

No. 19-868

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

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AARON MINER AND DENNIS LAURANCE,  
*Petitioners,*

v.

STEVEN L. PICATTI,  
*Respondent.*

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On Petition for a Writ of Certiorari to the  
Idaho Supreme Court

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**RESPONDENT'S BRIEF IN OPPOSITION**

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**QUESTION PRESENTED**

When defendants in a case brought in Idaho state court under 42 U.S.C. § 1983 seek summary judgment under Idaho Rule of Civil Procedure 56, and the state supreme court determines that whether the defendants are entitled to qualified immunity depends on disputed facts, does the state supreme court err in remanding to the state district court for the fact-finder to resolve the disputed facts?

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## INTRODUCTION

Respondent Steven Picatti was forcibly removed from his vehicle, slammed to the ground, and tased after driving around some traffic barrels to ask a deputy sheriff for assistance. Mr. Picatti later filed suit in Idaho state court against the officers who harmed him. Deputies Aaron Miner and Dennis Laurance moved for summary judgment based on qualified immunity, and the state trial court granted the motion. On appeal, the Idaho Supreme Court noted that both the deputies and Mr. Picatti “presented arguments on qualified immunity that depend on their own version of the arrest” and vacated the trial court’s grant of summary judgment, explaining that it could not “determine as a matter of law that the deputies are entitled to qualified immunity when that determination depends on unresolved disputed facts.” Pet. App. 24. The court remanded to the trial court for the trier of fact to resolve the disputed facts so that a determination whether the deputies are entitled to qualified immunity could then be made.

The deputies seek this Court’s review of the Idaho Supreme Court’s decision but overlook two glaring problems. First, the petition presents the question whether the Idaho Supreme Court was required, in reviewing the trial court’s grant of summary judgment, to address whether the deputies were entitled to judgment on the facts taken in the light most favorable to the plaintiff. Summary judgment standards in state courts, however, are governed by state, not federal, procedural law. Because the question presented by the petition is a question of state law, it is not within the jurisdiction of this Court.

Second, the deputies assert that this Court has jurisdiction under 28 U.S.C. § 1257(a), but section 1257(a) limits the Court's jurisdiction to "[f]inal" state-court judgments. The decision below, which remanded for fact-finding, is indisputably not a final judgment.

In any event, review of the state court's decision is unwarranted. Although the court did not expressly state that the deputies would not be entitled to qualified immunity if the facts were considered in the light most favorable to the plaintiff, it determined that whether the deputies are entitled to qualified immunity depends on the resolution of disputed factual questions. Under those circumstances, the court correctly remanded for the trier of fact to resolve the genuine issues of material fact.

### STATEMENT OF THE CASE

A. On July 12, 2014, seventy-year old Steven Picatti drove through Eagle, Idaho on his way home from his shop for lunch. Pet. App. 39. Because the community was holding an Eagle Fun Days parade that day, the first two routes home Mr. Picatti tried were blocked. *Id.* at 2; Idaho S. Ct. Clerk's R. 303 (Picatti Dep. 68–69). As he attempted a third route, he saw an officer—petitioner Aaron Miner—standing near a crosswalk that was blocked by a sign reading “road closed to thru traffic.” Pet. App. 4; Picatti Dep. 69. Mr. Picatti drove around orange traffic barrels that were partially blocking the road so that he could talk to Deputy Miner and see if he could obtain permission to continue towards his home. Pet. App. 3–4; Picatti Dep. 69–70.

As Mr. Picatti slowly approached, Deputy Miner stepped in front of his vehicle, so Mr. Picatti stopped.

Picatti Dep. 96. Deputy Miner slapped the hood of the vehicle and started yelling, but Mr. Picatti could not hear what he was saying over the sound of the engine. Pet. App. 4. Deputy Miner then opened the vehicle door and grabbed Mr. Picatti around the neck, trying to pull him from the vehicle. Picatti Dep. 104–05. Mr. Picatti repeated the word “seatbelt” to let Deputy Miner know that his seatbelt was still fastened, but he did not move his hands from the steering wheel because he did not want to upset Deputy Miner. *Id.* at 105.

