

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

—◆—  
AARON MINER AND DENNIS LAURANCE,

*Petitioners,*

v.

STEVEN L. PICATTI,

*Respondent.*

—◆—  
**On Petition For Writ Of Certiorari  
To The Idaho Supreme Court**

—◆—  
**PETITION FOR WRIT OF CERTIORARI**

—◆—  
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**QUESTION PRESENTED**

In this excessive force case under 42 U.S.C. § 1983, the defendant officials (petitioners here) moved for summary judgment arguing that, on the facts taken in the light most favorable to the plaintiff, they did not violate plaintiff's clearly established constitutional rights. The question presented is: May a court decline to address such an argument based solely on its determination that genuine disputes of fact exist?

## **PARTIES TO THE PROCEEDINGS**

Pursuant to Rule 14.1(b), Petitioners state that all the parties to the proceedings in the Idaho Supreme Court below are named in the caption.

### **LIST OF PROCEEDINGS PURSUANT TO RULE 14.1(b)(iii)**

*Steven L. Picatti v. Aaron Miner, Dennis Laurance, Mark Williamson, Randall Goodspeed, John Does 1-5*, District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, Case No. CV-PI-2016-10624. Order granting summary judgment filed September 5, 2017.

*Steven L. Picatti v. Aaron Miner and Dennis Laurance and Mark Williamson, Randall Goodspeed, and John Does 1-5*, In the Supreme Court of the State of Idaho, Docket No. 45499-2017. Opinion filed September 10, 2019. Order Denying Petitions for Rehearing entered September 10, 2019.

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**PETITION FOR WRIT OF CERTIORARI**

Petitioners, Deputy Aaron Miner and Deputy Dennis Laurance, respectfully petition for a writ of certiorari to review the judgment of the Idaho Supreme Court.



**OPINIONS BELOW**

The opinion of the Idaho Supreme Court (App. 1–37) is reported at 449 P.3d 403. The opinion of the district court is not published but is available at 2017 WL 11379823.



**STATEMENT OF JURISDICTION**

The Idaho Supreme Court filed its substitute opinion on September 10, 2019. (App. 1–37). It denied a petition for rehearing on September 10, 2019. (App. 57–58). The jurisdiction of this Court rests on 28 U.S.C. § 1257(a).



**CONSTITUTIONAL AND  
STATUTORY PROVISIONS INVOLVED**

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not

be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Rev. Stat. § 1979, 42 U.S.C. § 1983, provides in relevant part:

**§ 1983. Civil action for deprivation of rights.**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .



## INTRODUCTION

This case is typical of excessive force cases brought under 42 U.S.C. § 1983 in that the defendant officials moved for summary judgment arguing that, even on the facts viewed in the light most favorable to the plaintiff, the defendants did not violate plaintiff's clearly established constitutional rights. This Court's decisions make clear that the defendants are entitled to a ruling—yea or nay—on that argument. The Idaho Supreme Court, however, did not address the

argument solely because, in its view, genuine disputes of fact exist that are material to the plaintiff’s claim on the merits. That court’s refusal to address petitioners’ qualified immunity argument not only conflicts with decisions of this Court and many lower courts but would also cripple the utility of summary judgment as a tool for “resolving immunity questions at the earliest possible stage in litigation.” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (per curiam). Further review is warranted.

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## STATEMENT OF THE CASE

### 1. Facts

On the afternoon of July 12, 2014, the respondent, Steven Picatti, drove through Eagle, Idaho, on his way home. App. 3. Because the community was celebrating the Eagle Fun Days festival, a parade blocked access to Mr. Picatti’s residence. App. 3. With several access points closed, Mr. Picatti drove his truck around orange barrel barricades toward a pedestrian crosswalk where petitioners—Ada County (Idaho) Deputies Aaron Miner and Dennis Laurance (“the Deputies”)—were in uniform and on foot patrol. App. 3. The crosswalk was blocked by a sign marked “road closed to thru traffic.” App. 3.

In the Deputies’ account, Mr. Picatti did not slow his truck down as he came around the barricades, nor did it appear that he would stop the vehicle. App. 4. Deputy Laurance even began unholstering his gun out

of concern Mr. Picatti would not stop the truck. App. 4. Deputy Miner pushed through some pedestrians to put himself in front of the crosswalk and ordered Mr. Picatti to stop the truck. App. 4. The truck slowed down but physically pushed Deputy Miner back into the crosswalk before stopping. App. 4. Deputy Miner claimed that Mr. Picatti looked frustrated and gestured at him with his hands. App. 4–5. Deputy Miner slammed his hand on the hood of Mr. Picatti’s truck. App. 5. The truck then “jerked” forward and hit Deputy Miner a second time. App. 5. Deputy Miner walked over to the driver’s door, opened it, and ordered Mr. Picatti out of the truck. App. 5. Mr. Picatti did not comply. App. 5. Deputy Miner released Mr. Picatti’s seatbelt, and then he and Deputy Laurance pulled Mr. Picatti out of the truck. App. 5. As the three men struggled, Mr. Picatti and the Deputies went to the ground. App. 5.

