

No. _____

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

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EDELINE JULMISSE PROSPER,
as Personal Representative
of the Estate of Junior Prosper,

Petitioner,

v.

ANTHONY MARTIN,

Respondent.

—◆—

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Respondent tased Junior Prosper three times and then shot him three times, killing him. Pet. App. 4a. Petitioner, Prosper’s widow, sued Respondent under 42 U.S.C. § 1983, claiming Respondent used excessive force.

In affirming the district court’s grant of summary judgment to Respondent, the Eleventh Circuit stated that security video did not create a genuine question of material fact because the video did “not *contradict* [Martin]’s statements; at best, it fail[ed] to *corroborate* them.” Pet. App. 20a. The panel therefore accepted the facts told by Respondent, the only living eyewitness. Pet. App. 2a.

In *Tolan v. Cotton*, 572 U.S. 650, 656 (2014), this Court held that “courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment.” In *Scott v. Harris*, 550 U.S. 372, 380 (2007), this Court held that courts should adopt a nonmovant’s version of facts unless “blatantly contradicted by the record, so that no reasonable jury could believe it,” directing courts to reject any “visible fiction” and view “the facts in the light depicted in the videotape.” Courts have struggled to apply this Court’s guidance to excessive-force cases involving video evidence that may be open to differing interpretations, leading to inconsistent results. The question presented is:

Under *Scott* and *Tolan*, must courts implement the traditional summary judgment requirement that all evidence be considered in the light most favorable to the nonmovant when the record includes video evidence?

PARTIES TO THE PROCEEDINGS

Petitioner, Edeline Julmisse Prosper, Personal Representative of the Estate of Junior Prosper, was plaintiff in the district court and appellant in the Eleventh Circuit.

Respondent, Anthony Martin, was the defendant in the district court and the appellee in the Eleventh Circuit.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Prosper v. Martin*, No. 17-20323-CIV (S.D. Fla. June 21, 2018) (Order and Opinion denying motion to dismiss third amended complaint) (Pet. App. 64a-83a);
- *Prosper v. Martin*, No. 17-20323-CIV (S.D. Fla. July 1, 2019) (Opinion and Order granting summary judgment issued December 16, 2019) (Pet. App. 25a-63a);
- *Prosper v. Martin*, 989 F.3d 1242 (11th Cir. 2021) (Order and Judgment affirming summary judgment, issued March 5, 2021) (Pet. App. 1a-24a);

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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The Eleventh Circuit’s opinion (Pet. App. 1a-24a) is reported at 989 F.3d 1242. The Southern District of Florida’s opinion (Pet. App. 25a-63a) is available at 2019 WL 2734041.



JURISDICTION

The court of appeals entered judgment on March 5, 2021. Pet. App. 1a. It denied rehearing on April 29, 2021. Pet. App. 82a. This Court has jurisdiction under 28 U.S.C. § 1254.



CONSTITUTIONAL AND STATUTORY PROVISIONS AND FEDERAL RULES INVOLVED

The Fourth Amendment provides, in relevant part: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. CONST. amend. IV.

The Seventh Amendment provides, in relevant part: “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved[.]” U.S. CONST. amend. VII.

Section 1983 provides: “Every person who, under color of any statute, ordinance, regulation, custom, or

usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” 42 U.S.C. § 1983.

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STATEMENT

I. Petitioner’s Encounter With Police

In the early morning hours of September 28, 2015, Respondent shot and killed Junior Prosper next to Interstate-95 near N.W. 119th Street in Miami, Florida. *See* Pet. App. 2a. Prior to the shooting, witnesses alerted the Miami-Dade Police Department that Prosper’s taxi had been involved in an accident. Pet. App. 3a. When Respondent arrived at the scene of the accident, a tow truck operator, who witnessed the initial accident, pointed towards Prosper, who had exited the vehicle on foot and was walking southbound along the highway. Pet. App. 3a. Respondent approached Prosper, first in his marked police vehicle and then on foot. Pet. App. 3a-4a. When Respondent got within arm’s length of Prosper, he put his hands on Prosper’s shoulder. Pet. App. 28a.