While Mr. Picatti sat waiting for directions, Deputy Miner undid Mr. Picatti’s seatbelt and pulled him out of the vehicle onto the hot pavement. Mr. Picatti started to get up, but other officers joined Deputy Miner and hit Mr. Picatti. *Id.* Mr. Picatti stayed passive and limp while the officers, including both Deputy Miner and Deputy Dennis Laurance, pulled at him from different directions. *Id.* at 106. Pushed to the ground, Mr. Picatti could not breathe, so he used his hands to try to push himself up. Each time he did so, the officers slammed him to the ground again. *Id.* During this time, no one told Mr. Picatti that he was under arrest or gave him any instructions or commands. Pet. App. 4. While Mr. Picatti was on the ground with the officers on top of him, Deputy Miner tased him. Picatti Dep. 107.

Mr. Picatti was handcuffed, taken to jail, and charged with felony aggravated battery on a police officer under Idaho Code § 18-915(3) and misdemeanor resisting and obstructing officers under Idaho Code § 18-705. On August 20, 2014, a magistrate judge held a preliminary hearing and found 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. Pet. App. 6. Mr. Picatti ultimately pled guilty to a misdemeanor charge of disturbing the peace by “failing to obey a traffic sign and driving into a restricted pedestrian area.” *Id.*

**B.** On June 9, 2016, Mr. Picatti filed this case in Idaho state court, asserting claims under 42 U.S.C. § 1983 for a deprivation of his rights to be free from unreasonable seizure, excessive force, and felony arrest without probable cause. Pet. App. 6. The trial court dismissed the claims against one of the original four defendants and granted summary judgment to another, leaving Deputies Miner and Laurance as defendants. *Id.*

On July 17, 2017, Deputies Miner and Laurance moved for summary judgment under Idaho Rule of Civil Procedure 56. The trial court granted the motion. Pet. App. 38–56. The court held that the unreasonable seizure and arrest without probable cause claims were barred by collateral estoppel based on the magistrate judge’s finding in the criminal case that there was probable cause to bind Mr. Picatti over to the district court on the felony charge. *Id.* at 45–51. The court then held that the deputies were entitled to qualified immunity on the excessive force claim, premising this holding as well on the earlier finding of probable cause to arrest Mr. Picatti. *Id.* at 53.

**C.** Mr. Picatti appealed to the Idaho Supreme Court, which affirmed the grant of summary judgment as to the false arrest and unreasonable seizure claims based on collateral estoppel but vacated the grant of summary judgment as to the excessive force claim. *Id.* at 3. The court explained that the excessive force claim is not barred by collateral estoppel and

that genuine issues of material fact prevented the court from finding as a matter of law that the deputies were entitled to qualified immunity. *Id.*

The court noted that, “[n]ormally, qualified immunity is resolved long before trial.” *Id.* at 25; *see id.* (stating that “qualified immunity is most often a summary judgment vehicle”). The court explained, however, that the deputies and Mr. Picatti “presented arguments on qualified immunity that depend on their own version of the arrest,” and that the determination of whether the deputies are entitled to qualified immunity depends on these “unresolved disputed facts.” *Id.* at 24. When the facts are disputed, the court continued, it is appropriate to use a bifurcated process, under which the trier of fact resolves the factual disputes and the court then determines whether the defendants are entitled to qualified immunity. *Id.* at 25–26. Accordingly, the court remanded “for the fact-finder to first resolve the genuine issue of material facts so that the court can answer the remaining issue of excessive force and qualified immunity.” *Id.* at 24.

Among the “genuine issues of material fact” the court left to the fact-finder were “whether Picatti resisted arrest or was simply pushing himself off the pavement, if Miner heard Laurence say ‘get your hand off my gun,’ whether Miner asked Picatti to exit the vehicle or immediately grabbed Picatti by the neck to pull him out, and so on.” *Id.* at 34. The court emphasized that, once those historical facts were established, “the ultimate determination of whether the deputies violated Picatti’s clearly established right is a question reserved for the court.” *Id.* at 35.