Continuing the Deputies’ account: Officer Randall Goodspeed came to help subdue and arrest Mr. Picatti. App. 5. Mr. Picatti resisted handcuffing. App. 5. During the struggle, Deputy Laurance felt someone tugging on his gun and yelled, “get your hands off my gun!” App. 5. He then realized that Mr. Picatti’s wild arm movements caused one of his hands to become trapped between Deputy Laurance’s gun and its holster. App. 5. Upon hearing Deputy Laurance’s shout, Deputy Miner tased Mr. Picatti to quell the struggle and finish the handcuffing process. App. 5.

Mr. Picatti’s account is as follows. He drove towards Deputy Miner to ask for directions. App. 4. He did not believe his truck hit Deputy Miner, but he could

not say for sure. App. 40. Deputy Miner slammed his hands onto the hood of Mr. Picatti's truck and yelled at Mr. Picatti, but Mr. Picatti could not hear what Deputy Miner was saying. App. 4. Deputy Miner then went to the driver's door, opened it, and grabbed him by the neck. App. 4. Mr. Picatti did not get out of the truck because his seatbelt was on, and he was afraid to take his hands off the steering wheel. App. 4. Mr. Picatti said the words "seat belt" to Deputy Miner several times. App. 4. Deputy Miner reached across Mr. Picatti to unlatch the seatbelt. App. 4. Deputy Miner and Deputy Laurance then pulled Mr. Picatti out of the truck and took him to the ground. App. 4.

To continue Mr. Picatti's account: Mr. Picatti struggled to get off the hot pavement and get his breath as the Deputies pushed him against the ground. App. 4. He never got any instructions, commands, or explanations from the Deputies as they wrestled him from his truck to the ground. App. 4. After Mr. Picatti kept trying to push himself off the ground, Mr. Picatti was tased in the back and handcuffed. App. 4.

Deputy Mark Williamson took Mr. Picatti to the Ada County Jail on a misdemeanor charge of resisting and obstructing officers, in violation of Idaho Code § 18-705, as well as a felony charge for aggravated battery on law enforcement, in violation of Idaho Code § 18-915(3). App. 5.

On August 20, 2014, Mr. Picatti appeared before a magistrate court for a contested preliminary hearing. App. 6. Mr. Picatti and Deputy Miner were the only

witnesses at the hearing, and both testified. App. 6. Mr. Picatti was represented by counsel at the hearing. App. 6. His counsel cross-examined Deputy Miner at length, and questioned Mr. Picatti as well. App. 6. At the hearing's conclusion, the court determined there was probable cause to bind Mr. Picatti over to the district court on the felony charge, and sufficient cause to believe he was guilty of both charges. App. 6. The magistrate court explained that Mr. Picatti's vehicle came into contact with Miner, with Mr. Picatti knowing that Deputy Miner was a deputy. App. 6.

Before trial, Mr. Picatti reached a plea agreement, in which he pleaded guilty to disturbing the peace, in violation of Idaho Code § 18-6409, for "failing to obey a traffic sign and driving into a restricted pedestrian area." App. 6. The court entered a judgment of conviction, which has not been appealed or overturned. App. 6.

## **2. Proceedings Below**

### **A. District Court**

On June 9, 2016, Mr. Picatti filed this civil action against Deputies Miner, Laurance, and Williamson, and Officer Goodspeed, asserting under 42 U.S.C. § 1983 deprivations of his rights to be free from (1) unreasonable seizure, (2) excessive force, and (3) felony arrest without probable cause. App. 43. All claims against Deputy Williamson were dismissed under Idaho R. Civ. Proc. 12(b)(6), and Mr. Picatti acceded to summary judgment in Officer Goodspeed's favor.

App. 43. Only Deputies Miner and Laurance (“the Deputies”) remain as defendants, App. 43, and are petitioners here.

On July 17, 2017, the Deputies moved for summary judgment. App. 44. They argued that Mr. Picatti’s first and third claims were barred by collateral estoppel and his second (excessive force) claim was barred by qualified immunity. App. 46, 51. “[C]onstru[ing] the record in the light most favorable to” Mr. Picatti, App. 45, the district court granted summary judgment on all claims in an unpublished memorandum decision and order granting summary judgment dated September 5, 2017. App. 38–56.

The district court held as a matter of state law that Mr. Picatti’s first and third claims are barred by collateral estoppel. App. 45–51. The court observed that both claims rest on the asserted lack of probable cause for Mr. Picatti’s arrest. App. 45–46. The court determined that Mr. Picatti cannot re-litigate the existence of probable cause because it was decided against him at the preliminary hearing. App. 46–51.