Because Prosper was killed during the altercation, Petitioner relies on video evidence taken from the nearby Biscayne Air building (Video) to describe the

encounter. Pet. App. 4a. In the video, a dark figure, now known to be Respondent, catches up to another dark figure, Prosper, and walks with him for a few steps. Video.04:13:28-04:13:31. They then appear to reach out and grab each other at the waist level, the Respondent's weight shifts toward his rear, and away from the highway and towards the bushes. Video.04:13:31-04:13:35. Prosper takes one step with each leg toward the highway, with the men appearing to rotate counterclockwise around the point of contact between their arms. Video.04:13:33-04:13:36. They lose their footing, and Prosper falls back-first into the bushes, as Respondent topples over him and out of view. Video.04:13:36-04:13:38.

Less than two seconds later, Respondent emerges from the bushes, moves toward the edge of the highway, and turns to face the bushes again. Video.04:13:39-04:13:41. An extremity extends from Respondent toward where Prosper (still out of view) fell into the bushes. Video.04:13:45-04:14:08. The extremity then extends further into the brush at a different angle. Video.04:14:08.

Respondent backs away from Prosper, who remains out of view, and heads towards the highway while a round light appears near the end of his right arm as he walks. Video.4:14:26-4:14:30. Respondent takes several steps along the highway towards the camera, and a blob begins to move through the brush, down and to the right, along the fence line, appearing more clearly at the 4:14:37 mark. Video.4:14:30-4:14:39. Respondent walks into the

brush toward the blob, the round light flashing near his waist as he walks. Video.4:14:37. The blob suddenly and briefly materializes into the shape of a person walking upright—now known to be Prosper—then swiftly disappears downward from view into a large black blob on the ground again. Video.4:14:40. Prosper appears to move slowly, as Respondent moves at a faster pace and eventually reaches Prosper. Video.4:14:38-4:14:42.

Standing over Prosper, Respondent's left shoulder dips down, reaching toward Prosper with his left arm, as Prosper appears to move while still on the ground. Video.4:14:42. Respondent stands over Prosper, shifting his weight, and a white light periodically flashes from Respondent's torso area. Video.4:14:44-4:14:47. At one point, it appears that Respondent brings his arms together, raises them up, and aims something in Prosper's direction. Video.4:14:47. Simultaneously, at least two flashes appear at the ground near Prosper. Video.4:14:47-4:14:48.

Respondent's figure continues to stand over Prosper's, with occasional moving flashes coming from, presumably, the end of Respondent's arm, indicating otherwise-indecipherable movement of Respondent in relation to Prosper. Video.4:14:53-4:14:57. At some point, Prosper seems to slightly distance himself from Respondent who then bends at the waist, dipping his right shoulder with his arm extended and moves toward where Prosper is on the ground. Video.4:14:57. Prosper's figure then rises and staggers backward briefly, as Respondent drops

something from his hand and swiftly moves in the same direction, his arm still outstretched towards Prosper, ultimately appearing to land on top of Prosper in a bush. Video.4:14:59-4:15:01. Their movements become mostly indecipherable and undistinguishable, except for visible movement from the lighter colored blob—Respondent—as he stays on top of Prosper, indicating a possible struggle. Video.4:15:13-4:15:23. Finally, Respondent rises, leaving Prosper—a dark motionless blob—behind on the ground and unsteadily walks away. Video.4:15:01-4:15:24.

II. Procedural Background

Petitioner sued Respondent under 42 U.S.C. § 1983, alleging that Respondent unreasonably used excessive force against her husband Prosper in violation of the Fourth Amendment. Pet. App. 2a, 35a, 64a. Respondent moved for summary judgment, asserting qualified immunity. Pet. App. 2a, 36a.