Both the deputies and Mr. Picatti filed petitions for rehearing, with the deputies contending in their petition that the court erred in concluding that it could not determine as a matter of law that the deputies are entitled to qualified immunity. *Id.* at 60. The Idaho Supreme Court denied both petitions, *id.* at 58, but issued a substitute opinion explaining further that it could not reach the step of determining whether the deputies violated Mr. Picatti’s clearly established rights until after resolution of the disputed facts, *id.* at 28–31.

## **REASONS FOR DENYING THE WRIT**

### **I. The petition presents a question of state law that falls outside this Court’s jurisdiction.**

The question presented in the petition is a question of state law over which this Court lacks jurisdiction. *See* 28 U.S.C. § 1257(a). The deputies ask whether the state supreme court erred in reviewing the trial court’s grant of summary judgment by “declin[ing] to address” whether they are entitled to qualified immunity “based solely on [the court’s] determination that genuine disputes of fact exist.” Pet. i. Summary judgment standards, however, are procedural matters that are governed in state courts by state rules of civil procedure and state law. *See, e.g.*, Idaho R. Civ. P. 56 (governing summary judgment in Idaho district courts); Pet. App. 44 (citing Idaho R. Civ. P. 56); *James v. City of Boise*, 376 P.3d 33, 40 (Idaho 2016) (discussing standard of review in summary judgment cases). Thus, the question whether the state appellate court properly declined to rule on the merits of the qualified immunity defense in light of the existence of disputed facts is a question of

whether the court properly applied Idaho procedural law and is outside this Court's purview.

The deputies attempt to evade the fact that they present a question of state law by contending that "Idaho follows federal summary judgment principles in all respects relevant to this case." Pet. 10 n.1. Even to the extent that is correct, however, the similarity of state and federal law does not transform a state-law question into a federal-law question. *See Johnson v. Fankell*, 520 U.S. 911, 916 (1997) (noting that even when federal and state laws "contain[] identical language," neither "this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest Court of the state").

The deputies also attempt to frame their question presented as a federal question by including within it the facts that this case was filed under 42 U.S.C. § 1983 and that the issue on which they believe they are entitled to summary judgment is whether they violated Mr. Picatti's clearly established constitutional rights. The nature of the underlying claim, however, does not convert a state procedural issue into a federal question. State courts apply state procedural law to claims arising under both federal and state law. *See Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 367 (1990) (noting that the Supremacy Clause "charges state courts with a coordinate responsibility to enforce [federal] law according to their regular modes of procedure"). "The general rule, bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the

state courts as it finds them.” Hart, *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489 (1954).

To be sure, federal law may sometimes preempt state procedural rules. See *Howlett*, 496 U.S. at 372. Here, however, the deputies specifically declined to raise any preemption arguments in their petition, resting on their argument that Idaho “follows federal summary judgment principles,” and contending that this case therefore “provides no occasion for addressing whether state courts are required to apply those principles when analyzing qualified immunity in § 1983 cases.” Pet. 10 n.1.

In any event, any such argument would be unavailing. In *Johnson v. Fankell*, 520 U.S. 911, this Court held that § 1983 does not preempt an Idaho rule preventing interlocutory appeals of denials of summary judgment, including denials of summary judgment based on qualified immunity in § 1983 cases. The Court explained that the “postponement of the appeal until after final judgment w[ould] not affect the ultimate outcome of the case,” and it rejected the defendants’ argument that the rule did not “adequately protect their right to prevail in advance of trial.” *Id.* at 921. The Court noted that although the “right to have the trial court rule on the merits of the qualified immunity defense presumably has its source in § 1983,” “the right to immediate appellate review of that ruling in a federal case has its source in [28 U.S.C.] § 1291,” and is thus “a federal procedural right that simply does not apply in a nonfederal forum.” *Id.*

The same is true here. Section 1983’s “recognition of the defense of qualified immunity” does not

preempt Idaho's application of its neutral rules concerning summary judgment, *id.* at 923, and the deputies' objections to how the Idaho state court interpreted and applied those rules in this case do not present a question of federal law.

