS,
Cross-Respondents

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

RESPONDENTS' OPPOSITION TO
CONDITIONAL CROSS-PETITION
FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit properly followed this Court's mandate in affirming summary judgment for Officer Hinds after concluding that he did not violate clearly established law?

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**RESPONDENTS' OPPOSITION TO CROSS-
PETITION FOR WRIT OF CERTIORARI**

COUNTERSTATEMENT OF THE CASE

A. Factual Background

On the morning of April 27, 2013, Deputy Sheriff Matthew Hinds and fellow officers were dispatched to a rural neighborhood in Kaufman County, Texas, after 911 dispatchers received numerous urgent calls from neighbors reporting that a suspect with a gun was terrorizing the neighborhood, threatening them, and shooting at mailboxes. (ROA.16-11482.279-80, 285-86, 296-97, 302-03, 311-320). After Deputy Hinds and a Texas State Trooper arrived on the scene, the suspect, standing in the middle of the roadway, fired a gun in their direction. (ROA.279-80, 285-86, 323). After losing sight of the suspect among houses and trees, Hinds and other arriving officers slowly approached his last known location. (ROA.281, 286, 291, 297-98, 303, 323). Gabriel Winzer suddenly emerged into the roadway riding toward the officers on a bicycle. (ROA.281, 286, 291-92, 298, 304, 323). After seeing that Winzer appeared to be carrying a weapon, one of the officers stated he had “that gun” and another officer yelled for Winzer to “put the gun down.” (ROA.281, 286, 292, 298, 304). Shortly thereafter, Hinds and the officers opened fire; Winzer was shot, fell off his bicycle but arose and disappeared again. (*Id.*). The officers located Winzer nearby in the backyard of a residence where he later passed away. (ROA.282, 286-87, 292-93, 298-99, 304-05).

B. Proceedings Below

On August 10, 2016, the Honorable U.S. District Judge David Godbey granted Defendants' Motion for Summary Judgment on the grounds that the Plaintiffs' claims against various law enforcement officers was barred by limitations, and that Defendant Matthew Hinds had qualified immunity because he committed no constitutional violation in that his use of deadly force was objectively reasonable. *See* Petitioner/Cross Respondent's Appendix at 55a-74a. Notably, Judge Godbey did not address the "clearly established" law prong of qualified immunity. *Id.* Because there was no constitutional violation, Judge Godbey also dismissed Plaintiffs' claims against Kaufman County. *Id.* at 48a-54a.

On February 18, 2019, a divided panel of the Fifth Circuit affirmed the dismissal of the officer defendants on limitations grounds, affirmed the dismissal of Defendant Hinds based on qualified immunity, but reversed the judgment in favor of Kaufman County. 916 F.3d 464 (5th Cir. 2019); Petitioner/Cross-Respondent's Appendix at 11a-47a. The majority concluded that, under the circumstances of this case, Winzer's right to be free from excessive force was not clearly established. *Id.* at 33a.

On October 21, 2019, the Fifth Circuit denied rehearing *en banc* with dissenting opinions. 940 F.3d 900 (5th Cir. 2019); Petitioner/Cross-Respondent's Appendix at 3a-10a.

REASONS FOR DENYING THE CONDITIONAL CROSS-PETITION

The conditional cross-petition is the latest in a series of attacks in this Court by plaintiffs on the qualified immunity doctrine. Litigants are asking this Court to substantially limit the application of qualified immunity or, worse yet, abolish it all together. For the reasons discussed below, the conditional cross-petition should be denied because this case does not present the Court with a compelling reason to re-visit the standards governing qualified immunity.

I. The Fifth Circuit’s Decision Regarding the “Clearly Established” Prong of Qualified Immunity Was Not Erroneous.

Despite the mistaken analysis of the Fourth Amendment issue by the majority of the panel below, its decision on the qualified immunity of the deputy sheriff was appropriate.

A. Cross-Petitioner ignores basic qualified immunity law.

Petitioner argues the majority reached an “absurd” result by reversing the summary judgment for Officer Hinds on the Fourth Amendment violation while granting him immunity. But comparing reasonable jurors to police officers in this context illustrates a fundamental misunderstanding between summary judgments and qualified immunity. Reasonable jurors resolve disputed facts, not the contours of “clearly established” law. That is the role of the courts, and it is what governs the behavior of

law enforcement officers, like Hinds, who make life-threatening, split-second decisions every day.