The district court held that Mr. Picatti’s excessive force claim is barred by qualified immunity. App. 51–55. As the district court explained, Mr. Picatti argues that the Deputies “used excessive force against him twice, first when they removed him from his vehicle, and again when they tased him.” App. 51. The court accordingly framed the relevant questions, taking into account its ruling on collateral estoppel, as follows:



(1) Did Picatti have a clearly established right to be free from forcible removal from his vehicle after he had given Deputy Miner probable cause to believe he had committed an aggravated battery upon Deputy Miner, and after he had failed to voluntarily exit his vehicle as lawfully ordered by Deputy Miner?

(2) Did Picatti have a clearly established right to be free from Deputy Miner's deployment of a taser when—after he had given Deputy Miner probable cause to believe he had committed an aggravated battery upon Deputy Miner, and after he had failed to voluntarily exit his vehicle as lawfully ordered by Deputy Miner—he engaged in a physical struggle with Deputy Miner and other officers upon being forcibly removed from his vehicle?

App. 53. The court answered both questions “no.” App. 53.

The court reasoned that, given probable cause to believe Mr. Picatti had committed aggravated battery against him, Deputy Miner lawfully told Mr. Picatti to get out of his truck. App. 53–54. The court accepted as true Mr. Picatti's explanation that he did not understand what Deputy Miner was telling him. App. 54. But the court explained that this explanation “doesn't create a genuine factual dispute about whether Deputy Miner ordered him to exit his vehicle.” App. 54. The court also determined that undisputed evidence established that Mr. Picatti “didn't exit his vehicle as ordered.” App. 54. Thus, the court summarized, “from Deputy Miner's perspective—the one that is relevant

here under *Graham* [*v. Connor*, 490 U.S. 386, 396 (1989)]—the situation confronting him was that a man who had just committed an aggravated battery against him was now unresponsive to a lawful order to exit his vehicle.” App. 54. In this situation, the court concluded, Mr. Picatti “had no clearly established right to be free from forcible removal from his vehicle.” App. 54.

The court recounted the undisputed circumstances confronting Deputy Miner when he tased Mr. Picatti: “Deputy Miner had probable cause to arrest him for aggravated assault, he hadn’t followed Deputy Miner’s lawful order to exit his vehicle, and upon his forcible removal from his vehicle he had engaged in a physical struggle with Deputy Miner and other officers.” App. 54. This struggle with armed officers, the court found, “was inherently dangerous, especially in light of the pedestrians in the area.” App. 55 (footnote omitted). The court concluded that under these circumstances, Deputy Miner’s use of the taser did not violate Mr. Picatti’s clearly established rights. App. 55.

### **B. Idaho Supreme Court**

On Mr. Picatti’s appeal, the Idaho Supreme Court affirmed the district court’s rulings that two of Mr. Picatti’s claims are barred by collateral estoppel, but vacated and remanded the grant of summary judgment on his excessive force claim. App. 3. Thus, the Idaho Supreme Court agreed that Mr. Picatti is collaterally estopped from disputing that there was probable cause to arrest him for the felony of aggravated

battery on a police officer. App. 8–22. The court determined, however, that collateral estoppel does not bar Mr. Picatti’s excessive force claim, because by that claim Mr. Picatti “is trying to litigate whether the deputies acted reasonably in making the arrest, not whether they had probable cause to seize him.” App. 23.

The court acknowledged the “two prong analysis” that this Court has established for qualified immunity, which distinguishes the issue of whether an official has violated statutory or constitutional rights from the issue of whether those rights were clearly established. App. 25. The court began its own analysis with the second, “clearly established” issue. App. 25.<sup>1</sup> The court recognized that “[n]ormally, qualified immunity is resolved . . . at the earliest possible stage in litigation . . . to preserve the doctrine’s status as immunity from suit.” App. 25 (internal quotation marks omitted). The court also recognized that “qualified immunity is most

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<sup>1</sup> Idaho follows federal summary judgment principles in all respects relevant to this case. *See, e.g., James v. City of Boise*, 376 P.3d 33, 40 (Idaho 2016); *see also Stewart v. Hood Corp.*, 506 P.2d 95, 97 (Idaho 1973) (adopting federal decisions that “have held that if a party moves for summary judgment on the basis of an affirmative defense which entitles him to judgment as a matter of law, and if there is no genuine dispute of material facts as to that defense, even though a dispute of fact may exist as to the merits of the plaintiff’s claim, summary judgment should be granted”) (quoting *Collord v. Cooley*, 451 P.2d 535, 538 (Idaho 1969)) (internal quotation marks omitted). This case therefore provides no occasion for addressing whether state courts are required to apply those principles when analyzing qualified immunity in § 1983 cases. *Cf. Johnson v. Fankell*, 520 U.S. 911, 918–923 (1997); *Dice v. Akron, Canton & Youngstown R. Co.*, 342 U.S. 359, 363 (1952).

often a summary judgement vehicle.” App. 25. But the court believed that qualified immunity cannot be resolved by summary judgment “[w]hen disputed facts remain.” App. 25.