## **II. The Court lacks jurisdiction because the state court decision is not final.**

The deputies assert that this Court has jurisdiction over their petition under 28 U.S.C. § 1257(a). Pet. 1. Section 1257(a), however, limits this Court's jurisdiction to "[f]inal judgments or decrees rendered by the highest court of a State," and the decision below is not a final judgment.

To be reviewable by this Court, a state-court judgment must "be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997) (quoting *Mkt. St. Ry. Co. v. R.R. Comm'n of Cal.*, 324 U.S. 548, 551 (1945)). Here, the Idaho Supreme Court's decision, which vacated a grant of summary judgment and *remanded* to the district court for fact-finding, was not an "effective determination" of the litigation. Indeed, the decision below was not even a determination of the question of qualified immunity. The court made clear that that determination would be made in the future, after the fact-finder resolved the genuine issues of material fact.

Moreover, the decision below does not fall within the "limited set of situations in which [this Court] ha[s] found finality as to the federal issue despite the ordering of further proceedings in the lower state courts." *O'Dell v. Espinoza*, 456 U.S. 430 (1982) (*per curiam*). Those limited situations comprise only cases

falling within the four categories identified in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), none of which applies here.

The first *Cox* category is inapplicable because the Idaho Supreme Court's decision is not "conclusive and does not foreordain the outcome of the proceedings below." *Pierce Cty. v. Guillen*, 537 U.S. 129, 141 n.5 (2003). Either side may still prevail in the litigation. The second category is inapplicable because the state high court has not "finally decided" any federal issue, much less one that will "survive and require decision regardless of the outcome of future state-court proceedings." *Cox*, 420 U.S. at 480. The third *Cox* category is inapplicable because the federal claim has not been finally decided, and if Mr. Picatti ultimately prevails, the deputies will be able to seek review at that time. *Id.* at 481.

Finally, the fourth *Cox* factor is inapplicable because this case is not one in which a "federal issue has been finally decided," the deputies cannot prevail on the merits of the § 1983 claim "on nonfederal grounds," and reversal of the Idaho Supreme Court decision would not be "preclusive of any further litigation." *Id.* at 482–83. Moreover, "refusal immediately to review the state-court decision" will not "seriously erode federal policy." *Id.* at 483; see *Johnson v. Fankell*, 520 U.S. at 919 (explaining that although the defense of qualified immunity "has its source in a federal statute (§ 1983)," a state rule that prevented interlocutory appeals of denials of qualified immunity was "less an interference with *federal* interests than a judgment about how best to balance ... competing *state* interests").

As this Court has explained, “[c]ompliance with the provisions of § 1257 is an essential prerequisite to [this Court’s] deciding the merits of a case brought here under that section.” *Johnson v. California*, 541 U.S. 428, 431 (2004). Because the decision below does not meet § 1257(a)’s express finality requirement, this Court lacks jurisdiction to review it, and the petition should be denied.

### **III. The Idaho Supreme Court correctly remanded for a resolution of disputed facts.**

The Idaho Supreme Court stated below that it could not “determine as a matter of law that the deputies are entitled to qualified immunity when that determination depends on unresolved disputed facts.” Pet. App. 24. Accordingly, the court vacated the grant of summary judgment and remanded for resolution of the genuine issues of material fact. *See Idaho. R. Civ. P. 56(a)* (providing that summary judgment is appropriate only when there is no “genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”).

The deputies criticize the Idaho Supreme Court for not specifically addressing whether they would be entitled to qualified immunity when the facts are taken in the light most favorable to Mr. Picatti. By stating that the qualified immunity analysis “depends” on the resolution of disputed facts, however, the court made clear that the deputies would not be entitled to qualified immunity under the facts stated by Mr. Picatti. If that were not the case, qualified immunity would not have depended on resolution of the dispute.