Once a defendant asserts qualified immunity, the burden is on the plaintiff to show that the law was so clearly established he could not be entitled to the defense. *See Breen v. Texas A & M Univ.*, 485 F.3d 325, 331 (5th Cir. 2007) (“When a defendant invokes qualified immunity...the burden shifts to the plaintiff to rebut the applicability of the defense.”) Additionally, the *plaintiff’s burden* to rebut a showing of qualified immunity is difficult. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2474-75 (2015); *see also Vincent v. City of Sulphur Springs*, 805 F. 3d 543, 547 (5th Cir. 2015); *Ratliff v. Aransas County*, 948 F.3d 281, 287 (5th Cir. 2020); *Orr v. Copeland*, 844 F.3d 484, 490 (5th Cir. 2016); *Cass v. City of Abilene*, 814 F.3d 721, 728 (5th Cir. 2016). That is, once the defense is raised—a defense which not only entitles the officer to avoid a trial, but also the lawsuit itself¹—the plaintiff needs to advance evidence that the law was so clearly established under the facts of the case, that qualified immunity does not exist. *Id.*

Indeed, this Court has criticized courts below for, in effect, not exploring their refusal to allow qualified immunity—not for failing to sufficiently explain why the law was not clearly established. *City of Escondido v. Emmons*, 139 S. Ct. 500 (2019). In *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018), while describing the analysis as “straightforward,” the Court stated “[t]he precedent must be clear enough

¹ *See Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.” *Id.* at 589. The Court also noted that “the ‘clearly established’ standard also requires that the legal principle clearly prohibit the officer’s conduct in the particular circumstances before him.” *Id.* at 590.

Here, the panel’s majority analyzed both prongs of the qualified immunity analysis outlined by *Saucier v. Katz*, 533 U.S. 194, 201 (2001). After missing the mark on whether there was a fact issue involving an alleged Fourth Amendment violation,² the majority proceeded to find that, nevertheless, the law was not clearly established under the Court’s “exacting standard.” 916 F.3d at 476-77. In so finding, the panel’s majority followed a long line of decisions by this Court, mostly via summary reversals of denials of qualified immunity. *See City of Escondido, supra*; *Kisela v. Hughes*, 138 S.Ct. 1148 (2018) (per curium); *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018); *White v. Pauley*, 137 S. Ct. 548 (2017); *Mullinex v. Luna*, 136 S. Ct. 305 (2015); *Taylor v. Barkes*, 135 S. Ct. 2042 (2015); *Carroll v. Carmen*, 135 S. Ct. 348 (2014); *Stanton v. Sims*, 134 S. Ct. 3 (2013); *Ryburn v. Huff*, 132 S. Ct. 987 (2012).

Hence, it was not necessary for the panel’s majority to further explain the obvious conclusion that, regardless of the possibility of the alleged Fourth Amendment violation, clearly established law would not prevent Deputy Hinds from shooting at an

² Kaufman County has challenged that error in its own Petition for Certiorari now pending.

individual whom he believed, a few minutes before, had attempted to kill him.

B. The majority was not required to elaborate on its conclusion concerning the “clearly established” law.

In her conditional cross-petition, Eunice Winzer argues in favor of an extensive explanation whenever a court decides the law was not clearly established at the time force was applied by a law enforcement officer. However, there was no need for a more elaborate explanation in this case where a group of deputies fired at an assailant they knew to be armed, after receiving numerous 911 calls from neighbors, and after the assailant had taken a shot at deputy Hinds. The Plaintiffs were simply unable to rebut Hinds’ qualified immunity defense as they were required to do by this Court and the Fifth Circuit. *See infra*. Notably, the Plaintiff cites no case from this Court, nor the Fifth Circuit, mandating an explanation of “clearly established” law beyond what was provided by the majority below.

Indeed, there was no further explanation needed because, as noted in the dissent by Judge Edith Clement, no constitutional violation occurred, and the majority was well aware of a litany of cases from this Court and the Fifth Circuit supporting such an action. Hence, the majority correctly found that Hinds was entitled to immunity.

II. The Court Need Not Re-Visit the Qualified Immunity Standards Based on a Perceived Split Among the Circuit Courts

A. This case is not the appropriate vehicle for resolving alleged inconsistencies in interpreting the “clearly established” rule in other circuits.

The conditional cross-petition is essentially a screed attacking the concept of qualified immunity and especially the “clearly established law” prong. In an effort to dramatize the supposed difficulty courts have in differentiating the facts of the cases, the Plaintiff argues that the majority of the panel below cited two cases that were “plainly inapposite.”

First, the panel majority cited *Ashcroft v. Al-Kidd*, 563 U.S. 731 (2011)—a case which explained the concept of clearly established law and has been cited hundreds of times by courts in their own analyses. Then, the court below cited *Mullinex v. Luna*, 136 S. Ct. 305 (2015), a fact the Plaintiff apparently found ludicrous because *Mullinex* was so clearly a case for qualified immunity. *See* discussion, Conditional Cross-Petition at 15-16. In fact, however, this Court in that unanimous decision, criticized the Fifth Circuit panel for relying on cases that were “too factually distinct to speak clearly to the specific circumstances” that supported the officer’s assessment of the threat. *Mullinex*, 136 S. Ct. at 311-12. The Court essentially adopted the vociferous opinion of Judge Grady Jolly, who dissented from the denial of *en banc*

consideration. Hence, the *Mullinex* case served as a compelling precedent for the panel's majority in finding the law was not clearly established when it came to deciding deputy Hinds' actions. This Court "rarely grant[s] 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." *Salazar-Limon v. City of Houston*, 137 S. Ct. 1277 (2017). Yet, that is precisely what Petitioner is requesting the Court to do.

