No. 19-868

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

REPLY BRIEF OF THE PETITIONERS

RICHARD H. SEAMON
1297 Highland Drive
Moscow, Idaho 83843

ERICA JEANNINE WHITE
Ada County Deputy
Prosecuting Attorney
Counsel of Record
JAN M. BENNETTS
Ada County
Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700
Email: ewhite@adacounty.id.gov
Counsel for Petitioners

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

The respondent, Steven L. Picatti, mischaracterizes the decision below. As Mr. Picatti characterizes it, the Idaho Supreme Court held that the petitioners, Deputies Aaron Miner and Dennis Laurance (Deputies), "would not be entitled to qualified immunity under the facts stated by Mr. Picatti." Br. in Opp. 11. This characterization implicitly concedes what the court below *should have done* but does not accurately describe what the court actually did. Under this Court's qualified immunity precedent, the court below should have decided whether the Deputies are entitled to qualified immunity on the facts viewed in the light most favorable to Mr. Picatti. Instead, the court below refused to decide the Deputies' entitlement to qualified immunity solely because it believed that "genuine issues of material facts" exist with respect to "whether [the Deputies'] conduct violated the Fourth Amendment" by constituting excessive force. Pet. App. 34.

This refusal conflicts with decisions of this Court and lower courts, as discussed in our petition. As discussed below, the Idaho Supreme Court's judgment rests on federal law, not state law, and is final for purposes of this Court's jurisdiction under 28 U.S.C. § 1257(a).[1]

---

[1] For the Court's information, the Idaho Supreme Court issued a remittitur on October 2, 2019, remanding the case to the district court. Although no stay is now in place, there also has been no trial or other pretrial deadlines established since remand.

ARGUMENT

I. CONTRARY TO THIS COURT'S QUALIFIED IMMUNITY PRECEDENT, THE IDAHO SUPREME COURT REFUSED TO DECIDE WHETHER, ON THE FACTS TAKEN IN THE LIGHT MOST FAVORABLE TO MR. PICATTI, THE DEPUTIES VIOLATED MR. PICATTI'S CLEARLY ESTABLISHED CONSTITUTIONAL RIGHTS.

Our petition showed that, under this Court's qualified immunity precedent, the Deputies are entitled to a ruling—yea or nay—on whether they violated Mr. Picatti's clearly established rights, viewing the facts in the light most favorable to him. Pet. 12-20; *see also*, *e.g.*, *City of Escondido v. Emmons*, 139 S. Ct. 500, 501 (2019); *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Mr. Picatti does not contest the Deputies' entitlement to such a yea-or-nay ruling. Instead, he argues that the Idaho Supreme Court *did* render such a ruling, though not in so many words. That is wrong.

Mr. Picatti reads the opinion below as specifically holding that "the deputies would not be entitled to qualified immunity under the facts stated by Mr. Picatti." Br. in Opp. 11. Mr. Picatti admits that "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 [Mr. Picatti]." Br. in Opp. 2 (emphasis added); *see also id.* at 12 (admitting that "the Idaho Supreme Court did not use the phrase 'light most favorable to the non-moving party' "). But he contends that the court's determination of the

Deputies' non-entitlement to qualified immunity at this stage is "made clear" (Br. in Opp. 11) by this sentence: "We cannot 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. What the court really meant to say, according to Mr. Picatti, is, "We determine as a matter of law that the deputies are not entitled to qualified immunity" at the summary judgment stage.

In truth, however, the court below made no determination one way or the other. The court made no determination because, in its view, it *could* not do so. The court believed that its "ability to address whether the deputies are immune from suit" was "impede[d]" by the existence of "a genuine issue of material fact as to whether the deputies violated Picatti's Fourth Amendment right to be free from excessive force." Pet. App. 23. That impediment could be removed, the court thought, only by "remand[ing] the case . . . for the fact-finder to first resolve the genuine issue of material facts." *Id.* at 24. Thus, as explained in our petition (at 13), the court below adopted the same approach that the Ninth Circuit adopted, and this Court rejected, in *Saucier v. Katz*: namely, "to deny summary judgment any time a material issue of fact remains on the excessive force claim." 533 U.S. 194, 202 (2001).