Courts view the facts in the light most favorable to the non-moving party for the purpose of determining whether judgment can be granted as a matter of law



because the resolution of the factual disputes would not alter the outcome. Although the Idaho Supreme Court did not use the phrase “light most favorable to the non-moving party,” it plainly made that determination here, stating clearly that judgment could not be granted as a matter of law because qualified immunity depended on disputed facts.

The deputies premise many of their arguments—including their claim of a conflict with other lower courts—on the contention that the Idaho Supreme Court held that summary judgment is inappropriate “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” Pet. 25. But the court did not do so. Instead, the court concluded that the disputed facts were material to a key element of the qualified immunity defense: the determination whether the deputies violated a clearly established right. *See, e.g.*, Pet. App. 34 (“Picatti and the deputies dispute key facts surrounding the circumstances of Picatti’s arrest that prevent us from determining whether there was a clearly established right to be free from excessive force in these circumstances.”). Contrary to the deputies’ arguments, the Idaho court’s explanation that it could not “articulate a ‘clearly established’ right with specificity” until the disputed facts were resolved, *id.* at 30, does not demonstrate that, under the court’s decision, summary judgment must be denied whenever there is a factual dispute that is material to the constitutional claim. The court did not state that *any* dispute that is material to a constitutional claim would prevent it from determining whether the defendants violated the plaintiff’s clearly established rights. It held that, *in this case*, it could not determine whether Mr. Picatti

had “a clearly established right to be free from excessive force in the particular circumstances ... without first resolving the disputed facts.” Pet. App. 31. And although the deputies cite the court’s statement that a bifurcated process is necessary “[w]hen disputed facts remain,” Pet. 11 (quoting Pet. App. 25), it is clear from context that the court was discussing disputed *material* facts, not a need to remand to resolve *immaterial* disputes. See, e.g., Pet. App. 3 (explaining that the court could not find that the deputies were entitled to qualified immunity as a matter of law because there was a “genuine issue of material fact”).

That the Idaho Supreme Court considered the disputed facts material to the question of qualified immunity can be seen in the federal cases that it cited as persuasive. Pet. App 27–28. Those cases discuss the respective responsibilities of the judge and jury when a dispute of fact is material to qualified immunity. See, e.g., *Morales v. Fry*, 873 F.3d 817, 826 n.7 (9th Cir. 2017) (noting that whether the plaintiff’s constitutional rights were clearly established “depends on disputed factual issues”); *Willingham v. Crooke*, 412 F.3d 553, 560 (4th Cir. 2005) (discussing roles of court and jury “to the extent that a dispute of material fact precludes a conclusive ruling on qualified immunity at the summary judgment stage”).

The deputies claim that the decision below conflicts with lower court cases recognizing that qualified immunity can be resolved at the summary judgment stage even when there are factual disputes. In none of the cases, however, did the courts hold that they could resolve on summary judgment whether the defendants were entitled to qualified immunity when there

were factual disputes that were material to the qualified immunity analysis. Accordingly, those cases are inapposite here, where the Idaho Supreme Court determined that qualified immunity depends on resolution of the disputed facts.

Contrary to the deputies' claims, the decision below will not turn the "resolution of qualified immunity questions at the summary judgment stage ... [into] the exception." Pet. 25. The Idaho Supreme Court recognized that qualified immunity is normally resolved "at the earliest possible stage in litigation." Pet. App. 25 (quoting *Morales*, 873 F.3d at 822). Indeed, it specifically noted that "qualified immunity is most often a summary judgment vehicle" because qualified immunity usually "turns on legal determinations rather than disputed facts." *Id.* Here, however, having found that whether the deputies were entitled to qualified immunity turned on disputed facts, the state court correctly vacated the grant of summary judgment and remanded.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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