No. 19-889

Supreme Court of the United States

KAUFMAN COUNTY, TEXAS
MATTHEW HINDS
Petitioners

v.

EUNICE J. WINZER
Respondent

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

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESTATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

Every federal circuit has held that police officers are not entitled to summary judgment on the qualified-immunity defense if there are genuine issues of material fact in dispute as to "what actually happened" in the moments leading up to the conduct in question. The Fifth Circuit faithfully applied this clearly established precedent. In the absence of any conflict with any other circuit, should this Court re-write the summary-judgment standard of review for qualified-immunity cases?

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COUNTER-STATEMENT OF THE CASE

On April 27, 2013, Gabriel Winzer was riding his bicycle in his neighborhood in Kaufman County, Texas. ROA.497. At the time, there were several Kaufman County sheriff's deputies and Texas Department of Public Safety state troopers in the neighborhood. ROA.497. Although there is evidence that Gabriel was unarmed, did not have anything in his hands, did not wave his hands in any way, and did not suggest that he was reaching for something, several deputies and one state trooper—all of whom were between 90 and 500 yards away—fired multiple shots at Gabriel, striking him in the chest, shoulder, and upper back. ROA.281, 286, 292, 298, 304, 498. After they shot him, the officers then tased him multiple times as well. ROA.499. Gabriel died as a result of multiple gunshot wounds. ROA.507.

Multiple civil-rights lawsuits were filed against the law enforcement officers and government agencies involved, which were ultimately consolidated into the underlying proceeding. ROA.130, 147. This conditional cross-petition arises out of excessive-force and failure-to-train claims brought by Gabriel's mother, Eunice Winzer, against one of the shooters, Matthew Hinds, and against his employer, Kaufman County, Texas.

In the district court, Hinds filed a motion for summary judgment in which he argued that he was entitled to qualified immunity because his actions were reasonable under "clearly established law." ROA.241–273. The district court agreed and granted Hinds's motion. ROA.639–643. And because the

district court concluded that no constitutional violation had occurred, the district court also granted Kaufman County's motion for summary judgment on Winzer's failure-to-train claim. ROA.645–655.

A majority of the judges on the Fifth Circuit, however, concluded that the district court made "myriad" and "multifarious" errors in its analysis of the summary-judgment record. Pet.Appx. at 28a, 31a. Following a thorough discussion of the evidence and the well-established standard of review, the majority concluded that "a jury could find that the use of deadly force was unreasonable if it credited and drew reasonable inferences from the Winzer's account." *Id.* at 32a.

But unlike its detailed review of the evidence addressing the reasonableness of Hinds's actions, the majority devoted only a single paragraph to the consequential issue of whether his conduct was prohibited by "clearly established law." Without discussing any case law or statutory authorities, it summarily concluded that, under this Court's "exacting standard," the law at the time did not place the unreasonableness of Hinds's conduct "beyond debate." *Id.* at 33a.

As a result, the Fifth Circuit affirmed the district court's summary judgment on Winzer's excessive-force claim against Hinds, but reversed and remanded Winzer's failure-to-train claim against Kaufman County. *Id.* at 33a.

REASONS FOR DENYING THE WRIT

Having demonstrated that there are genuine issues of material fact in dispute with regard to *what actually happened* and *what the officers knew or should have known* before they opened fire on Gabriel Winzer, this case required nothing more than the application of the well-established standard of review for summary judgment of the qualified-immunity defense, which the Fifth Circuit faithfully applied. And because its opinion does not conflict with the holdings of this Court or any other circuit court of appeals, this Court should deny certiorari.

I. The Fifth Circuit correctly applied the well-established standard for summary-judgment review of the qualified-immunity defense.

A. Federal appellate courts unanimously hold that summary judgment on qualified immunity is not appropriate when there is a factual dispute over *what actually happened*.

The Fifth Circuit correctly held that the district court erred when concluding that Petitioners were not entitled to qualified immunity as a matter of law because a genuine issue of material fact remains in dispute with regard to *what actually happened* on the day of the incident in question. Contrary to the assertions in the petition, nothing in recent—or any—opinions from this Court or any circuit court suggest that summary judgment is appropriate under such circumstances. Astonishingly, Petitioners *concede* that the question of whether Gabriel Winzer was the proper suspect is "highly disputed." Pet. at 16. They

further acknowledge that the Fifth Circuit "adopted the Respondents' characterization of the events." This is not reversible error; this is strict compliance with this Court's precedent, which requires at this stage of a proceeding, "the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). The fact that this Court admonished the Fifth Circuit in *Tolan* for *not* following this standard suggests that the panel majority was certainly well-aware of the law on this issue and faithfully applied it.

