No. 19-872

In the
Supreme Court of the United States

MATTHEW REID HINSON,
Petitioner,

v.

R.A. BIAS, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a petition for certiorari should be granted where the Eleventh Circuit correctly applied Supreme Court precedent and settled rules of law to this case, where Petitioner had nothing to overcome the officers' entitlement to qualified immunity as a matter of law, relying instead on video footage that mostly corroborated, and did not contradict, the Respondents' sworn evidence, and otherwise blatantly contradicted Petitioner's unsupported claims?

STATEMENT OF RELATED PROCEEDINGS

There are no other court proceedings directly related to this case.

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INTRODUCTION

There is no principled basis for this Court's review of the Eleventh Circuit's decision and the Court should deny the Petition. In presenting his question to this Court, Petitioner Hinson ("Hinson" or "Petitioner") misconstrues the Eleventh Circuit's opinion, claiming that the court of appeals' reasoning was merely based on its "disagreement with the district court's review of the factual record;" specifically, the district court's conclusion that a surveillance video tape would allow a reasonable juror to conclude that Hinson was not resisting arrest. This, Petitioner argues, was not a basis for jurisdiction to review the district court's qualified immunity opinion as a "collateral order."

To the contrary, the Eleventh Circuit did not base its decision on a "factual disagreement." The appeal taken by the officers and decided by the Eleventh Circuit involved several issues of law, not evidence sufficiency. One of the issues was whether the officers were entitled to qualified immunity on Hinson's excessive force claim, because the undisputed facts showed they had not committed a constitutional violation. This was a legal issue sufficient for interlocutory review. *See Siegert v. Gilley*, 500 U.S. 226, 232 (1991) ("A necessary concomitant to the determination of whether the constitutional right asserted by the plaintiff is 'clearly established' at the time the defendant acted is the determination of whether the plaintiff has asserted a violation of a constitutional right at all.").

Also among those issues of law were the district court's crediting of the allegations in the complaint as

part of the undisputed facts even though all of those allegations were inadmissible hearsay, *i.e.*, they were based on what Hinson's father told him about the content of the surveillance footage Hinson had not seen and the events of which Hinson testified under oath he had no recollection. The Eleventh Circuit, as a matter of law, ruled that an affidavit from Hinson's father was inadmissible hearsay and could not be credited. *See Hinson v. Bias,* 927 F.3d 1103, 1108 (11th Cir. 2019).

Another issue of law was whether the officers were entitled to qualified immunity on Hinson's claim that they were deliberately indifferent to his medical needs. The Petition focuses entirely on the contention that the Eleventh Circuit did not have jurisdiction to review the determination that there was a dispute of fact over whether Hinson resisted the officer's commands prior to being handcuffed.[1] Hinson does not complain that the Eleventh Circuit had no jurisdiction to review the denial of qualified immunity on the deliberate indifference claims. Thus, Hinson has abandoned that issue and provides no explanation for how the Eleventh Circuit could not have had jurisdiction to review the entire case as it relates to qualified immunity when he now concedes there was jurisdiction to review the

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[1] On page 12 of the Petition, Petitioner states that "[b]ecause the Officers appealed and the Eleventh Circuit decided only the question whether the record permitted genuine issues of fact concerning Mr. Hinson's conduct at the scene of the arrest," the Eleventh Circuit lacked jurisdiction to consider the appeal. This statement is misleading. Respondents appealed questions of law, including deliberate indifference and whether the district court could legally consider hearsay evidence as "undisputed facts."

deliberate indifference claims against the very same officers in the very same incident.

The Eleventh Circuit did exactly what courts of appeals are supposed to do–examine whether the officers were entitled to qualified immunity as a matter of law based on undisputed facts in the record. Hinson's characterization of the Eleventh Circuit's analysis–that the court determined merely a question of evidence sufficiency regarding the issue of Hinson's resistance–is an incorrect and misleading characterization, much like Hinson's repeated misleading characterizations about the facts in the record.

The Eleventh Circuit correctly reviewed the *only* admissible, material evidence presented by Petitioner in the case–a surveillance video–to determine whether the officers acted in an objectively reasonable manner when they confronted a fleeing murderer. This review included the district court's misapplication of the factors in *Graham v. Connor*, 490 U.S. 386 (1989). As a matter of law, the Eleventh Circuit applied this Court's analysis in *Scott v. Harris*, 550 U.S. 372 (2007), and found that the officers did not violate the Constitution when they used reasonable force to subdue Hinson, who had just brutally murdered a man by slashing his throat.[2]

In short, Petitioner's inflammatory interpretation of the "facts," while not objectively supported and blatantly contradicted by the surveillance video footage

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[2] Petitioner was convicted of murder and remains in prison for this heinous crime.

and also contradicted by the officers' sworn, first-hand version of events and expert evidence, did not create genuine material facts to overcome the officers' immunity. Petitioner correctly notes that the Eleventh Circuit applied the correct qualified immunity analysis in light of the video footage of the arrest, as this Court has instructed appellate courts to do when there is uncontested surveillance video of an arrest. *See* Pet. at 16. Petitioner provided this footage to the Eleventh Circuit via his own web link (created by counsel), and he never questioned the appellate court's jurisdiction and duty to review the footage. The Eleventh Circuit correctly held that the unsupported and contradicted speculations by Petitioner and his counsel could not, as a matter of law, defeat qualified immunity under the analysis in *Scott*. The district court therefore erred in this case and had to be reversed. This case does not present circumstances justifying certiorari review.