This belief grew out of the need for “specificity . . . when defining a clearly established right in Fourth Amendment excessive force cases.” App. 28. The court reasoned, “We cannot articulate a ‘clearly established’ right with specificity until the district court first determines what facts occurred.” App. 30. Without that determination, in the Idaho Supreme Court’s view, it “would be forced to either make factual determinations on appeal or articulate a generalized right, neither of which [it] can do.” App. 31. The court concluded that, when a defendant official moves for summary judgment based on qualified immunity but “disputed facts remain, a bifurcation of duties becomes unavoidable: only the jury can decide the disputed factual issues, while only the judge can decide whether the right was clearly established.” App. 25. The court vacated the grant of summary judgment for the Deputies and remanded the case to the district court, so that a jury can resolve factual disputes and the judge can then decide whether, on the facts found by the jury, the Deputies have qualified immunity. App. 34–35.

The Deputies petitioned for rehearing. App. 59–79. They argued in their petition that “factual issues do not need to be resolved by the trier of fact before this Court can grant qualified immunity to them on Picatti’s excessive force claim.” App. 63. They explained:

[W]hen a court is asked to enter summary judgment based on qualified immunity, it is required to view the facts in the light most favorable to the non-moving party and decide whether the defendants are entitled to qualified immunity based on those facts. If it is determined that no clearly established right was violated based upon the facts taken in the light most favorable to the non-moving party, the factual dispute becomes immaterial.

App. 64 (citations omitted). The court denied the rehearing petition on September 10, 2019, but, on the same date, issued a substitute opinion. App. 57–58.



## **REASONS FOR GRANTING THE PETITION**

### **I. THE JUDGMENT BELOW CONFLICTS WITH DECISIONS OF THIS COURT ESTABLISHING THAT AN OFFICIAL IS ENTITLED TO QUALIFIED IMMUNITY ON SUMMARY JUDGMENT IF, VIEWING THE FACTS IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF, THE OFFICIAL DID NOT VIOLATE CLEARLY ESTABLISHED RIGHTS.**

The Idaho Supreme Court held that the existence of a factual dispute prevents a ruling on the Deputies' motion for summary judgment based on qualified immunity. That holding conflicts with decisions of this Court establishing that a factual dispute does *not* prevent a ruling on a summary judgment motion based on qualified immunity.

The Idaho Supreme Court erred in the very same way that the Ninth Circuit did in *Saucier v. Katz*, 533 U.S. 194 (2001). *Saucier*, like this case, involved an excessive force claim against law enforcement officers who moved for summary judgment on qualified immunity grounds. *Id.* at 198–199. The Ninth Circuit held in *Saucier*, like the Idaho Supreme Court held here, that summary judgment was inappropriate because of the existence of a genuine dispute of fact that was material to the excessive force claim. *Id.* at 199–200. In reversing that holding, this Court determined that “[t]he approach the Court of Appeals adopted—to deny summary judgment any time a material issue of fact remains on the excessive force claim—could undermine the goal of qualified immunity to ‘avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment.’” *Id.* at 202 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The Idaho Supreme Court’s identical approach has the identical deleterious effect of preventing summary judgment disposition of qualified immunity claims any time a factual dispute exists that is material to the claim on the merits. The Idaho Supreme Court’s decision warrants further review, and reversal, as did the Ninth Circuit’s decision in *Saucier*.

Although the Idaho Supreme Court’s reasoning differed from the Ninth Circuit’s in *Saucier*, it is equally flawed. The Ninth Circuit in *Saucier* reasoned that a factual dispute precluded summary judgment because the excessive force analysis and qualified

immunity analysis overlap; thus, a dispute material to whether excessive force occurred is also material to whether qualified immunity applied. *Saucier*, 533 U.S. at 199–200. This Court rejected that reasoning, holding that excessive force analysis and qualified immunity analysis are distinct. *Id.* at 204. The Idaho Supreme Court reasoned that a factual dispute material to a plaintiff’s claim on the merits prevents a court from “articulat[ing] a ‘clearly established’ right with specificity.” App. 30; *see also* App. 31 (stating that, to rule on qualified immunity, “This Court would be forced to either make factual determinations on appeal or articulate a generalized right, neither of which we can do.”). But that is wrong, because, to the extent that the specific circumstances are in dispute, the court must simply view the facts in the light most favorable to the plaintiff. Doing so supplies the requisite specificity.