A. Parties' Contentions On Summary Judgment

1. Petitioner's Version Of Facts

Petitioner asserts that the facts show an unreasonable use of force by Respondent against Prosper. Pet. App. 5a-7a. Petitioner claims that Respondent initiated contact and that Prosper never struck, or attempted to strike, Respondent. Pet. App. 5a. Petitioner maintains that a reasonable jury could

have watched the video and concluded that “no punches were thrown and the parties simply ‘lost their balance and fell into the bushes along the embankment.’” Pet. App. 28a.

Once Respondent regained his footing after the fall into the embankment, he took out his taser, which had an attached light. Pet. App. 29a. Petitioner asserts that Respondent “gained distance” from Prosper and deployed the taser three times as Prosper lay in the bushes. Pet. App. 5a; *see* Pet. App. 29a. Petitioner interprets the video to show Respondent swiftly recover from the fall and immediately deploy his taser towards Prosper, who then crawls into the bushes. Pet. App. 65a.

Petitioner alleges that after being tased, Prosper crawled through the vegetation in the embankment, and that although Respondent had walked away from the initial tasing, he then pursued Prosper in the embankment once more. Pet. App. 5a. According to Petitioner, Respondent caught up to Prosper, who was on the ground, as Respondent Martin stood over him and either tased or shot Prosper. Pet. App. 5a-6a, 30a.

Petitioner claims that a struggle ensued, during which Respondent tackled and repeatedly beat Prosper with his fists. Pet. App. 6a; *see also* Pet. App. 74a (in rejecting the motion to dismiss, the district court agreed that the video may partially depict this use of force: “Prosper then rises, staggers briefly—maybe wounded—and is tackled by Defendant”). Petitioner alleges that during this attack, Respondent’s

finger became lodged in Prosper's mouth, and that Respondent Martin discharged his firearm soon thereafter without attempting to dislodge the finger through means of nonlethal force. Pet. App. 6a.

2. Respondent's Version Of Facts

The court found that Respondent issued several commands through his patrol car speaker that Prosper did not heed. Pet. App. 3a. According to Respondent, Prosper was "stumbling" and "looked like a zombie almost," as he walked along I-95. *Id.* Respondent assumed Prosper's behavior to be indicative of intoxication. Pet. App. 27a. Respondent claimed he put a hand on Prosper's shoulder in an attempt to redirect Prosper from the highway, after which Prosper struck him, prompting Respondent to strike back. Pet. App. 4a, 28a.

After the first physical altercation, Respondent claimed that he "lost sight of Prosper, but could hear him trying to escape through the vegetation." Pet. App. 29a. He then deployed his taser a second time. Pet. App. 30a. Prosper then moved along the embankment but fell on the ground, allowing Respondent to catch up and stand over Prosper. Pet. App. 5a, 29a. Respondent alleged that Prosper disobeyed his verbal commands, and so he deployed his taser again. Pet. App. 5a, 30a.

Respondent alleged that Prosper lunged at him, bit down on his finger, and pulled him down to the ground thereafter, prompting him to fire his first gun shot. Video.4:14:48-57; Pet. App. 5a; Pet. App. 32a-33a. He alleged he fired two more times until Prosper released his finger. Pet. App. 5a. The courts below accepted Martin's allegation that Prosper's attacks justified deadly force. Pet. App. 22a-23a. Pet. App. 46a.

B. The District Court Denied The Motion To Dismiss After Drawing Inferences From The Video In Petitioner's Favor

In denying the motion to dismiss, the district court rejected Martin's interpretation of the video, Pet. App. 64a, noting that several material facts and inferences contradicted the narrative of a justified shooting.

The Biscayne Air Video's depiction of the confrontation between Defendant and Junior begins at timestamp 4:13:31, when Defendant approaches Junior and the two fall to the ground. (*See* Biscayne Air Video 4:13:31–38). One person then stands up and gestures at the ground for several seconds. (*See id.* 4:13:39–4:14:30). The video then shows Junior fleeing as Defendant pursues him. (*See id.* 4:14:35–40). Junior falls to the ground as Defendant approaches. (*See id.* 4:14:41). While Junior is on the ground, Defendant, standing over Junior's prone body, raises his arms toward Junior several times. (*See id.* 4:14:46). While Defendant's arms are raised