STATEMENT OF THE CASE

As they have throughout this case, Hinson and his counsel spin a new and fantastical tale based solely on their nonsensical interpretations of the apprehension surveillance footage and footage of Hinson's post-arrest interview. Hinson began this case as a *pro se* plaintiff with no recollection of any of the events at issue, and he never viewed the surveillance footage. Years later, his appointed counsel used that footage to create their own version of events, without any evidence and without any confirmation by any of the footage in the video. The district court erred by simply accepting Hinson's unfounded version of facts in his complaint, and the Eleventh Circuit corrected that error by finding

that immunity had to be determined in light of the surveillance footage compared to the officers' sworn testimony because Hinson had no firsthand evidence. Similarly, in *Scott*, an inconclusive or blatantly contradictory video was not enough evidence to overcome the officers' entitlement to qualified immunity as a matter of law.

Viewed from the officers' perspective under the circumstances they confronted at the time, the facts, as shown from the un-contradicted evidence, including the Jacksonville Landing surveillance video, are as follows:[3]

1. "For no apparent reason," Hinson had just committed a brutal stabbing and was attempting to leave the scene of the murder. Pet. Appx. 1. Officer Williams saw the victim lying in a pool of blood, dead on the floor of the bar where he had just been slashed in the throat by Hinson. *Id.* at 5.

2. An eyewitness was giving the dispatcher information that Hinson was attempting to leave the Jacksonville Landing (an entertainment complex) in his truck, as corroborated by the video and Officer Anderson. As Hinson was attempting to exit the parking lot, he was surrounded by officers. *Id.* at 4.

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[3] The Respondents do not agree with the Petitioner's factual background statement, beginning on page 7 of the Petition, and so the actual undisputed facts are described herein.

3. The Landing parking lot exit was very close quarters. A bloodied Hinson did not immediately put his hands up. Even though the video has no sound, the footage shows officers obviously shouting commands that were not followed for several seconds. *Id.* at 4-5. The officers could not initially see both of the murder suspect's bloody hands. *Id.* at 5.

4. Hinson did not make a move to get out of his truck. Officers therefore had to guide him out of the very narrow space, thus placing a potentially armed murder suspect in close proximity to the officers. *Id.* at 5.

5. In fact, Hinson was armed. A knife–the murder weapon–fell to the ground while he was close to the officers. Another large knife was in Hinson's truck. *Id.* at 7.

6. Still in very close quarters, Hinson did not turn around or immediately comply with officer commands for several seconds, and thus the officers took him to the ground. Petitioner's claim that he never offered resistance is patently false. *Id.* at 5-6. Objectively, officers could not know if Hinson was still armed and therefore posed an imminent threat to safety.

7. In a quick succession of events, officers tried to get ahold of Hinson's hands, giving him five strikes to the back, and then one strike to the face, which ultimately led to Hinson releasing his hands. *Id.* at 6-7. Officer Bias was then able to handcuff Hinson and no further force was

used. *Id.* at 7. The characterization of these six strikes in order to accomplish the handcuffing as a "beating" is hyperbole.

8. Officer Janes, who was not involved in the arrest and was never a defendant in this case, put on a pair of gloves and picked up Hinson after he was handcuffed. Hinson refused to walk and fell to the ground. *Id.* at 7. Officer Janes nudged Hinson with his foot then picked up Hinson and escorted him to the patrol car. The Petition's description of Hinson as "bloodied" and "dazed" is more hyperbole and unsupported by the evidence. Moreover, the claim that an officer kicked Hinson "in the groin" is both false a red herring; it is undisputed that none of the Respondents kicked Hinson.

9. Hinson never indicated that he needed medical attention. *Id.* at 7, 12-13. He had abrasions on his face. Respondents' medical expert testified that the minor abrasions were consistent with his face coming in contact with the pavement and a brief struggle with officers. *Id.* at 13-15. The characterization of his abrasions as "bleeding for hours" is hyperbole.

10. The post-arrest interview footage unquestionably shows that the facial abrasions were not serious, as Hinson was rubbing his face and was not wincing or showing any signs of pain. Hinson also never asked for medical assistance before he was cleared into the Duval County Pre-trial Detention Facility. *Id.* at 13-15.

> Hinson told detectives he was "alright." *Id.* at 33.

These facts were undisputed and uncontested by Hinson with any material evidence, and they were uncontradicted by any video footage or other record evidence. All that Hinson had was the videotape which contradicts nothing material in the record testimony from the officers and their experts and actually corroborates nearly all of it. Hinson should not be able to simply create a wild version of the "facts" (which he does not independently remember), and then claim that his version of events should defeat qualified immunity. That is all the Petition does here; it creates a tall tale which could not defeat immunity under the analysis in *Scott* where there is an uncontested video.

In denying qualified immunity, the district court recognized as a matter of law that Hinson had to "present evidence beyond the pleadings showing that a reasonable jury could find in its favor." Pet. App. at 41. While accepting that Hinson could remember nothing, the court nonetheless found that the video "could" create material facts to overcome qualified immunity under the totality of circumstances faced by the officers. Citing *Scott*, the court reasoned that it had to view the facts in the light depicted by the videotape, but then found that Hinson's version of events in his complaint was supported by the video footage. Moreover, without evidence, the court found that other officers could have intervened under the circumstances and, despite no evidence and blatantly contradictory post-arrest interview footage, that Hinson's injuries were sufficiently serious to warrant medical attention.

Respondents appealed this decision because, as a matter of law, the district court misapplied *Scott* and failed to take into account the totality of the circumstances from the officers' perspective in light of the uncontested video footage. Petitioner never raised the issue of whether the district court's order was appealable to the Eleventh Circuit, in his briefs on the merits or during argument to the appellate panel, until he asked the appellate court for rehearing *en banc* after an adverse decision. Not a single judge on the Eleventh Circuit sought polling to possibly rehear this case *en banc* and consider Petitioner's new "collateral order" argument. Pet. App. at 72-73.