The Court made this clear in *Saucier*. The Court held that the facts are to be “[t]aken in the light most favorable to the party asserting the injury” when analyzing both whether the defendants’ conduct violated a constitutional right and, if so, whether the right was clearly established. 533 U.S. at 201; *see also Tolan v. Cotton*, 572 U.S. 650, 656–657 (2014). The “clearly established” issue, the Court emphasized in *Saucier*, “must be undertaken in light of the specific context of the case, not as a broad general proposition.” 533 U.S. at 201. Illustrating the proper approach, the Court held that “on the facts alleged” by the plaintiff in that case—including “the ‘gratuitously violent shove’ [he] allegedly received when he was placed into the [police

transport] van” following his arrest (*Id.* at 208)—the defendants did not violate clearly established rights. *Id.* at 207–209.

In *Pearson v. Callahan*, 555 U.S. 223 (2009), the Court reaffirmed the two-part qualified immunity analysis described in *Saucier* while modifying the mandatory sequence of analysis prescribed there. The Court in *Pearson* held that although it would often be appropriate, courts were no longer required to decide first whether a defendant’s conduct violated the plaintiff’s statutory or constitutional rights, before deciding (if necessary) whether the rights violated were clearly established. *Id.* at 236–243. The Court confirmed, however, that both issues should be analyzed in light of “the facts that a plaintiff has alleged (see Fed. R. Civ. Proc. 12(b)(6), (c)) or shown (see Rules 50, 56).” *Id.* at 232. Moreover, the Court recognized that courts can, and should, decide whether the defendant has violated clearly established rights even if qualified immunity is “asserted at the pleading stage,” when “the precise factual basis for the plaintiff’s claim or claims may be hard to identify.” *Id.* at 238–239. This recognition reflects that uncertainty about the actual facts supporting the plaintiff’s claim does not preclude ruling on qualified immunity. It simply limits that ruling to the allegations or evidence presented at the applicable pre-trial stage, viewed favorably to the plaintiff. See *Behrens v. Pelletier*, 516 U.S. 299, 309 (1996); see also *Ortiz v. Jordan*, 562 U.S. 180, 184 (2015).

The Idaho Supreme Court recognized that qualified immunity is “most often” resolved on summary



judgment because “qualified immunity turns on legal determinations rather than disputed facts.” App. 25. But the court believed that a summary judgment ruling is not possible “when disputed facts remain.” App. 25. This belief ignores that, when a court analyzes qualified immunity viewing the facts in the light most favorable to the plaintiff, the court is making simply a legal determination. And if the court determines on that view of the facts that the defendant did not violate the plaintiff’s clearly established rights, any factual dispute becomes immaterial. *See, e.g., Camarillo v. McCarthy*, 998 F.2d 638, 640 (9th Cir. 1993).

The Court made this point in a related context in *Behrens v. Pelletier*, 516 U.S. 299 (1996). There, this Court held that a federal district court’s denial of summary judgment on qualified immunity grounds can be appealable as a collateral order even if “[m]aterial issues of fact remain.” *Id.* at 312 (internal quotation marks omitted). The Court explained that appealability depends on the grounds for appeal: Denials of summary judgment are not appealable “if what is at issue . . . is nothing more than whether the evidence could support a finding that particular conduct occurred.” *Id.* at 313. But “summary judgment determinations *are* appealable when they resolve a dispute concerning an abstract issue of law relating to qualified immunity—typically, the issue whether the federal right allegedly infringed was clearly established.” *Id.* (internal quotation marks, citation, and brackets omitted). The district court decision in the case before it fell into the latter category: Its denial of summary judgment “necessarily

determined that certain conduct attributed to [the defendant official] (which was controverted) constituted a violation of clearly established law.” *Id.* Thus, the “controverted” nature of the defendant’s conduct did not prevent the district court’s qualified immunity decision from “concerning an abstract issue of law.” *Id.*

So too here. The supposedly controverted nature of the Deputies’ conduct did not prevent a ruling on the Deputies’ motion for summary judgment based on qualified immunity. That motion presented the “abstract issue of law” that the Court identified in *Behrens*, 516 U.S. at 313: whether, on the facts viewed in the light most favorable to the plaintiff, they violated the plaintiff’s clearly established rights.<sup>2</sup> If on that view of the facts, the court determined that the Deputies did not violate Mr. Picatti’s clearly established rights, any factual disputes that might otherwise be material to his excessive force claim would not be material to the proper outcome of the case. But if on that view of the facts, the court determined that the Deputies *did* violate Mr. Picatti’s clearly established rights, the court should have denied summary judgment. In all events, the Deputies were entitled to a decision—yea or nay—at the summary judgment stage. The Idaho Supreme Court erred in holding that a factual dispute decision “prevent[ed]” such a decision. App. 34.