and pointing toward Junior, light flashes, either from a flashlight or perhaps from Defendant's gun. (*See id.* 4:14:47). Junior then rises, staggers briefly—maybe wounded—and is tackled by Defendant. (*See id.* 4:14:57–4:15:01). Junior does not appear on the video again, which ends with Defendant walking away unsteadily. (*See id.* 4:15:20–47). The Biscayne Air Video *clearly* shows Junior on the ground at least once, with Defendant approaching and then standing over him. (*See id.* 4:14:47). Given Defendant's posture and the flash of light, it may even show Defendant shooting Junior while Junior was on his knees or stomach, as the TAC suggests.

Pet. App. at 73a-75a (emphasis added).

C. The Excluded Experts

The lower courts excluded part of the testimony of Dr. Michael A. Knox, Ph.D., a shooting scene reconstruction expert. Dr. Knox would have testified that the video and other evidence was inconsistent with Respondent's claim that Prosper punched Respondent in the face, that Prosper was not standing or otherwise approaching Respondent at the time of the taser, and that the video and other evidence did not show that Prosper was biting Respondent at the time of the shots. The courts based their exclusion on the premise that expert testimony is unhelpful when it says no more than what a jury can see and conclude for

itself. Order Excluding Experts at 7, *Prosper v. Martin*, No. 1:17-cv-20323-CMA (S.D. Fla. 2019), ECF No. 147. The courts also excluded the entire opinion of Dr. Bruce Kohrman, M.D., that Prosper had suffered a neurological impairment and was not intoxicated. *Id.*

D. The District Court Granted Summary Judgment, And The Eleventh Circuit Affirmed

In its summary judgment opinion, the district court discussed the parties' disputed assertions based on the video, as well as both the Petitioner's and Respondent's versions of facts. The court found Petitioner's interpretation of the video to insufficiently create a factual dispute and granted summary judgment. Pet. App. 42a.

In affirming the district court's grant of summary judgment to Respondent, the Eleventh Circuit stated that it would accept "the facts as told by the only living eyewitness of those critical two minutes—Defendant Martin." Pet. App. 2a. The court affirmed summary judgment after concluding that Petitioner made "too much of the video." Pet. App. 19a. The court found the Respondent's use of force to be reasonable, adopting Respondent's version of the facts that Prosper punched Respondent, was standing as Respondent deployed his taser, and was biting down on Respondent's finger when he deployed the fatal gunshots. Pet. App. 17a.



SUMMARY OF ARGUMENT

Courts disagree over how to interpret video evidence at summary judgment where parties dispute which facts can be drawn from video evidence. This is often an outcome-determinative disagreement in deadly force cases where no eyewitness is left alive to contradict the movant's justification for lethal force. When a video can easily be construed in favor of the defendant, many courts emphasize that the summary judgment standard still requires courts to draw reasonable inferences in favor of the plaintiff so long as it provides more than a scintilla of evidence to warrant a plaintiff verdict. Other courts quickly defer to video evidence whenever it is available, approaching the video in light of what the court sees, rather than in light of the plaintiff's assertions. The Court should grant the petition to lend guidance on the proper treatment of video evidence at the summary judgment stage, especially when the issue is deadly force—a circumstance in which a fact finder's interpretation of video often determines the outcome.



REASONS TO GRANT THE PETITION

I. There Is Substantial Confusion Among The Lower Courts Regarding Use Of Video Evidence At The Summary Judgment Stage.

Courts and judges vigorously disagree on the proper way to handle video evidence, leading to

inconsistencies and competing interpretations under *Scott* and *Tolan*. *Tolan* established that courts may not grant qualified immunity at summary judgment by resolving genuine disputes of fact in favor of the moving party. *Tolan v. Cotton*, 572 U.S. 650, 656 (2014). In *Scott v. Harris*, 550 U.S. 372, 380 (2007), this Court held that courts must adopt a nonmovant’s version of facts even when there is video evidence available, unless that video evidence “blatantly contradicts” the nonmovant’s account. This Court has repeatedly emphasized that video evidence does not fundamentally alter the summary judgment standard, and that courts should divert from their duty to adopt the nonmovant’s factual account only in extreme cases where video evidence utterly discredits that account.