While the trial court had to take all of the facts in the light most favorable to Hinson as the non-moving party, that did not mean Hinson could create an unsupported and blatantly contradicted storyline to defeat immunity.[4] As the Eleventh Circuit correctly

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[4] The Eleventh Circuit correctly concluded that Petitioner's attempt to use an affidavit from this father as evidence based solely on his father's interpretation of the video footage could not defeat summary judgment because the affidavit was inadmissible hearsay. *See Hinson v. Bias,* 927 F.3d 1103, 1108 (11th Cir. 2019). Respondents argued that the affidavit, as well as the Petitioner's "verified complaint" itself, was sham evidence because neither was based on any firsthand knowledge and thus could not defeat summary judgment. *See also Pace v. Capobianco*, 283 F.3d 1275, 1278-79 (11th Cir. 2002) (affidavit from witness, based solely on his beliefs regarding the facts, was insufficient to overcome immunity); *Benjamin v. Thomas*, 766 Fed. Appx. 834, 837 (11th Cir. 2019) (disregarding plaintiffs' affidavits when they were not present at the scene of the shooting). Petitioner does not dispute the reasoning of the Eleventh Circuit on this issue, but nonetheless puts forth his hearsay version of the facts based solely

held, the events of the arrest had to be objectively analyzed *from the perspective of the reasonable arresting officers* on the scene, as the chaotic events unfolded, and without the benefit of 20/20 hindsight. *See, e.g., Abney v. Coe*, 493 F.3d 412, 416 (4th Cir. 2007), *citing Graham,* 490 U.S. at 396-97 (holding that "reasonableness is evaluated from the perspective of the officers on the scene, not through the leisurely lens of hindsight"). This means that as a matter of law, the court could only consider facts that were knowable to the officers on the scene, giving them all the benefit of the doubt in quickly apprehending a fleeing, potentially armed murderer. *See White v. Pauly*, 137 S. Ct. 548, 551-52 (2017). Under the *Scott* analysis, the videotape had to support Hinson's created version of events. The district court's misapplication of *Scott* and the *Graham* analysis was an appealable order to the Eleventh Circuit.

Excessive force means force applied recklessly that is unreasonable in light of the facts and circumstances of the time. *See Kingsley v. Hendrickson,* 135 S. Ct. 2466, 2471 (2015). Given the entirety of the circumstances in this case (i.e., a brutal murder, a fleeing armed suspect, a chaotic scene in a parking garage, and a suspect not immediately complying with orders), the question was what amount of force was reasonably justified in securing the arrest and protecting both the officers and the public. By this

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on an unsupported interpretation of the video footage, apparently by his attorneys, many years after the fact. Just as the appellate court rejected Petitioner's affidavit from his father, it rejected similar second-hand accusations from counsel.

objective standard, the officers' quick actions were justified and they were entitled to immunity. The lower court erred as a matter of law in considering the allegations in the complaint based on inadmissible hearsay as "facts" without any admissible evidence to overcome immunity or contradict the officers. Respondents properly appealed that order and sought reversal of this errant qualified immunity analysis.

REASONS TO DENY THE WRIT

I. The Eleventh Circuit's Opinion Comports with *Scott v. Harris*, and Does Not Conflict with This Court's Precedent.

Contrary to Petitioner's contention, the Eleventh Circuit's opinion does not conflict with this Court's precedent. As was noted in *Salazar-Limon v. City of Houston,* 137 S. Ct. 1277, 1278 (2017), this Court rarely grants 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."[5]

Indeed, *Salazar-Limon* illustrates perfectly why Hinson's Petition should be denied, as the Petition in that case was denied despite being a far better case for the petitioner there than Hinson's claim. *Salazar-Limon* involved the application of deadly force; he was shot by an officer after a traffic stop because he "made a motion for his waistband." *Id.* at 1279. Two Justices

[5] The Court cited Rule 10 of the Rules of the Supreme Court of the United States.

felt the evidence was sufficiently controverted by Salazar-Limon's testimony so as to preclude summary judgment. *Id.* at 1280-81. Hinson's claims are far weaker than those of Salazar-Limon; unlike the shooting in that case, Hinson was subjected to a mere six compliance strikes, was not seriously hurt, and was being arrested because he murdered a man with a knife with which he was still armed, and he testified under oath that he remembered *nothing* of the events and could not contradict the officers' sworn testimony.

The Eleventh Circuit's opinion squarely comports with the Court's reasoning in *Scott v. Harris*, 550 U.S. 372 (2007), which the Eleventh Circuit cited in determining that Hinson did not meet his burden to demonstrate that the officers used objectively unreasonable and excessive force in violation of clearly established law. Just as in *Scott,* the Eleventh Circuit emphasized that Petitioner relied on only one admissible piece of material evidence to determine what happened in this case–surveillance footage of his arrest.[6] In the end, "what looked at first like a tale of two stories turns out to be a single one, uncontradicted in any material way by any admissible evidence in this case." *Hinson*, 927 F.3d at 1108.

The crux of Petitioner's argument is that the Eleventh Circuit's approach in this case, and in

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[6] In his complaint, Petitioner admitted that he was solely relying on the surveillance video, which he never personally viewed. There was no other admissible, material evidence. Petitioner's attorneys also relied on the surveillance footage, even creating their own link to the video so the Eleventh Circuit could review it in conjunction with their unsupported version of the facts.

qualified immunity cases dating back decades, is in conflict with *Johnson v. Jones*, 515 U.S. 304 (1995), and *Behrens v. Pelletier*, 516 U.S. 299 (1996). This is incorrect, and there is no justification to overturn decades of established case law on qualified immunity. *Johnson* involved a factual dispute where the plaintiff, unlike this case, *had evidence* to overcome summary judgment (his own sworn deposition and admissions in the officers' depositions that supported his theory of the case), and thus the district court's determination regarding evidence sufficiency was not a final order. *See Johnson*, 515 U.S. at 308. Unlike *Johnson*, this case is not a simple "we didn't do it" case; here, the officers had a mountain of evidence, including their own sworn statements, as to the chaotic and potentially dangerous circumstances surrounding the arrest of a fleeing murderer. Petitioner had no evidence, and thus the court of appeals had to review the video, just as the court did in *Scott*. Petitioner could not meet his burden to overcome qualified immunity as a matter of law.