Indeed, such a holding is consistent with the Fifth Circuit's own precedent, specifically, its 2018 opinion in *Mangieri v. Clifton*, in which it held that a district court simply cannot make a determination of the reasonableness of an officer's activities "without settling on a coherent view of what happened in the first place." 29 F.3d 1012, 1016 & n.6 (5th Cir. 1994). Every other circuit court applies a similar version of this rule. *See Estate of Lopez v. Gelhaus*, 871 F.3d 998, 1021 (9th Cir. 2017); *Curley v. Klem*, 499 F.3d 199, 208 (3d Cir. 2007); *Arrington v. United States*, 473 F.3d 329, 339 (D.C. Cir. 2006); *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1312 (10th Cir. 2002); *Mitchell v. Randolph*, 215 F.3d 753, 755 (7th Cir. 2000); *Vathekan v. Prince George's County*, 154 F.3d 173, 179 (4th Cir. 1998); *Thomas v. Roach*, 165 F.3d 137, 143 (2d Cir. 1999); *Crumpton v. Morris*, 112 F.3d 513 (8th Cir. 1997); *McKinney v. DeKalb County, Ga.*, 997 F.2d 1440, 1443 (11th Cir. 1993); *Apostol v. Landau*, 957 F.2d 339, 342 (7th Cir. 1992); *Prokey v. Watkins*, 942 F.2d 67, 73 (1st Cir. 1991); *Jackson v. Hoylman*, 933 F.2d 401, 403 (6th Cir. 1991).

Here, the Fifth Circuit's majority opinion clearly explained how the evidence in this case does not provide such coherence:

> The central error is the district clerk's failure to credit [Gabriel's father's] testimony, instead adopting the officer's characterization of the events preceding the shooting. This alone is reversible error. …
>
> The district court [also] ignored facts in the record casting doubt on whether a reasonable officer would have concluded that the 'black man cycling towards the officers was the same black man who had so brazenly fired upon them' earlier. or instance, Hinds had informed [another officer] that the suspect who fired the shots was "wearing a brown shirt." In fact, the officers repeatedly informed each other that the suspect was in a "brown shirt." The man on the bike, however, was wearing a blue jacket. Further, the officers had no indication at all that the dangerous suspect, who had fired a shot at Hinds and [another officer] earlier, had a bicycle. Moreover, the man on the bike was over 100 yards away and there had been numerous civilians in the area throughout the encounter. A jury could conclude that a reasonable officer would not have determined that Gabriel was the dangerous suspect.

Pet.App. at 28a–29a. In light of these obvious inconsistencies, the Fifth Circuit correctly recognized that if a factual dispute exists about what actually occurred, there is necessarily a factual dispute about

how a reasonable officer would have responded to the occurrence. Petitioners' strenuous advocacy for their version of the facts may be appropriate before a jury but has no place at the summary-judgment stage of the proceedings. (*See* Pet. at 17–19).

In sum, Petitioners appear to suggest that this Court should adopt a new summary-judgment standard for law-enforcement officers simply because they are often presented with "chaotic and especially tense situations." Pet. at 15. But the primary reason that law-enforcement officers are hired in the first place is to deal with such scenarios. And the reason that Congress enacted section 1983 in the first place was to provide a disincentive for persons "acting under color of state law" from using their power to abridge the constitutional rights of private citizens—particularly minorities. *See Adickes v. S. H. Kress & Co.,* 398 U.S. 144, 162–63 (1970) (recognizing that the law was orginally titled the "Ku Klux Klan Act" and that it was "intended to counteract and furnish redress against state laws and proceedings, and customs having the force of law, which sanction…wrongful acts"). In direct contrast to the stated purpose of this statute, Petitioners' requested holding would effectively result in *total* immunity for *all* individual defendants in *all* excessive-force cases because—for obvious reasons—everyone accused of using excessive force *always* offers self-serving testimony to explain that he or she acted reasonably. This Court should summarily reject this self-serving request for a tacit judicial usurpation of a nearly-150-year-old statute, especially given that it was enacted by Congress to guarantee the our most fundamental Constitutional rights.