But courts have struggled in evaluating video evidence at the summary judgment stage in cases where the defendant officer has killed the only other eyewitness. Judge Willett models the approach in which courts assess the events depicted in a video in light of the nonmovant whenever possible, with the primary question being whether a reasonable jury could find in the nonmovant’s favor. *Joseph ex rel. Est. of Joseph v. Bartlett*, 981 F.3d 319, 326 (5th Cir. 2020). He explains that courts should “prioritiz[e] the video evidence” when drawing facts from the record but should still “view the facts and draw reasonable inferences in the light most favorable to the petitioners.” *Id.* Here, Judge Willett aligns with *Scott*, *Tolan*, and traditional principles of summary judgment: “in qualified immunity cases, which often

involve competing versions of events, we take the Petitioner’s version of the facts, unless that version is blatantly contradicted by the record, so that no reasonable jury could believe it.” *Id.* Such an approach posits that inconclusiveness or ambiguity does not allow the court to ascertain its own version of facts as long as “the video does not preclude the possibility” of what the nonmovant asserts. *Id.* In such cases, courts should construe all facts and inferences in the nonmovant’s favor.¹ *Id.*

Other courts have similarly held that when a video can be construed in favor of the movant, the summary judgment standard still requires courts to draw reasonable inferences in favor of the plaintiff-nonmovant. *See, e.g., Cantu v. City of Dothan*, 974 F.3d 1217, 1226, 1232 (11th Cir. 2020) (noting that “the dash camera video does not answer all of the questions. There are ambiguities and lack of clarity about some of the details” Thus, summary judgment was precluded); *Aguirre v. City of San Antonio*, 995 F.3d 395, 409 (5th Cir. 2021) (interpreting *Scott v. Harris* to narrowly hold that “the normal rules of summary judgment do not apply when undisputedly accurate video evidence blatantly contradicts a nonmovant’s version of events so thoroughly that it could not reasonably be believed.”); *Smith v. Finkley*, No. 20-1754, 2021 WL 3660880, at *16 (7th Cir. Aug. 18, 2021) (“So long as there is video evidence, the dissent reasons, the

¹ Judge Willett did not, however, cite *Guerra* or critique its interpretation of *Scott*.

historical facts are preserved and not debatable. We disagree.”).

The court below, however, evaluated the video footage according to a different approach, in which the court may focus on the movant’s version of facts and test it against the video. Pet. App. 2a. Under this approach, the Eleventh Circuit deemed the video too blurry to corroborate the Plaintiff’s account and instead accepted the movant’s version of the facts. *Id.* Other courts have similarly deferred to video footage whenever it is available, construing facts in light of the video without particular reference to the nonmovant’s version of facts and often consistent with the movant’s version of facts. In *Nelson v. City of Battle Creek, Mich.*, for example, the court of appeals cited *Scott* explaining: “When there is a video record of the incident, we take the facts as they appear in the video, which may not necessarily be in the light most favorable to the nonmoving party.” 802 F. App’x 983, 985 (6th Cir. 2020). The *Nelson* dissent, however, emphasized that since a reasonable juror could watch the video and accept either the plaintiff’s or defendant’s version of events, the court was required to find for the plaintiff. *Id.* at 992 (Moore, J., dissenting). When presented with video evidence at the summary judgment stage, some courts even use it to construct their own version of facts. See *Guerra v. Bellino*, 703 F. App’x 312, 316 (5th Cir. 2017) (Facts are “usually” viewed in nonmovant’s favor, except when “a videotape of the incident exists,” in which case the court should view the facts “in the