Less than one year later, in *Behrens*, the Court clarified and cabined *Johnson*. The Court held that just because material fact issues remained for trial did not mean that an order regarding qualified immunity could not be reviewed on appeal. *Behrens*, 516 U.S. at 312-13. The Court explained that "if what is at issue in the sufficiency determination is nothing more than whether the evidence could support a finding that particular conduct occurred," there is no "final decision" to review. *Id.* at 313. The denial of summary judgment in *Behrens* "necessarily determined" that certain controverted facts constituted a violation of clearly established law, and thus *Johnson* did not bar

appellate review. *Id.* The same is true here—only more so—as Petitioner had no evidence to controvert what occurred during his arrest and whether the officers objectively acted reasonably under the circumstances. Petitioner could remember nothing and the video did not show anything contradicting the officers' sworn statements. Thus, as a matter of law, Petitioner could not overcome qualified immunity.

Despite Petitioner's attempt to gloss over *Scott* as not concerning jurisdiction and inapplicable to this case, *Scott* does further clarify *Johnson* and *Behrens* and does present the same circumstances faced by the appellate court in this case. *Scott* was an excessive force case where the district court denied the officers' motion for summary judgment based on qualified immunity because there were "material issues of fact on which the issue of qualified immunity turns which present sufficient disagreement to require submission to a jury." *Scott*, 550 U.S. at 377.

The Court stressed that "[t]he first step in assessing the constitutionality of Scott's actions is to determine the relevant facts." *Id.* at 378. While that usually means adopting the plaintiff's version of the facts, in *Scott*, like here, there was a videotape capturing the events in question that clearly contradicted the plaintiff's version of the facts. *Id.* The plaintiff had to show more than just "some metaphysical doubt" as to the facts, but rather had to show a *genuine* issue of material fact even if there was some dispute between the parties. *Id.* at 381. The court had to view the facts in the light depicted by the videotape, and that is what the Eleventh Circuit did here. *See id.* at 380-81. In the

end, the video and un-contradicted facts determine whether the officers' actions were reasonable under the circumstances they faced at the time. *See id.* at 384. This does not present an issue for certiorari review.

Petitioner also ignores this Court's decision in *Plumhoff v. Rickard*, 572 U.S. 765 (2014), in which it distinguished orders like that entered in *Scott* (and here) from the type entered in *Johnson*. The Court held that appellate courts have jurisdiction to review orders such as the one here, reasoning that the district court's order in *Plumhoff* was "not materially distinguishable from the District Court order in *Scott v. Harris*, and in that case we expressed no doubts about the jurisdiction of the Court of Appeals under § 1291." *Id.* at 773. Here, Petitioner's sole ground for seeking review is that the Eleventh Circuit exceeded its jurisdiction, and this is simply not true under the Court's decision in *Plumhoff*, which plainly says that when officers contend their conduct did not violate the Fourth Amendment, that is a reviewable legal issue, not a purely factual issue. *See id.*

The Eleventh Circuit pointed out that Petitioner remembered nothing about his arrest after he put his hands up, and therefore the only evidence relevant to the qualified immunity analysis was the video footage and the officers' sworn statements. *See Hinson,* 927 F.3d at 1112. As a matter of law, the court had to determine the facts in light of the videotape, as the Court did in *Scott*. Unlike *Scott*, here Petitioner had *no other material evidence* whatsoever and the objective video footage blatantly contradicted his second-hand story. Moreover, *Scott* presented far more justification

for denying qualified immunity than did Hinson. There, Harris was a fleeing motorist against whom deadly force was used, not a fleeing murderer against whom rather trivial non-deadly force was applied.

Thus, contrary to Petitioner's arguments, this was not a case of mere "evidence sufficiency" or weighing of evidence; it was case where the Petitioner had no evidence to combat the mountain of evidence establishing that qualified immunity should apply as a matter of law. Just as in *Scott,* the appellate court had to review the videotape to determine whether qualified immunity applied, and whether its presentation of the events conflicted with the only other evidence in the case–the officers' sworn statements. The surveillance video did not support the allegations in the complaint or the fantastical story told in the appellate briefs and now in the Petition; instead, it flatly contradicted Petitioner's conjecture and supported the officers' sworn statements, as did the footage in *Scott.* The Eleventh Circuit's opinion was completely in line with this Court's precedents.

The court of appeals followed *Scott* and long-established law requiring *de novo* review of summary judgment orders and the factors that establish qualified immunity. Importantly, the court emphasized that inferences "based on speculation and conjecture" are not reasonable, and a "mere scintilla of evidence" could not overcome qualified immunity. *Id.* at 1115, *citing Hammett v. Paulding City,* 874 F.3d 1036, 1049 (11th Cir. 2017), *and Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). As the Court stated in *Anderson*, a plaintiff cannot "merely assert[] that the

jury might, and legally could, disbelieve" the defendants' evidence, but instead plaintiff must present "affirmative evidence" to allow a reasonable jury to find in his favor. *Id.* at 1115-16, *quoting Anderson*, 477 U.S. at 252, 257. Here, Petitioner had no evidence other than surveillance video which he, and the district court, believed "could" allow a jury to find in his favor. The Eleventh Circuit correctly held that as a matter of law, that utter lack of evidence could not overcome the officers' entitlement to qualified immunity.

