

No. _____

IN THE
Supreme Court of the United States

PAMELA QUINLAN,
PETITIONER,
v.

JOSEPH P. LOPINTO, III, *SHERIFF, IN HIS OFFICIAL
CAPACITY*; ROBERT F. STOLTZ, JR., *DEPUTY*

RESPONDENTS.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the United States Fifth Circuit cases of *Guerra v. Castillo*, 22-40196 (5th Cir. Sep 7, 2023) and *Wallace v. Taylor*, 22-20342 (5th Cir. Apr 24, 2023), which stand for the proposition that qualified immunity requires dismissal of a malicious prosecution claim in which the alleged misconduct occurred prior to the Supreme Court's decision of *Thompson v. Clark*, are contrary to the established jurisprudence of the United States Supreme Court and should be abrogated by this Court.

PARTIES TO THE PROCEEDINGS

The Petitioner is Pamela Quinlan, the plaintiff and plaintiff-appellant in the courts below. The Respondents are Sheriff Joseph P. Lopinto, III, in his official capacity, and Deputy Robert F. Stoltz, Jr., the defendants and defendant-appellees in the courts below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Pamela Quinlan, respectfully petitions for a writ of certiorari to the United States Court of Appeal for the Fifth Circuit in *Quinlan v. Lopinto, et al.*, 23-30490 (5th Cir. 1/9/24); which decision affirmed a decision of the United States District Court for the Eastern District of Louisiana granting a motion for summary judgment and dismissing Petitioner's claim of malicious prosecution under 42 U.S.C. § 1983 due to a patently erroneous application of the doctrine of qualified immunity. Petitioner seeks reversal of the Fifth Circuit's decision and an order remanding the matter to the District Court for further proceedings.

OPINIONS BELOW

The judgment of the United States Court of Appeal for the Fifth Circuit is a non-precedential decision of *Quinlan v. Lopinto, et al.*, 2019-2415 (Fed. Cir. 5/10/21), which summarily affirmed the decision of the United States District Court for the Eastern District of Louisiana in the matter of *Quinlan v. Jefferson Parish Sheriff's Office, et al.*, No. 22-cv-889 (E.D. La. 4/25/23).

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeal for the Fifth Circuit was entered on January 9, 2024. Appx. at 1-2. A timely application for rehearing was denied by the Fifth Circuit on March 26, 2024. Appx. at 21-22. This Court's jurisdiction is pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional and statutory provisions under consideration are as follows:

United States Constitution: Fourth Amendment. Appx. at 23.

42 U.S.C. § 1983. Appx. at 23-24.

STATEMENT OF THE CASE

Petitioner filed the above captioned action on April 4, 2022, alleging malicious prosecution claims under 42 U.S.C. §1983 and under Louisiana law, which claims stemmed from her November 4, 2020 arrest by Respondent, Deputy Robert Stoltz (“Dep. Stoltz”) on behalf of Respondent, Sheriff Robert Lopinto (collectively, “the JPSO”) for asserted violations of La. R.S. 14:126.1, False Swearing and La. R.S. 14:133, Filing False Public Records. Appx. at 5. On April 18, 2022, Petitioner filed an Amended Complaint asserting an additional legal basis for the federal malicious prosecution claim under the Fourth Amendment to the United States Constitution. Appx. at 30-31.

Petitioner’s Section 1983 Claim was predicated solely upon a claim for malicious prosecution, specifically recognized by this Court’s holding *Thompson v. Clark*, 142 S. Ct. 1332 (2022), decided on April 4, 2022. Appx. at 10, 31. Admittedly, Petitioner did not file a claim for false arrest and acknowledges that such a claim was barred by statute of limitations as of November 4, 2021, and was therefore barred at the time of filing of this suit.

On March 29, 2023, Respondents filed their Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(C) or, alternatively, for Summary Judgment Pursuant to Fed. R. Civ. P. 56 (“Motion to Dismiss/Motion for Summary Judgment”), within which Respondents raised the doctrine of qualified immunity on the part of Dep. Stoltz. Appx. at 5-6, 13.

On April 25, 2023, the District Court granted Respondents’ Motion for Summary Judgment dismissing Petitioner’s Section 1983 malicious prosecution claim with prejudice, effectively holding that Petitioner’s Section 1983 claim was barred by the application of the doctrine of qualified immunity. Appx. at 19. The District Court, without explicitly so noting, based its dismissal upon the recent Fifth Circuit holding in the case of *Wallace v. Taylor*, 22-20342 (5th Cir. 4/14/23), which decision was rendered during the pendency of the Respondents’ Motion to Dismiss/Motion for Summary Judgment. Appx. at 14-15. As the District Court did not otherwise conduct an analysis of the application of qualified immunity to the merits of Petitioner’s claims, the District Court effectively provided that any arrest (regardless of whether an analysis on the merits would yield that such arrest was not lawfully supported by probable cause) raised solely within the context of a malicious prosecution claim, which arrest occurred prior to the United States Supreme Court holding in *Thompson v. Clark*, 142 S. Ct. 1332 (2022), could not be raised in a claim under Section 1983 due to the application of the doctrine of qualified immunity. *See id.*

On May 23, 2023, Petitioner filed a motion to alter or amend judgment under Federal Rules of Civil Procedure Rule 59(e). The District Court denied

Petitioner's motion to alter or amend the judgment on June 21, 2023.