light depicted by the videotape.”) (quoting *Scott*, 550 U.S. at 380-81).²

A court following Judge Willett’s approach, in which all reasonable inferences must be drawn from video evidence, largely ignores whether the video is consistent with or even corroborates the movant’s story. The Willett approach filters the video through the nonmovant’s version of events, drawing all reasonable inferences in their favor. In *McCue v. City of Bangor*, the video in question was consistent with the officer’s story that the deceased plaintiff was resisting arrest, warranting a fatal hog-tie. 838 F.3d 55 (1st Cir. 2016). In the moments leading up to the hog-tie, the deceased plaintiff “growl[ed] and mutter[ed] intermittently” but did “not seem to kick or flail as noticeably as he did” earlier in the video. *Id.* at 59. The First Circuit affirmed the holding of the lower court because a jury *could* find that the officers used unconstitutional excessive force after McCue stopped resisting. *Id.* at 63. But the court found the issue of the officer’s justification to be “difficult, if not impossible,” to determine from the video. *Id.*

In *McCue*, the video’s inconclusivity preserved a genuine issue of fact, but other courts describe inconclusivity as a fatal flaw. The Eighth Circuit affirmed the lower court’s grant of qualified immunity and described the plaintiff’s misstep: “by pointing to

² In his dissent, Judge Graves criticized the court for failing to ask whether a reasonable jury could believe nonmovant’s version of events and for choosing instead to rely on its own interpretation of an “inconclusive” video. *Id.* at 319 (Graves, J., dissenting).

the inconclusiveness of the video, Smith has failed to set forth specific facts showing that there is a genuine issue for trial.” *Smith v. Kilgore*, 926 F.3d 479, 483 (8th Cir. 2019). The court also articulated, “[t]he poor video quality does not create a genuine issue for trial.” *Id.*

As highlighted by the conflicting opinions of courts and panels as well as the vigorous back-and-forths between majority opinions and dissents, the approach that a court takes in evaluating video evidence in deadly force cases is often controversial and outcome-determinative. If a plaintiff brings an action on behalf of a decedent, the odds of success substantially differ depending on whether the court follows Judge Willett’s approach in *Joseph* or an approach more akin to *Guerra* and *Battle Creek*. Thus, plaintiffs’ fates will differ depending on the circuit or even panel they get.

Due to these conflicting approaches, plaintiffs are confused as to how to evaluate the viability of their § 1983 claims, and judges are in strong disagreement as to how to address those claims at the summary judgment stage. The Court should grant this petition to lend guidance on the proper treatment of video evidence at the summary judgment stage when an officer asserts qualified immunity in response to an excessive-force claim, especially when that force was deadly—a circumstance in which video evidence may likely play a pivotal role in supporting the nonmovant’s version of events.

II. There Is An Urgent Need For This Court To Clarify The Proper Handling Of Video Evidence At Summary Judgment.

Video evidence increasingly appears as crucial evidence in excessive force cases and will only continue to do so as body-worn cameras, dashboard cameras, and other forms of police surveillance make their way into local, state, and federal police policies. Seven states mandate police use of body cameras, and a study by the Wisconsin Department of Justice, for example, reported that 88% of responding agencies indicated using at least one form of recording device among their officers. Bureau of Justice Information and Analysis, Wisconsin Department of Justice, Body-worn and Dashboard Camera Use and Trends in Wisconsin Police Agencies (January 2021). Even in 2016, well before the protests of 2020 that led to public outcries for police accountability, a substantial proportion of general-purpose law enforcement agencies in the United States had acquired some sort of police recording device: 47% had body-worn cameras, 69% had dashboard cameras, and 38% had personal audio recorders. Shelley Hyland, United States Department of Justice, Bureau of Justice Statistics, Body-Worn Cameras in Law Enforcement Agencies, 2016, at 1 (Nov. 2018).

The widespread presence of cameras has created silent and unassuming witnesses of civil rights disputes. With that, courts have struggled to decipher the proper way to evaluate video evidence at the summary judgment stage. Currently, some courts are

viewing the facts in light of the video and relying on their own interpretations to determine its contents. Instead, courts should only be deciding whether reasonable inferences can be drawn from the video so that a jury could reasonably find for the nonmovant. In other words, the well-established summary judgment standard permits courts to weigh in on what the video could show, not what they believe it shows in fact.