Petitioner himself did not view the video, and his attorneys' allegations in their briefs show that they are attempting to create a material fact out of thin air, despite being blatantly contradicted by the surveillance video. For example, Petitioner never argued on appeal that he may have been struck by a flashlight, despite the district court inexplicably finding this to be potentially true. That is because such an allegation is *blatantly* contradicted by the video and, under *Scott*, had to be disregarded by the Eleventh Circuit.

Then, for the first time on appeal and continuing in the Petition, Petitioner's counsel added the completely unfounded allegation that Petitioner was "kicked in the groin," an allegation that is not in the complaint or in any way supported by the video and was never discussed by the trial court.[7] All of this demonstrates the "visible fiction" of Petitioner's story and why the Eleventh Circuit, correctly under *Scott*, viewed the uncontested video footage and determined that as a

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[7] Moreover, this unfounded allegation concerned the actions of an officer who was not a defendant in this case.

matter of law, excessive force was not used by the officers under the circumstances they faced in arresting a fleeing, bloody murderer.

If the video utterly discredits the plaintiff's story, summary judgment should be granted. That was the case here, as Petitioner had no evidence and no memory of the circumstances surrounding his arrest, and the video (both of the arrest and the post-arrest interviews) blatantly contradicts his wild claims of being beaten and seriously injured. What the video did confirm was that Petitioner posed an unknowable risk to both the officers and the public, as he had just slashed a man's throat, had two knives in his possession, was attempting to flee the scene, and given the time lapse shown by the video, did not immediately comply with the officers' commands. The Eleventh Circuit correctly held that the district court should be reversed because the officers were entitled to immunity as a matter of law.

Petitioner focuses entirely on what he claims is a "fact issue" found by the district court regarding whether he was resisting arrest, thereby justifying the use of force. However, whether Petitioner was "actively resisting" is only one factor to consider within the entirety of the officers' circumstances in determining whether their limited use of force was reasonable. As the Court stated in *Graham*, the determination as to excessive force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or

attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citation omitted). In short, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* The Eleventh Circuit applied these legal standards and the *Graham* factors to this qualified immunity appeal.

The Eleventh Circuit properly viewed the surveillance video and discussed the uncontested circumstances, which included Petitioner's serious and heinous crime committed, his attempt to flee the scene after slashing the victim's throat, the reasonableness of the officers' perception that Petitioner posed a risk to public safety given that he was armed, bloody, of large stature and attempting to flee, and the need for some force in making the arrest to prevent any further threat. The appellate court correctly held as a matter of law that given the totality of the circumstances as perceived by the officers at the time of the arrest, the use of some force was reasonable and did not violate the Constitution. There is no reason to disturb that holding in this specific case.

Petitioner argues that the Eleventh Circuit did nothing more than watch the same video and disagree with the factual findings of the lower court. This is not the case. What the Eleventh Circuit did find was that, as a matter of law when reviewed from the perspective of a reasonable officer on the scene trying to capture a fleeing murderer, the officers acted reasonably in using

force to arrest Petitioner. In so holding, the Eleventh Circuit stressed that it must take the facts in the light most favorable to Petitioner, but because he remembered nothing about the events and could not rebut the officers' testimony, all the court had before it was surveillance video, along with Petitioner's deposition testimony and medical records and sworn firsthand testimony from the officers and their experts. *Id.* at 1116.

The court emphasized that it would not necessarily accept the officers' version of events, but it had to examine the video footage to see if it was consistent with their sworn testimony. *Id.* at 1118, *citing Scott*, 550 U.S. at 372, *Flythe v. District of Columbia*, 791 F.3d 13, 19 (D.C. Cir. 2015). It could not simply accept what the footage could conceivably show, and thus the district court erred in concluding that the video was inconclusive and therefore material facts existed. The trial court could not just take Petitioner's word what was in the video; he had to present evidence showing the existence of a material fact to overcome immunity. He had to show the officers violated clearly established law through more than just speculative accusations and contradicted allegations. This approach by the Eleventh Circuit was entirely appropriate and consistent with *Scott* and the long-established reasoning in the Eleventh Circuit and other sister courts of appeals.

As stated in *Scott*, the Eleventh Circuit could not accept assertions, such as the manufactured ones Petitioner continues to make to this Court, that were flatly contradicted the surveillance video. *See Beshers*

v. Harrison, 495 F.3d 1260, 1262 n.1, *citing Scott*, 550 U.S. at 372. In so holding, the Eleventh Circuit found that based on the uncontroverted evidence in the video, which was not inconsistent with the officers' sworn testimony, Petitioner did not initially comply with the officers' instructions. *See Hinson*, 927 F.2d at 1120. As a matter of law, the court of appeals viewed the video in conjunction with all the other evidence in this case and concluded that the officers were entitled to qualified immunity. There is no basis for certiorari review of that holding in this specific case.

Looking at all the circumstances objectively through the eyes of the officers at the time, as the court was required by law to do, the Eleventh Circuit properly found that Hinson posed an immediate threat to the officers and the public. Given the obvious time lapses in the surveillance video, which contradict Petitioner's notion that he immediately complied with the officers' commands, the Eleventh Circuit held that a "reasonable officer could feel a compelling need to apply force" to get Hinson under control, particularly since he was armed, bloody and fleeing the scene of a brutal murder he just committed. *See id.*

The Eleventh Circuit accepted that officers Anderson and Bias struck Hinson, but only after he did not immediately comply with their commands, a fact shown in the video without any evidence to contest it. *See id.* Some force was therefore necessary to gain compliance from Hinson and prevent any possible harm to the officers or the public. The force was reasonable and the injuries were *de minimis.*

All the officers knew for sure was that Hinson had just slashed a man's throat "for no apparent reason" and left him in a pool of his own blood while Hinson attempted to flee the scene and get away from witnesses and law enforcement. The officers, in the moment, had no way to know what further threat Hinson posed, especially once they realized he had a knife and was not immediately complying with their commands and in fact could have been merely feigning whatever compliance he may have appeared to be evincing. This was not just a "disagreement" with the district court on factual issues; this was blatantly presented by the evidence and completely uncontested with any admissible evidence. As a matter of law, Petitioner failed to overcome the officers' entitlement to qualified immunity on his Fourth Amendment claim. This legal holding was entirely consistent with longstanding precedent; certiorari review is unwarranted.