II. THE IDAHO SUPREME COURT'S ERRONEOUS REFUSAL TO DETERMINE THE DEPUTIES' ENTITLEMENT TO QUALIFIED IMMUNITY RESTS ON FEDERAL LAW, NOT STATE LAW.

Contrary to Mr. Picatti's contention (Br. in Opp. 6–9), the Idaho Supreme Court relied on federal law, not state law, in refusing to determine whether the Deputies are entitled to qualified immunity at this stage. Specifically, the court's refusal rests on a misunderstanding of the federal law of qualified immunity.

Under that law, officials are immune unless they violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (per curiam) (internal quotation marks omitted). This Court has "repeatedly told courts . . . not to define clearly established law at a high level of generality." *Id.* (internal quotation marks omitted; ellipsis supplied by Court in *Mullenix*). A particularized definition of clearly established law ensures that the defendant official "has fair notice" of the law's requirements. *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curiam).

The decision below rests on the requirement that "clearly established law" be defined with particularity. The Idaho Supreme Court recognized that "[t]he qualified immunity doctrine requires a right to be particularized to the facts of the case at hand and not defined 'at a high level of generality.'" Pet. App. 34 (quoting *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (quoting

Ashcroft v. al-Kidd, 563 U.S. 731, 742 (2011)). The court below reasoned, "Because we must define a right with such specificity, we cannot meaningfully characterize the right at issue without a fact-finder first resolving disputed facts." *Id*. This reasoning ignores decisions of this Court requiring that, to the extent that specific circumstances are in dispute, the facts must be viewed in the light most favorable to the plaintiff. *E.g.*, *City of Escondido v. Emmons*, 139 S. Ct. 500, 501 (2019) (per curiam); *see also* Pet. 12–20. The "in the light most favorable" viewpoint ordinarily supplies the requisite particularity, as explained in our petition (at 15–16).

And, more to the present point, the "in the light most favorable" viewpoint is central to federal qualified-immunity analysis. It can obviate a trial even when genuine disputes of fact exist that are material to the plaintiff's claim on the merits. As such, it preserves "an 'essential attribute' of qualified immunity": namely, its status as "'an entitlement not to stand trial under certain circumstances.'" *Van Cauwenberghe v. Biard*, 486 U.S. 517, 523 (1988) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985)). By the same token, that essential attribute would be largely lost under the Idaho Supreme Court's reasoning, which would preclude "the resolution of many insubstantial claims on summary judgment." *Saucier*, 533 U.S. at 202 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The decision below thus denies officials an entitlement conferred by the federal law of qualified immunity.

In arguing that the Idaho Supreme Court's judgment nonetheless rests on state law, Mr. Picatti mainly

relies on *Johnson v. Fankell*, 520 U.S. 911 (1997). Br. in Opp. 7–10. His reliance is misplaced.

In *Johnson*, the Idaho Supreme Court dismissed the defendant officials' interlocutory appeal from a trial court order denying them summary judgment on qualified immunity grounds. *Johnson*, 520 U.S. at 914. In this Court, the officials argued that 42 U.S.C. § 1983 preempted the Idaho appellate rule upon which the Idaho Supreme Court had relied in dismissing the appeal. *Id.* at 918. This Court rejected that argument. *Id.* at 918–923.

Johnson does not apply here for two reasons. First, the Deputies' challenge to the decision below does not rest on preemption. As explained in the petition and as Mr. Picatti does not contest (Br. in Opp. 7), "Idaho follows federal summary judgment principles in all respects relevant to this case." Pet. 10 n.1. Thus, this is not a case in which Idaho has adopted a rule that prevents the Idaho courts from deciding whether the Deputies are entitled to qualified immunity when the facts are viewed in the light most favorable to Mr. Picatti. Rather, the Idaho Supreme Court has misapplied federal law based on its faulty reasoning regarding the need to define "clearly established" law with particularity. In challenging that court's decision, therefore, the Deputies—unlike the defendant officials in *Johnson*—do not seek to "restructur[e] the operation of [Idaho's] courts." *Johnson*, 520 U.S. at 922.[2]