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<sup>2</sup> See Memorandum in Support of Motion for Summary Judgment 6, 11, 22–24, *Picatti v. Miner et al.*, No. CV PI 1610624 (4th Dist. Ct., Ada Cty., ID, filed July 17, 2017).

In their petition for rehearing below, the Deputies cited the most recent decision in which this Court has used the “light most favorable” view in analyzing qualified immunity, *City of Escondido v. Emmons*, 139 S. Ct. 500, 501 (2019) (per curiam). See App. 65. The Idaho Supreme Court found *Emmons* inapposite because “*Emmons* did not contain any disputed facts on appeal.” App. 28; see also App. 30 (“While the Deputies point to *Emmons* as the basis for a rehearing, *Emmons* did not deal with *any* disputed facts.”). But in *Emmons*, the Ninth Circuit *did* hold that there was a “genuine issue of material fact” about the conduct of one of the plaintiffs leading to that plaintiff being taken to the ground and handcuffed by the police. *Emmons v. City of Escondido*, 716 F. App’x 724, 726 (9th Cir. 2018), *rev’d in part*, 139 S. Ct. 500 (2019). The factual dispute did not prevent the Ninth Circuit or this Court from making a decision on qualified immunity at the summary judgment stage, because each viewed the record “in the light most favorable to the plaintiff.” 139 S. Ct. at 501; see also 716 F. App’x at 726.<sup>3</sup>

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<sup>3</sup> In any event, *Emmons* does not stand alone. The Court has used the “light most favorable” view to decide many qualified immunity cases that came to the Court on summary judgment and in which the facts were disputed. See, e.g., *Kisela v. Hughes*, 138 S. Ct. 1148, 1155 (2018) (per curiam) (Sotomayor, J., dissenting) (charging majority with failing to view facts and draw inferences most favorably to plaintiff); *Mullenix v. Luna*, 136 S. Ct. 305, 307 n.\* (2015) (per curiam); *City & Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1770 nn.1 & 2 (2015); *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (per curiam); *Pauly v. White*, 814 F.3d 1060, 1064–65 (10th Cir. 2016), *rev’d*, 137 S. Ct. 548, 549 (2017) (per curiam);

Likewise in this case, the district court properly “construed the record in the light most favorable to the nonmovant.” App. 45. And it properly assumed the truth of Mr. Picatti’s factual allegations when analyzing qualified immunity. *See, e.g.*, App. 54 (assuming the truth of Mr. Picatti’s assertion that he did not understand that Deputy Miner was ordering him to get out of his truck); *see also* App. 55 n.2 (“leav[ing] . . . to the side” the “factual dispute” over whether Mr. Picatti touched Deputy Laurance’s gun, holding that mere presence of the gun made the physical struggle between the two dangerous). The Idaho Supreme Court, unlike the district court, believed that there is a genuine issue of material fact. App. 3. But so did the Ninth Circuit in *Emmons*. 716 F. App’x at 726. As discussed above, that did not prevent the Ninth Circuit (albeit incorrectly) or this Court from deciding the qualified immunity issue on summary judgment. The Idaho Supreme Court’s erroneous refusal to make such a decision thus squarely conflicts with *Emmons*.

The Idaho Supreme Court’s error matters for the same reason as the Ninth Circuit’s identical error mattered in *Saucier*: The erroneous approach—“deny[ing] summary judgment any time a material issue of fact remains on the excessive force claim”—“undermine[s] the goal of qualified immunity to ‘avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment.’” *Id.* at 202 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800,

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*Haugen v. Brosseau*, 339 F.3d 857, 861 (9th Cir. 2003), *rev’d*, 543 U.S. 194, 197 (2004) (per curiam).

818 (1982)). The Idaho Supreme Court, unlike the Ninth Circuit, believes that a factual dispute precludes summary judgment on qualified immunity grounds not only in excessive force cases but in all other § 1983 cases as well. That is because in its view, factual disputes prevent analyzing clearly established rights with the requisite specificity. App. 25–26, 30–31. As a result, the ramifications of the Idaho Supreme Court’s rationale are broader than that of the Ninth Circuit’s in *Saucier*. Further review is therefore even more warranted here than in *Saucier*.

**II. THE JUDGMENT BELOW CONFLICTS WITH DECISIONS OF OTHER LOWER COURTS HOLDING THAT OFFICIALS ARE ENTITLED TO A RULING ON QUALIFIED IMMUNITY AT THE SUMMARY JUDGMENT STAGE, EVEN WHEN THERE ARE GENUINE FACTUAL DISPUTES MATERIAL TO THE PLAINTIFF’S CLAIM ON THE MERITS.**

The Idaho Supreme Court’s decision conflicts with that of every other lower court of which we are aware. Most gravely, it conflicts with decisions of the Ninth Circuit, resulting in a conflict between the state courts and federal courts in Idaho. *Cf. Johnson v. California*, 545 U.S. 162, 164 (2005) (granting certiorari to resolve conflict between Ninth Circuit and California Supreme Court).