On July 20, 2023, Petitioner filed her notice of appeal. In her Original Brief to the Fifth Circuit, Petitioner specifically argued the inapplicability of the provision of *Wallace* pertaining to the pre-*Thompson v. Clark* malicious prosecution claims to the facts of this case; and that said portion of the *Wallace* holding should be limited to the facts of that particular case.

In response, Respondents raised the even more recent Fifth Circuit holding of *Guerra v. Castillo*, 22-40196 (5th Cir. Sep 7, 2023). Specifically, Respondents cited the *Guerra* case as an extension of the dicta contained in *Wallace*, in which the Court again provided that the doctrine of qualified immunity applied to require dismissal of any malicious prosecution claim in which the alleged conduct occurred prior to the United States Supreme Court holding *Thompson v. Clark*.

Admittedly, the facts and circumstances of the *Guerra* case are materially analogous to the facts and circumstances of this case, in that *Guerra* involved a retaliatory prosecution of the plaintiff in that case, in which the criminal accusations were alleged to have been intentionally false. 22-40196 at pp. 2-6. Within the context of the knowing use of false accusations in support of plaintiff's arrest, the plaintiff in *Guerra* brought two different Section 1983 claims: one for false arrest, the other for malicious prosecution under *Thompson v. Clark*. 22-40196 at p.5. In *Guerra*, the Fifth Circuit, reviewing the Rule 12(b) dismissal of plaintiff's claims, found that qualified immunity did not apply to support the dismissal of plaintiff's false

arrest claim, noting explicitly that the knowing use of false accusations to support an arrest was a violation of an established right precluding the application of qualified immunity. 22-40196 at pp. 9-14. However, the Court in *Guerra* also found that the doctrine of qualified immunity did apply to require dismissal of the malicious prosecution claims, citing the holding in *Wallace* for the proposition that malicious prosecution claims were not established law at the time of the alleged occurrence, notwithstanding the fact that said claim was predicated upon the very same factual scenario, the knowing use of false accusations to support an arrest otherwise lacking in probable cause that precluded dismissal of the claim for false arrest. See 22-40196 at pp. 14-15.

While the *Guerra* case did not result in the outright dismissal of all of plaintiff's Section 1983 claims, as plaintiff in that case had "properly" brought a timely claim for false arrest; the application of *Guerra* to this case would require such a dismissal, as Petitioner herein has admittedly not asserted a timely claim for false arrest, and has brought her Section 1983 claim exclusively as a claim for malicious prosecution as provided under *Thompson v. Clark* (which malicious prosecution claim was not recognized in the Fifth Circuit prior to the April 4, 2022 decision of *Thompson v. Clark*). See Appx. at 30-31. In apparent accordance with this analysis, on January 9, 2024, a panel of the Fifth Circuit affirmed the holding of the District Court via summary disposition. Appx. at 1-2.

The Fifth Circuit denied petitioner's Application for *En Banc* Rehearing on March 26, 2024.

Appx. at 21-22. This Application for Writ of Certiorari follows.

ARGUMENT

Recent Fifth Jurisprudence Providing that Qualified Immunity Requires Dismissal of Section 1983 Malicious Prosecution Claims Involving Allegations that Pre-Date the Supreme Court Ruling of *Thompson v. Clark*; Violates Established Jurisprudence of this Court.

For reasons more fully set forth below (and with utmost respect), to the extent that the case of *Guerra v. Castillo*, 22-40196 (5th Cir. Sep 7, 2023) and its predecessor case of *Wallace v. Taylor*, 22-20342 (5th Cir. Apr 24, 2023) stand for the proposition that qualified immunity requires dismissal of a malicious prosecution claim in which the alleged misconduct occurred prior to the Supreme Court's decision of *Thompson v. Clark*, those cases are contrary to the established jurisprudence of the United States Supreme Court and should be abrogated by this Court.

A) Background Jurisprudence on Section 1983 Claims, False Arrest and Malicious Prosecution Claims, Application of Qualified Immunity Defense.

As an initial matter, Petitioner unquestionably has a right under Section 1983 against unreasonable seizure (arrest) in violation of the Fourth Amendment to the United States Constitution. As explicitly

recognized and succinctly provided by no less than the Court below in the case of *Winfrey v. Rogers*, 901 F.3d 483 (5th Cir. 2018):

Since *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), it has been clearly established that a defendant's Fourth Amendment rights are violated if (1) the affiant, in support of the warrant, includes "a false statement knowingly and intentionally, or with reckless disregard for the truth" and (2) "the allegedly false statement is necessary to the finding of probable cause." *Id.* at 155–56, 98 S. Ct. 2674.