Notably, Petitioner's entire argument is based on an alleged "fact issue" as to whether he was resisting arrest. There is no mention of whether the officers were deliberately indifferent to Hinson's medical needs. That is for good reason. What the videotaped post-arrest interviews showed, along with the uncontested medical records, was that Hinson's injuries were *de minimis*. Under *Graham*, the minor nature of the injuries is one factor that shows that there was no excessive force and qualified immunity applied to the officers' actions. Petitioner himself admitted that he never asked for medical assistance, and any claim that his injuries were serious is flatly contradicted by the video and

medical evidence.[8] In fact, the post-arrest evidence simply supports the holding that, as a matter of law, the officers did not violate a clearly established constitutional right by using excessive force in arresting Hinson.

Unlike the cases cited by Petitioner, this is not a case of "evidence sufficiency" and whether Petitioner had evidence that would create a material fact for a jury. Petitioner had *no evidence* in this case to rebut the officers' sworn testimony, only a surveillance video which does not support his claims and does not contradict any of the officers' statements. Neither Petitioner nor the district court could simply say the video is inconclusive or may conceivably present a fact issue for a jury; Petitioner had to present evidence creating a material fact, otherwise the officers were entitled to qualified immunity as a matter of law. With material evidence on only one side, the Eleventh Circuit had to view the video to determine whether it could rebut the officers' entitlement to immunity. It could not. This case therefore differs from other cases

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[8] The video shows conclusively that Hinson was coherent during the interviews, was not bleeding or behaving in a way that would suggest a serious medical need, and even described how he stabbed the victim. It therefore makes sense that the Petition does not challenge the Eleventh Circuit's holding as to deliberate indifference to serious medical needs; these allegations were blatantly contradicted by the video footage of the post-arrest interviews, and thus *Scott* dictates that the Eleventh Circuit had to take the facts in light of the video interview footage. So, according to the Petitioner, the Eleventh Circuit had no jurisdiction despite having jurisdiction.

where evidence was presented on both sides of the qualified immunity issue.

II. There is No Split in Authority.

Petitioner also argues that the Eleventh Circuit's decision in this case, and its decisions dating back decades, demonstrates that the court disregards this Court's rules regarding "collateral orders," and also conflicts with the decisions of sister circuit courts of appeals. Even if that were true, which it is not, this would not be the case to decide that issue and potentially overturn decades of established law in the Eleventh Circuit. There is no direct split between this specific case, which lines up with *Scott*, and dissimilar cases in other circuits. This specific case involves a convicted murderer who had no evidence to overcome qualified immunity, and therefore the officers were entitled to immunity as a matter of law.

Petitioner highlights *Johnson v. Clifton*, 74 F.3d 1087 (11th Cir. 1996), *Cottrell v. Caldwell*, 85 F.3d 1480 (11th Cir. 1996), and *McMillian v. Johnson*, 88 F.3d 1554 (11th Cir. 1996), all decided decades ago, as being both in line with this case and in conflict with this Court's law on qualified immunity and "collateral orders." This is incorrect and it does not provide a basis for the Court to review the Eleventh Circuit's decision in this fact-specific, much different case. In *Johnson*, the Eleventh Circuit simply held the lower court's order regarding whether a public official could have believed his conduct was lawful based on clearly established law was a final, collateral order that could be reviewed on appeal. This ruling as a matter of law is uncontroversial. *Johnson*, 74 F.3d at 1087.

The appellate court then reasoned that in making a summary judgment ruling based on qualified immunity, the district court must determine whether there is a genuine issue of material fact as to whether the defendant's conduct violated clearly established law. *Johnson*, 74 F.3d at 1087. That ruling is appealable and necessitates a review of the material fact issues to determine if qualified immunity should apply as a matter of law. *See id.* In this case, Hinson had no memory and no evidence and raised no material facts at all; the Eleventh Circuit, like the Court did in *Scott*, had to review the video footage and the officers' uncontested evidence to determine if qualified immunity applied as a matter of law.

Cottrell's reasoning is similar to *Johnson's* in that the Eleventh Circuit simply held that it can determine whether the evidence would violate clearly established law to determine if qualified immunity applies. The court can review "core qualified immunity issues" independently of the final judgment rule's exceptions found in 28 U.S.C. § 1292, and that includes determining whether there were material facts to overcome the defendants' entitlement to qualified immunity. *See Cottrell*, 85 F.3d at 1484-85. The district court in this case viewed the surveillance footage and found that it "could" present material facts to demonstrate that the officers violated clearly established law and thus qualified immunity would not apply. This denial of summary judgment was reviewable by the Eleventh Circuit and it could view the videotape to determine whether it was enough to overcome immunity, given that Petitioner had no other material evidence. This was not in conflict with this

Court's precedent, and the Eleventh Circuit's decades-old precedent should not be disturbed in this case.