When a court draws factual inferences from the video in favor of the movant, it alters the summary judgment standard and assumes the jury's fact-finding role. Adherence to the established summary judgment standard ensures that courts preserve a civil litigant's constitutional right to a jury trial. *See* U.S. CONST. amend. VII. When viewing video evidence, "[r]easonable people can look at the same video and see different things." Martin Schwartz, *Analysis of Videotape Evidence in Police Misconduct Cases (pt. 1)*, 25 *TOURO L. REV.* 857, 863 (2009). The right to a jury trial is not altered by the existence of a video, and courts should not determine what an admittedly unclear video does and does not show. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). This principle is especially critical where the officer has killed the only other witness.

These challenges presented by video evidence as they relate to civil rights claims are not going

anywhere. To ensure that Rule 56 continues to preserve jury access when genuine disputes of material fact exist, the Court should grant the petition and provide guidance on the proper treatment of video evidence in a summary judgment record.

III. Petitioner’s Case Should Go To A Jury To Resolve Genuine Disputes Of Material Fact Regarding The Reasonableness Of Force.

Only a jury should resolve an excessive force claim where video depicts different things to different people; only a jury should resolve Respondent’s claim that the video is *too* blurry. The Eleventh Circuit determined that the video depicts “two persons engaged in a two-minute-long struggle in the dark beside a busy highway,” but in affirming summary judgment without viewing the video in the light most favorable to Petitioner, the Eleventh Circuit misapplied the summary judgment standard:

“Ordinarily, we would be required to decide a case of this posture on the plaintiff’s version of the facts. In this case, however, Plaintiff’s account is based on a blurry surveillance video that depicts little more than two persons engaged in a two-minute-long struggle in the dark beside a busy highway. We must therefore take the facts as told by the only living eyewitness of those critical two minutes—Defendant Martin.”

Pet. App. 2a.

The Eleventh Circuit's interpretation of the video left unaddressed Respondent's contradictory statements about multiple material circumstances, which diminish his credibility further and evince his guilty conscience. Contradictory statements about material circumstances, in conjunction with the video, could lead a jury to disbelieve Respondent's fabricated justifications for the use of deadly force against Prosper, an unarmed man who suffered a medical emergency.

For example, on the issue of the need for force, Respondent testified that Prosper backed away from him, Respondent's Deposition at 84, *Prosper v. Martin*, No. 1:17-cv-20323-CMA (S.D. Fla. 2019), ECF No. 103-8, but Respondent told investigators that Prosper fled then turned toward Respondent aggressively. Respondent's Statement at 5-6, *Prosper v. Martin*, No. 1:17-cv-20323-CMA (S.D. Fla. 2019), ECF No. 103-9. On the issue of the need for deadly force, Respondent made statements in support of medical treatment the day after killing Prosper: "[Prosper] had been hit in the face a few times and was bleeding from [his] mouth when he [bit] [Respondent's] left index finger and wound [up] not let[ting] go." Respondent's Statement to Medical Personnel at 68, *Prosper v. Martin*, No. 1:17-cv-20323-CMA (S.D. Fla. 2019), ECF No. 102-16. Respondent does not claim in the litigation that Prosper had been hit in the face a few times or that Prosper was bleeding from the mouth before the bite. These and other contradictions, in addition to the

video, could lead a jury to disbelieve Respondent's justifications.

Prosper suffered a brain injury while operating a taxi, and a reasonable jury could find from the video and other evidence that Prosper exhibited no aggression that would warrant force.³ The video in *Prosper v. Martin* says different things to reasonable people, to the district court, to the parties, and to the experts; and a court cannot resolve factual disputes from blurry video or conflicting inferences at summary judgment. See *Ramirez*, 716 F.3d at 368-369. A reasonable jury could find Respondent's justification discredited by video and other evidence and return a verdict in favor of Petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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³ Respondent could foresee that repeatedly punching a man in the face without justification could result in injury to himself. Cf. *County of Los Angeles v. Mendez*, 137 S. Ct. 1539 (2017).