The Ninth Circuit’s approach is illustrated in *Camarillo v. McCarthy*, 998 F.2d 638 (9th Cir. 1993). James Camarillo sued prison officials for transferring

him to a housing unit for HIV-positive inmates. *Id.* at 639. He claimed a violation of his constitutional freedom of association. *Id.* The magistrate judge “canvassed decisional law” and concluded that this right was not clearly established. *Id.* at 640. The district court judge “[n]evertheless” denied summary judgment “because a factual dispute remained as to whether Camarillo’s freedom to associate was restricted.” *Id.* The Ninth Circuit reversed, stating that “[t]he district court should have ordered summary judgment for the defendants.” *Id.* The Ninth Circuit explained, “Once it was determined that no clearly established right was violated, the factual dispute became immaterial.” *Id.*

To the same effect is the Second Circuit’s decision in *Cartier v. Lussier*, 955 F.2d 841 (2nd Cir. 1992). Plaintiffs there claimed the defendant official violated the Fourth Amendment by arresting them without probable cause. *Id.* at 842. The district court denied summary judgment, holding that “material issues of fact precluded the application of qualified immunity.” *Id.* The Second Circuit rejected the district court’s view that “the mantle of qualified immunity with which public officers are enveloped simply melts away in the heat of controverted facts.” *Id.* Instead, the Second Circuit explained, “when, as here, the factual disputes are immaterial to resolving the qualified immunity issue, its protective mantle remains undissolved.” *Id.* The Second Circuit independently reviewed the record in the light most favorable to the plaintiffs, and held that the defendant was entitled to qualified immunity. *Id.* at 844–846.

Cases in other circuits accord with those of the Ninth and Second Circuits. *See, e.g., Johnson v. Caudill*, 475 F.3d 645, 650 (4th Cir. 2007) (reversing district court decision that denied qualified immunity based solely on “existence of disputed facts”); *Turner v. Scott*, 119 F.3d 425, 427–428 (6th Cir. 1997) (holding, contrary to district court, that presence of factual dispute did not preclude qualified immunity); *Brayman v. United States*, 96 F.3d 1061, 1064–1066 (8th Cir. 1996) (holding that district court erred in denying qualified immunity based on factual disputes); *Bennett v. Parker*, 898 F.2d 1530, 1531, 1534 (11th Cir. 1990) (reversing district court’s denial of qualified immunity, which was based on disputed facts; and instructing that, “[w]hen faced with a motion for summary judgment based on a defense of qualified immunity, the district courts should first focus on whether the plaintiff has established a constitutional violation before determining whether material issues of fact are present. No material issues can be in dispute where the plaintiff’s evidence fails to establish a constitutional violation.”); *see also Workman v. Jordan*, 958 F.2d 332, 336 (10th Cir. 1992) (“Discovery should not be allowed until the court resolves the threshold question whether the law was clearly established at the time the allegedly unlawful action occurred.”); *Cole v. Carson*, 935 F.3d 444, 457 (5th Cir. 2019) (stating that district court “must afford [defendant officials] qualified immunity at the earliest point the defense’s applicability is determinable”), *petition for cert. filed* (U.S. Dec. 9, 2019) (No. 19-753).

Like the lower federal courts, state courts consistently follow this Court's decisions in recognizing that, regardless of factual disputes, qualified immunity can be decided at the summary judgment stage by viewing the facts in the light most favorable to the plaintiff. *See, e.g., State of Alaska, Dep't of Health & Social Servs. v. Doherty*, 167 P.3d 64, 69 (Alaska 2007); *Ham v. Greene*, 729 A.2d 740, 749–750 (Conn. 1999); *Morgan v. Bubar*, 975 A.2d 59, 65 (Conn. App. Ct. 2009); *Conrad v. New Hampshire Dept. of Safety*, 104 A.3d 1029, 1041 (N.H. 2014); *Finlan v. Dallas Independent School Dist.*, 90 S.W.3d 395, 409 (Tex. App. 2002); *Peak Alarm Co. Inc. v. Salt Lake City Corp.*, 243 P.3d 1221, 1238 (Utah 2010); *City of Saint Albans v. Botkins*, 719 S.E.2d 863, 868–869 (W. Va. 2011).