Lastly, Petitioner cites another 1996 Eleventh Circuit decision in *McMillian v. Johnson*, 88 F.3d 1554 (11th Cir. 1996), as being in conflict with this Court's precedent. Again, the Eleventh Circuit held in *McMillian* that the court's determination of whether the defendants were entitled to qualified immunity required it to determine whether a reasonable official would have known that his actions violated clearly established law, and therefore the appellate court had to determine the relevant facts at issue. *Id.* at 1562. The Eleventh Circuit based this conclusion on the longstanding admonition in *Anderson* that to be clearly established, "the law that the government official allegedly violated must have earlier been developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place, that 'what he is doing violates federal law.'" *Lassiter v. Alabama A&M Univ.*, 28 F.3d 1146, 1149 (11th Cir. 1994), *quoting Anderson*, 483 U.S. at 640.

None of these decades-old Eleventh Circuit cases has ever been cited or challenged as an outlier in the qualified immunity analysis or as being in conflict with this Court's controlling precedent. In any event, this case differs from other qualified immunity cases in that here, the analysis is in line with *Scott* and turns on whether the officers' actions were objectively reasonable in light of the circumstances they faced at the time and the video surveillance footage, without any other material evidence presented by Petitioner.

See also Quinette v. Reed, 2020 WL 864889 (11th Cir. 2020) (under *Scott*, appellate court would review video in the light depicted by the footage where it obviously contradicted plaintiff's story); *David v. Edwards*, 779 Fed. Appx. 691, 694 (11th Cir. 2019) (same); *Benjamin v. Thomas*, 766 Fed. Appx. 834, 837 (11th Cir. 2019) (appellate court reviewed camera footage and disregarded plaintiffs' affidavits when they were not present at the scene of the shooting). As a matter of law, in light of the video and the officers' uncontradicted sworn statements, the Eleventh Circuit held that in this case the district court erred and the officers were entitled to immunity. This is not a case that would justify certiorari review.

Petitioner's assertion that this case should be reviewed because the Eleventh Circuit's analysis is "irreconcilable" with its sister circuits is misplaced. Petitioner cites a long chain of cases from other circuits where the qualified immunity analysis turned on different circumstances than in this case, making this case an inappropriate vehicle to determine how the Eleventh Circuit's overall approach to reviewing denials of qualified immunity may or may not differ with its sister courts. In *McGrew v. Duncan*, 937 F.3d 664 (6th Cir. 2019), for example, the Sixth Circuit unremarkably held that it could only review issues of law on a qualified immunity appeal, but then stressed that the plaintiff could get to a jury only if she could create a *genuine* fact issue. *See id.* at 669-70.

Unlike this case, in *McGrew* the officers asked the appellate court to go *outside the record* and make factual findings. *See id.* Here, the Eleventh Circuit had

to review the record, with no evidence presented by Petitioner, in the light presented by the video surveillance footage and interview footage, as well as the officers' sworn statements to determine whether the amount of force used was reasonable or if it violated clearly established law. The Petitioner's support for his version of the facts was not only absent, his allegations were contradicted by the record that was before the district court.

Similarly, in *Leiser v. Kloth*, 933 F.3d 696 (7th Cir. 2019), the Seventh Circuit held that the defendants could not interpose disputed factual issues into their argument, but the appellate court had to review *de novo* whether the defendants violated clearly established law. Moreover, if one side concedes the other's facts, the appellate court can review the order denying qualified immunity. *See id.* Here, the officers' facts were either conceded or could not be contradicted by Petitioner, and there was video footage that supported the officers' testimony and blatantly contradicted the Petitioner's unsupported allegations. The Court's decision in *Scott* dictated that there was no material evidence demonstrating that the officer violated clearly established law when they quickly and safety arrested a fleeing murderer. This case is not conflicting and does not present the same circumstances as the other circuits cited by Petitioner.

Petitioner also cites the Eighth Circuit's recent decision in *Thompson v. Dill*, 930 F.3d 1008, 1012 (8th Cir. 2019), for the proposition that the appellate court cannot review whether the record contains a material issue of fact for trial. However, this means

there must be a *disputed* issue of material fact. *See id.* at 1011. The court also held that "[r]eversal of denial of qualified immunity is warranted 'where the record *plainly forecloses the district court's finding of a material dispute.*" *Id. at* 1012, *citing Raines v. Counseling Assocs., Inc.*, 883 F.3d 1071, 1074 (8th Cir. 2018), *and Scott*, 550 U.S. at 380 (emphasis added). That is exactly the case here. This case thus differs from the so-called "conflicting" cases cited by Petitioner.[9] *See also Ralston v. Cannon*, 884 F.3d 1060, 1064-65 (10th Cir. 2018) (stating that appellate court did not have jurisdiction to review district court's pure evidence sufficiency ruling that there was *record evidence presented by plaintiff* to show an intent to interfere with his free exercise rights); *Garver v. Brandt*, 584 Fed. Appx. 393 (9th Cir. 2014) (district court held there were material fact issues in the record as to what the social workers were told before removing child, and therefore decision was purely based on evidence presented by parties); *Martinez v. Simonetti*, 202 F.3d 625 (2d Cir. 2000) (appellate court could not review district court's denial of immunity based on *genuine* conflicting evidence, including officers' depositions and evidence that the plaintiff was badly hurt).

Likewise, in *Cady v. Walsh*, 753 F.3d 348 (1st Cir. 2014), there was evidence *on both sides* that prevented the appellate court from reviewing whether there was

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[9] In *Thompson*, the appellate court found that there was body camera evidence corroborating the plaintiff's facts and contradicting the officer's version of facts. *See id.* at 1014. The opposite is true here.

material evidence that could overcome qualified immunity. The plaintiff even had an expert witness that conflicted with the defendants' expert. *Id.* at 351-52. Unlike this case, in *Cady* there was a mountain of disputed material evidence presented by both parties such that the appellate court could not overturn a finding that the evidence was sufficient to create fact issues as to qualified immunity. In other words, the First Circuit could not simply re-weigh the evidence and do nothing more on appeal.