---

[2] The court below suggested that because there are (in its view) genuine issues of fact material to Mr. Picatti's excessive

Second, the federal right asserted by the defendant officials in *Johnson* differs from the federal right asserted by the Deputies here. The officials in *Johnson* asserted "a federal right to an interlocutory appeal from a denial of qualified immunity." *Id.* at 913. That right, this Court held, "ha[d] its source" in the general federal appellate statute (28 U.S.C. § 1291), not § 1983. *Johnson*, 520 U.S. at 921. It was thus a "federal procedural right that simply d[id] not apply in a nonfederal forum." *Id.* In contrast, the Deputies assert a right to have the court decide whether, viewing the facts in the light most favorable to Mr. Picatti, they violated his clearly established constitutional rights. The right asserted by the Deputies is inextricably intertwined with an "essential attribute" of qualified immunity (*Van Cauwenberghe*, 486 U.S. at 523)—i.e., "an entitlement not to stand trial under certain circumstances"—which is an entitlement associated with § 1983. *See Johnson*, 520 U.S. at 921; *see also Tower v. Glover*, 467 U.S. 914, 920 (1984); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 n.30 (1982).

---

force claim, it could not decide the Deputies' entitlement to qualified immunity without taking on "the role of the trier of fact," a role inconsistent with Idaho precedent. Pet. App. 34 (citing *Jensen v. Siemsen*, 794 P.2d 271, 276 (Idaho 1990)). A court does not try the facts, however, when it provisionally views them in the light most favorable to the non-moving party at the summary stage. If, on that view of the facts, the moving parties have established an affirmative defense, they are entitled to judgment as a matter of law, and there is simply no role for the jury to play, even if genuine disputes of fact exist that are material to the plaintiff's claim on the merits. *See Stewart v. Hood Corp.*, 506 P.2d 95, 97 (1973), cited in Pet. 10 n.1.

III. THIS COURT HAS JURISDICTION BECAUSE THE JUDGMENT BELOW IS FINAL AS TO THE DEPUTIES' FEDERAL RIGHT NOT TO STAND TRIAL.

Contrary to Mr. Picatti's contention (Br. in Opp. 9–11), this Court has jurisdiction under 28 U.S.C. § 1257(a). The judgment below falls within the third category identified in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). The third *Cox* category comprises "those situations where [1] the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which [2] later review of the federal issue cannot be had, whatever the ultimate outcome of the case." *Id.* at 481. The present case has both of the features described by the Court in *Cox*.

First, the Idaho Supreme Court has finally decided the Deputies' federal claim. Mr. Picatti's argument to the contrary inaccurately describes their claim. He describes the claim as a general claim of qualified immunity. *See* Br. in Opp. 9–10. Instead, the Deputies claim an entitlement under federal law to summary judgment on qualified immunity grounds if, viewing the facts in the light most favorable to Mr. Picatti, they did not violate his clearly established Fourth Amendment rights. Mr. Picatti does not dispute that the judgment below finally decided (and rejected) that claim. Nor is this disputable in light of this Court's precedent. *E.g.*, *Ortiz v. Jordan*, 562 U.S. 180, 188 (2011) ("When summary judgment is denied to a defendant who urges that qualified immunity shelters her from suit, the

court's order finally and conclusively [disposes of] the defendant's claim of right not to stand trial.") (internal quotation marks omitted) (bracketed text supplied by Court in *Ortiz*).

Second, later review of the Deputies' entitlement to summary judgment on qualified immunity cannot be had in the state court. That is true whether they win or lose at trial, for "[i]t is well settled in Idaho that an order denying a motion for summary judgment is not . . . reviewable on appeal from a final judgment [following a trial]." *E.g.*, *Tiegs v. Robertson*, 236 P.3d 474, 476 (Idaho 2010); *cf. Ortiz*, 562 U.S. at 184.