B. None of the authorities on which Petitioners rely are analogous to the facts of this case.

The description of the authorities in section III of the petition actually demonstrate the *correctness* of the panel majority's opinion, as Petitioners effectively concede that they involve facts that are not even remotely similar to those present here.

— In *Manis v. Lawson,* 585 F.3d 839, 842 (5th Cir. 2009); *Reese v.* Anderson, 926 F.2d 494, 497 (5th Cir. 1991); *Young v. City of Killeen, Tex.*, 775 F.2d 1349, 1351 (5th Cir. 1985); an officer shot a suspect from point-blank range when the suspect, who was sitting in a car, disobeyed the officer's orders to keep his hands in the air;

— In *Ontiveros v. City of Rosenberg,* 564 F.3d 379, 381 (5th Cir. 2009) an officer shot a suspect from point-blank range when the suspect—who *undisputedly* had threatened to use deadly force earlier in the day—ignored the officer's command to "let me see your hands" and instead reached into a boot at chest level;

— In *Ballard v. Burton*, 444 F.3d 391, 402 (5th Cir. 2006), an officer shot a suspect from ten-to-fifteen feet away after they witnessed him firing multiple shots in the air with a rifle, and refused to put down his rifle in accordance with the officers' instructions;

— In *Ramirez v. Knoulton*, 542 F.3d 124, 127 (5th Cir. 2008), officers shot a suspect who was directly in front of them and clearly holding a

handgun, after he put his hands on his hips, then brought his hands together in front of his waist;

— In *Salazar-Limon v. City of Houston*, 826 F.3d 272, 275 (5th Cir. 2016), an officer shot a suspect who, after a physical altercation with the officer, was walking away from the officer, ignoring the officer's commands, and reaching into his waistband;

— In *Mullenix v. Luna*, 136 S. Ct. 305, 309 (2015) an officer shot an intoxicated fugitive, who was attempting to avoid capture through high-speed vehicular flight, had twice threatened to shoot police officers, and was moments away from encountering another officer while driving towards him at over 100 miles per hour;

— In *United States v. Sharpe*, 470 U.S. 675, 679 (1985), the question at issue was the legitimacy of an investigative stop of a vehicle that had evaded officers for more than 20 miles;

— In *Estate of Lawson v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008) and *Untalan v. City of Lorain*, 430 F.3d 312, 315 (6th Cir. 2005), officers shot a suspect who threatening to stab officers who were only 7 to 12 feet away from them; and

— In *Mullins v. Cyranek*, 805 F.3d 760, 762 (6th Cir. 2015) and *Wilson v. Meeks*, 52 F.3d 1547, 1553–44 (10th Cir. 1995) it was *undisputed* that the suspect shot by police had a gun with his

> finger on the trigger, and was within close range of the officers at the time of the shooting;

Contrary to Petitioner's representation, the Fifth Circuit's analysis does not create any conflict with existing precedent from this Court, itself, or any other circuit court of appeals. A diligent search of all federal cases has not revealed a single reported or unreported decision in which a court has concluded that it was objectively reasonable for a law-enforcement officer to use deadly force on a suspect when the *only* source of information to suggest that the suspect is armed makes that determination from a distance of between one and five football fields away. Nor has any reported or unreported decision suggested that a suspect at this distance poses an "immediate threat" that would justify the use of deadly force—as a matter of law. As such, Petitioners' assertion that the reasonableness of the officers' actions is "clearly established" entirely unpersuasive.

CONCLUSION

The Fifth Circuit's proper application of well-established precedent does not any dangerous new standard as Petitioners lament. Instead, the Fifth Circuit's opinion is faithful to the summary-judgment standard that applies in *all* federal cases: judgment as a matter of law is not appropriate when genuine issues of material fact as to *what actually happened* remain in dispute. Because Petitioners have identified no conflict with the opinions of this Court or any court of appeals, and cannot articulate any public-policy justification for their narrow and self-serving

interpretation of "clearly established law," this Court should deny the petition for writ of certiorari.

Respectfully submitted,

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May 5, 2020