Moreover, if this Court were to grant review of the conditional cross-petition, it would essentially be a first review without a thorough vetting of the "clearly established" issue from the courts or the parties below. As noted above, the trial court granted summary judgment for the Defendants after concluding there was no Fourth Amendment violation; it never reached the "clearly established" prong of qualified immunity. Petitioner's/Cross-Respondents' Appendix at 55a-74a. On appeal, the Petitioner/Appellants/Plaintiffs did not address the issue either, focusing only on the constitutional question. The first instance of analyzing whether the law was "clearly established" is the Fifth Circuit's decision granting Hinds qualified immunity, in which the dissenting Judge Clement joined. The majority was not called upon, nor was it necessary, to examine and weigh in on an alleged split among other courts in regard to the "clearly established" law. The majority's decision is correct; it follows this Court's precedent, and does not conflict with any other circuit courts.

B. Alleged inconsistencies in the application of this Court's standards to the "clearly established" law prong of qualified immunity does not warrant review of this case.

Petitioner also argues this Court should review this case based upon an alleged disarray among other circuit courts in applying the principles governing "clearly established" law. However, a close review of the cases does not reveal any substantive disagreement among the courts on the appropriate standards to apply. Rather, the circuit courts appear to be faithfully applying this Court's precedent but to distinct sets of facts. Indeed, just in the last few years, this Court's decisions have left no doubt that the clearly established law must be defined at an appropriate and demanding level of specificity. *See Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curiam) (granting qualified immunity when the most analogous circuit precedent favored the officer and reiterating that specificity is especially important in the Fourth Amendment context); *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (per curiam); *Mullenix*, 136 S. Ct. at 311-12. One of the Court's most recent decisions further solidifies this approach. *See City of Escondido*, 139 S. Ct. 500 (2019). Thus, with this Court's emphatic endorsement of these standards, it is not surprising that circuit courts may reach different conclusions applying them to unique sets of facts. But these fact-driven conclusions, without a substantive disagreement among the circuit courts, do not warrant this Court's intervention.

Furthermore, as noted above, the Fifth Circuit in this case was not asked to, and did not need to address any perceived division among other circuit courts related to the “clearly established” law. In fact, the majority and dissent agreed on the standards to be applied and that Hinds was entitled to immunity. Even if this Court were to conclude that additional guidance is needed, it would not affect the outcome of this case. *See* Stephen M. Shapiro, et al., *Supreme Court Practice*, Ch. 4.4(f), p. 249 (10th ed. 2013) (“If the resolution of a clear conflict is irrelevant to the ultimate out-come of the case before the Court, certiorari may be denied.”). Accordingly, this Court should reject Petitioner’s invitation to review this case as a mechanism to address a phantom conflict in determining when the law is “clearly established.”

III. This Case Does Not Establish an Internal Conflict in the Fifth Circuit

Cross-petitioners also argue this case is worthy of review because the majority’s decision conflicts with “clearly established” law in the Fifth Circuit that using deadly force is unreasonable against a suspect who is not actively resisting police officers. *See Darden v. City of Fort Worth*, 880 F.3d 722 (5th Cir. 2018). This argument is meritless. Even if *Darden* could be considered “clearly established” law for this proposition, it is not controlling here.

First, the level of resistance by a suspect is only one component of the test to determine whether an officer’s use of force is reasonable. As the *Darden* court itself recognized, other factors also come into play –

namely, whether the suspect poses an immediate risk of harm to the safety of the officers or others. 880 F.3d at 729. Whether or not a suspect is actively resisting arrest is but one factor which informs this analysis. Police officers, like Hinds, are not immunized for using force based solely on whether a suspect is resisting arrest.

Indeed, at least one glaring distinction between *Darden* and this case is the threat of harm faced by the officers. In *Darden*, there was evidence the suspect posed no risk to the officers from the moment they entered the residence and found him kneeling on the seat of a couch near the door. *Id.* at 725. He immediately raised his hands in the air, and witnesses testified he made no threatening gestures and did not resist arrest. *Id.* at 729. But here, when the officers encountered Winzer on his bike, he had emerged from the last known location of the suspect who had fired a bullet at Hinds just minutes before. 916 F.3d at 468 (maj. op.). In addition, that same suspect had ignored repeated warnings to come outside, drop his weapon, and surrender.

Second, contrary to Petitioner's argument, *Darden* does not control the outcome here in regard to the proximity between Officer Hinds and Winzer. Distance is irrelevant when the suspect's choice of weapon is a gun. In fact, Hinds was keenly aware of the danger posed by a handgun after he was fired at from a similar distance just a few minutes before encountering Winzer on his bicycle. Especially after hearing another officer yell that Winzer had "that gun," Hinds' decision to use deadly force was not

contrary to the clearly established law. Therefore, there was no internal Fifth Circuit conflict in the court's decision to grant Hinds immunity.

CONCLUSION

For the reasons explained above, Respondents respectfully submit that this Court should deny the Conditional Cross-Petition for a writ of certiorari.

Respectfully submitted,

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