More fundamentally, this case concerns a federal right that cannot be vindicated after the trial has occurred. This Court has repeatedly held that qualified immunity confers a right under certain circumstances—which the Deputies assert exist here—not to stand trial. *E.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009). In this respect, the right claimed here is like a defendant's right not to stand trial on Double Jeopardy grounds, the denial of which is immediately appealable. *Mitchell*, 472 U.S. at 525. It is also like the rights asserted in other cases in which this Court has "held that state-court decisions rejecting a party's federal law claim that he is not subject to suit before a particular tribunal are 'final' for purposes of . . . 28 U.S.C. § 1257." *Id.* at 525 n.8 (citing *Mercantile National Bank v. Langdeau*, 371 U.S. 555 (1963); *Constr. Laborers v. Curry*, 371 U.S. 542 (1963), both also cited in *Cox*, 420 U.S. at 483–484).

IV. THE DECISION BELOW CONFLICTS WITH DECISIONS OF OTHER STATE COURTS AND LOWER FEDERAL COURTS.

The petition showed that the Idaho Supreme Court's decision conflicts not only with decisions of this Court but also those of other state courts and lower federal courts, including the Ninth Circuit. Pet. 20–25. Although Mr. Picatti tries (Br. in Opp. 13–14) to align the decision below with the Ninth Circuit's decision in *Morales v. Fry*, 873 F.3d 817 (9th Cir. 2017), the attempt fails for two reasons. First, as discussed above in Section I, it rests on a mischaracterization of the decision below. Second, it ignores the procedural history and the focus of the Ninth Circuit decision in *Morales*.

In *Morales*, unlike in this case, the trial court *denied* qualified immunity to the defendant officials, holding that, viewing the facts in the light most favorable to the plaintiff, the officials violated the plaintiff's clearly established rights. *Morales v. Fry*, 2014 WL 1230344, *10 (W.D. Wash. 2014), *vacated in part on other grounds*, 873 F.3d 817. The officials again raised the qualified immunity defense at trial. *Morales*, 873 F.3d at 820. The district court allowed the jury to decide both the issue of whether they violated the plaintiff's constitutional rights and the issue of whether those rights were clearly established. *Id.* at 821–822. The Ninth Circuit held that the district court erred in submitting the "clearly established" issue to the jury. *Id.* at 821–826. It was in the context of this holding that the Ninth Circuit said, "A bifurcation of duties is unavoidable: only the jury can decide the disputed

factual issues, while only the judge can decide whether the right was clearly established once the factual issues are resolved." 873 F.3d at 823.

The Ninth Circuit in *Morales* thus held that the district court committed error in its conduct of the *trial*. The Ninth Circuit did not suggest that the district court erred at the summary judgment stage, on the theory that a yea-or-nay decision at that stage was precluded by the existence of a genuine dispute of facts material to the plaintiff's claim on the merits. The Ninth Circuit's decision in *Morales* therefore does not support the judgment below. And as shown in the petition, the judgment below conflicts with other Ninth Circuit precedent. Pet. 20–21 (discussing *Camarillo v. McCarthy*, 998 F.2d 638 (9th Cir. 1993)).[3]

[3] Although Mr. Picatti disputes the petition's characterization of the decision below, he does not dispute that, if the petition's characterization is correct, the decision below conflicts with the many decisions of this Court and the lower courts cited in the petition. Nor does he dispute that, if the petition's characterization is correct, Section 1983 plaintiffs have a strong incentive to sue in Idaho's state court system, rather than in its federal court. *See* Pet. 25–26. True, the defendant officials in those state-court suits ordinarily will be able to remove the cases to federal court, *see* 28 U.S.C. §§ 1441 & 1442, and can be expected to do so. This removal scenario, however, in no way reduces the need for further review by this Court. A scenario in which the state courts become temporary way stations for § 1983 actions that end up in federal court undermines the essential role that state courts play in enforcing federal rights (as well as federal defenses). *See Burt v. Titlow*, 571 U.S. 12, 19 (2013).

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

RICHARD H. SEAMON
1297 Highland Drive
Moscow, Idaho 83843

ERICA JEANNINE WHITE
Ada County Deputy
Prosecuting Attorney
Counsel of Record
JAN M. BENNETTS
Ada County
Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700
Email: ewhite@adacounty.id.gov
Counsel for Petitioners

May 28, 2020