Despite this abundant, uniformly contrary case law, the Idaho Supreme Court thought its approach was justified by lower court cases allowing juries to decide factual disputes before the judge decides the issue of qualified immunity based on the jury's findings. App. 26–28. The court relied principally on *Morales v. Fry*, 873 F.3d 817 (9th Cir. 2017). App. 25, 26–27, 28, 31, 32 (citing *Morales*). As the Deputies explained in their rehearing petition, however, *Morales* and the other cases cited by the Idaho Supreme Court use the bifurcated jury/judge approach only if “the defendants would be entitled to qualified immunity based on their version of the facts but not based on the plaintiff's version of the facts.” Pet. App. 65. In other words, the bifurcated approach is used only “if the evidence at the summary judgment stage, viewed in the light most favorable to



the plaintiff, shows there are facts that are inconsistent with qualified immunity being granted.” *Johnson v. Breeden*, 280 F.3d 1308, 1317 (11th Cir. 2002), cited in App. 27, 31. In that situation, qualified immunity should be denied at the summary judgment stage, but the defendants can raise it again at trial. *Id.*; see also *Cavanaugh v. Wood Cross City*, 718 F.3d 1244, 1256 (10th Cir. 2013) (endorsing bifurcated approach when earlier resolution of qualified immunity was not possible because “disputed facts were dispositive of qualified immunity”), cited in App. 31–32; *Willingham v. Crooke*, 412 F.3d 553, 558–559 (4th Cir. 2005) (explaining that prior panel decision affirming denial of qualified immunity at summary stage did not preclude the defense from being raised at trial), cited in App. 27; *Peterson v. City of Plymouth*, 60 F.3d 469, 472–473 (8th Cir. 1995) (explaining that prior panel decision reversing grant of summary judgment on qualified immunity grounds did not prevent immunity defense from being raised at trial), cited in App. 27–28.<sup>4</sup>

In sum, case law on the bifurcation approach does not justify the Idaho Supreme Court’s refusal to rule on qualified immunity at the summary judgment stage merely because of the existence of a factual dispute. To

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<sup>4</sup> In addition to the cases cited in the text, the Idaho Supreme Court cited Fifth Circuit case law in which the qualified immunity issue was submitted to the jury. App. 28 (citing *McCoy v. Hernandez*, 203 F.3d 371, 376 (5th Cir. 2000)). The Fifth Circuit, however, allows the jury to decide qualified immunity only “if—and this is a big if—there remain disputed issues of fact *relative to immunity*.” *Presley v. City of Benbrook*, 4 F.3d 405, 410 (5th Cir. 1993) (emphasis added).

the contrary, the refusal squarely conflicts with all lower court decisions of which we are aware.

### **III. THE QUESTION PRESENTED WARRANTS FURTHER REVIEW**

This Court has “repeatedly stressed the importance of resolving immunity questions at the earliest possible stage [of the] litigation.” *Wood v. Moss*, 572 U.S. 744, 755 n.4 (2014) (quoting, and adding bracketed text to, *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (per curiam) (internal quotation marks omitted)). Resolution at the earliest possible stage is necessary to preserve qualified immunity’s status as “both a defense to liability and a limited ‘entitlement not to stand trial or face the other burdens of litigation.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). The summary judgment procedure plays a key role in ensuring early resolution of qualified immunity. *See Mitchell*, 472 U.S. at 526.

The judgment below prevents summary judgment from playing that role in any case that presents a factual dispute that is material to the plaintiff’s claim on the merits, regardless of whether the dispute is material to the qualified immunity defense. Considering the prevalence of cases in which such factual disputes exist, the judgment below ensures resolution of qualified immunity questions at the summary judgment stage will become the exception, rather than the rule, in the Idaho state courts. And because the judgment below conflicts with Ninth Circuit case law, the

judgment below creates a strong forum-shopping incentive for Section 1983 plaintiffs. As the Supreme Court of Connecticut observed in a similar context, it is not credible that “when Congress enacted the concurrent jurisdiction provision of § 1983 . . . it intended to create such a disparate treatment of plaintiffs depending on their choice of a federal or state forum.” *Red Maple Props. v. Zoning Comm’n*, 610 A.2d 1238, 1242 n.7 (Conn. 1992) (internal quotation marks omitted).

Further review is necessary to correct the Idaho Supreme Court’s error. If the Idaho Supreme Court’s decision is allowed to stand, qualified immunity in Idaho courts will be reduced to an immunity from suit in name only with no meaning or force behind it. It will become an immunity from liability only rather than immunity from suit. Defendant officials will be forced to endure litigation and trial with the result being the same as what should have been reached at summary judgment. If the right is not clearly established based on the facts taken in the light most favorable to the non-moving party, the roll of the jury in a bifurcated trial would be gratuitous. Whether a jury finds the plaintiff’s or defendant’s version of the disputed facts to be true, defendants are entitled to qualified immunity if the right was not clearly established based on the facts taken in the light most favorable to the plaintiff. This is a legal question that is properly determined on summary judgment rather than requiring defendant officials to undergo a full trial for the court to ultimately grant judgment in their favor, even if the jury

believes the plaintiff's version of the facts, because the right was not clearly established.



**CONCLUSION**

The petition for writ of certiorari should be granted.

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