Two cases buried within Petitioner's long string citation in support of his "split of authority" argument, *Fuentes v. Riggle*, 611 Fed. Appx. 183 (5th Cir. 2015), and *Blaylock v. City of Philadelphia*, 504 F.3d 405 (3d Cir. 2007), are instructive in their discussions of *Scott* and demonstrate that Petitioner's case does not create a split of authority. In *Fuentes*, the Fifth Circuit held that it lacked jurisdiction to review the officer's claim that the factual dispute was not genuine, given the parties' differing firsthand accounts, and it went on to differentiate *Scott* in dicta. *Fuentes*, 611 Fed. Appx. at 190-91. The court interpreted *Scott* as altering the standard for review when a videotape is involved, noting that jurisdiction was assumed in *Scott* because "undisputed documentary evidence … contradict[ed] [the] plaintiff's factual account." *Id.* at 191. Unlike *Scott* and this case, in *Fuentes* there was no "undisputed, contemporaneous recording of the disputed events." *Id.* Nonetheless, the appellate court recognized that if there was such a recording, *Scott* would dictate that the appeals court would have jurisdiction on appeal to review the video for itself to

determine if the officers' actions were objectively reasonable.

Similarly, the Third Circuit in *Blaylock* held, unremarkably, that questions of pure evidence sufficiency when there is genuine conflicting evidence in the record are not reviewable on appeal, but the court went on to note that *Scott* allows an appellate court to review a videotape to determine whether the district court erred in its conclusions as to material fact issues. *See Blaylock*, 504 F.3d at 413-14. If an undisputed videotape contradicts the plaintiff's allegations, as it does in this case, the appellate court can independently review the video footage to determine if the officers' actions were objectively reasonable. *See id.* at 413. This is because the plaintiff must raise a *genuine* issue of fact, and an objective, undisputed recording of the events tells the true story. *See id.* (*quoting Anderson*, 477 U.S. at 247-48). Here, as in *Scott* but unlike *Fuentes* and *Blaylock*, the appellate court "had before it a videotape of undisputed authenticity depicting all of the defendant's conduct and all of the necessary context that would allow the Court to assess the reasonableness of that conduct." *Id.* at 414. Nothing about Petitioner's specific case conflicts with any other circuit decision.

This is therefore a much different case than any case Petitioner cites as demonstrating a "split of authority." Here, the Eleventh Circuit conducted its analysis in line with *Scott* and judged the officers' actions under an objectively reasonable standard in light of the circumstances before them in the moment and the video footage, which supported their sworn

statements and either conflicted with or did not support Petitioner's hearsay version of events. *See also Plumhoff,* 572 U.S. at 773 (holding that the court of appeals properly exercised jurisdiction under *Scott*). In other words, this was not a case where the plaintiff did not present enough evidence that his version of events actually occurred; here there was *no evidence* to contradict the officers' testimony as supported by the surveillance footage (as well as post-arrest interview footage and medical records). *See Culosi v. Bullock*, 596 F.3d 195, 201 (4th Cir. 2010); *Barham v. Salazar*, 556 F.3d 844, 845 (D.C. Cir. 2009) (claim to qualified immunity depended on resolving disputed factual evidence); *Underwood v. Barrett*, 924 F.3d 19, 20-21 (under *Scott*, court had to view evidence in light of the videotape, where it contradicts plaintiff's story). The evidence here was completely one-sided and told only one story.

III. This Case is a Poor Vehicle to Resolve the Issues Raised in the Petition.

Even if the Eleventh Circuit misinterpreted and misapplied *Johnson* almost 25 years ago (which it did not), this would not be the case to review that interpretation on qualified immunity analysis. This case involved a fleeing, bloody murderer and the officers who risked their lives to stop and arrest him. Under the circumstances, as shown by the video and uncontested testimony, the officers acted reasonably in using minimal force to arrest the suspect, causing *de minimis* injury to him. To allow cases like Petitioner's to overcome the officers' entitlement to immunity from

suit would allow any plaintiff, without firsthand knowledge, to simply present video footage and ask the court to speculate on what it might show, based only on concocted, implausible accusations, and then claim the court's take on the video is unreviewable no matter how obviously wrong.

Moreover, accepting Petitioner's view would insulate from qualified immunity appeals all district court orders consisting of only one sentence—"the court hereby finds that genuine issues of material fact preclude summary judgment, therefore the motion is denied." This is not the law. Respondents moved for summary judgment with a mountain of evidence (including the video) and, unlike other cases, here the Petitioner responded with nothing to overcome immunity. The district court erred in its review of the video and hearsay allegations as a matter of law and, like in *Scott*, the appellate court had to reverse. Even if Hinson was correct in asserting there is a circuit court split of authority—which he is not—the fact remains that the Eleventh Circuit got it right. It therefore makes no sense to grant certiorari review when the Court could just as easily resolve the split in a future case where a circuit court gets it wrong.

In the end, Petitioner is simply asking the Court to review an opinion with which he disagrees. This does not warrant certiorari review. *See*, *e.g.*, *Salazar-Limon*, 137 S. Ct. at 1278 ("We may grant review if the lower court conspicuously failed to apply a governing legal rule. … [but] we rarely grant review where the thrust of the claim is that a lower court simply erred in applying a settled rule of law to the facts of a particular

case."). Petitioner has not presented any genuine conflict with this Court's precedent; to the contrary, the Eleventh Circuit's opinion is consistent with the Court's decisions in *Scott* and *Plumhoff*. In fact, in *Plumhoff* the Court answered the precise question posed by Petitioner regarding the jurisdiction of appellate courts, and this case does not demonstrate any need to revisit the Court's holdings in *Scott* or *Plumhoff*. Review is not justified and the Petition should be denied.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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