Winfrey, 901 F.3d at 494 (5th Cir. 2018) (citing *Franks v. Delaware*, 438 U.S. 154, 155–56 (1978)).

Next, qualified immunity protects public officers from suit if their conduct does not violate any “clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). At the summary judgment stage of litigation, the plaintiff must present sufficient evidence to create a genuine dispute of material fact regarding both prongs of the two-prong qualified immunity test. First, he must present evidence that “the facts alleged show the [government official's] conduct violated a constitutional right [prong-one].” *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Second, he must demonstrate that the right “was clearly established [prong-two].” *Id.* Courts “have discretion to decide which of the two prongs of qualified-immunity analysis to tackle first.” *Ashcroft v. Al-Kidd*, 131 S. Ct. 2074, 2080 (2011)

(citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)). In conducting this inquiry at the summary judgment level, the court must look to the evidence before it in the light most favorable to the plaintiff. *Behrens v. Pelletier*, 516 U.S. 299, 309 (1996)).

B) In Light of the Jurisprudence Recognizing the Established Right of a Petitioner to Be Free from Arrest Absent Probable Cause, Recent Fifth Circuit Holdings Directly Conflict with United States Supreme Court Jurisprudence Pertaining to the Principle of Reasonable Notice/Fair Warning as a Basis for the Application of the Doctrine of Qualified Immunity.

In light of the above, the recent Fifth Circuit decisions of *Wallace* and *Guerra*, to the extent that they extend the application of qualified immunity to this case, directly contradicts established United States Supreme Court jurisprudence and the Fifth Circuit’s own jurisprudence. At the outset, it is an unquestioned axiom that the “clearly established right” prong of the qualified immunity analysis is determined by the principle of notice: a right is considered “clearly established” at the time of the alleged misconduct if the defendant was on notice that his or her conduct was unlawful. *Hope v. Pelzer*, 536 U.S. 730, 739-741 (2002); *see Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020). In describing what constitutes sufficient notice to satisfy the “clearly established” prong, this Court in *Pelzer* provides as follows:

As we have explained, qualified immunity operates "to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful." *Saucier v. Katz*, 533 U.S., at 206. **For a constitutional right to be clearly established, its contours "must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, see *Mitchell* [v. *Forsyth*, 472 U. S. 511,] 535, n. 12; but it is to say that in the light of pre-existing law the unlawfulness must be apparent."** *Anderson v. Creighton*, 483 U. S. 635, 640 (1987).

Officers sued in a civil action for damages under 42 U. S. C. § 1983 have the same right to fair notice as do defendants charged with the criminal offense defined in 18 U. S. C. § 242. Section 242 makes it a crime for a state official to act "willfully" and under color of law to deprive a person of rights protected by the Constitution. In *United States v. Lanier*, 520 U. S. 259 (1997), we held that the defendant was entitled to "fair warning" that his conduct deprived his victim of a constitutional right, and that the standard for determining the

adequacy of that warning was the same as the standard for determining whether a constitutional right was "clearly established" in civil litigation under § 1983.

In *Lanier*, the Court of Appeals had held that the indictment did not charge an offense under § 242 because the constitutional right allegedly violated had not been identified in any earlier case involving a factual situation "fundamentally similar" to the one in issue. *Id.*, at 263 (citing *United States v. Lanier*, 73 F. 3d 1380, 1393 (CA6 1996)). The Court of Appeals had assumed that the defendant in a criminal case was entitled to a degree of notice "substantially higher than the "clearly established" standard used to judge qualified immunity" in civil cases under § 1983. 520 U. S., at 263. We reversed, explaining that the "fair warning" requirement is identical under § 242 and the qualified immunity standard. We pointed out that we had "upheld convictions under § 241 or § 242 despite notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights." *Id.*, at 269. We explained:

"This is not to say, of course, that the single warning standard points to a single level of specificity sufficient in every instance. In some circumstances, as when an earlier case expressly leaves open whether a general rule applies to the particular type of conduct at issue, a very high degree of prior factual particularity may be necessary. **But general statements of the law are not inherently incapable of giving fair and clear warning, and in other instances a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though 'the very action in question has [not] previously been held unlawful,' *Anderson, supra*, at 640." *Id.*, at 270-271 (citation omitted).**

Our opinion in *Lanier* thus makes clear that officials can still be on notice that their conduct violates established law even in novel factual circumstances. Indeed, in *Lanier*, we expressly rejected a requirement that previous cases be "fundamentally similar." Although earlier cases involving "fundamentally similar" facts can provide especially strong support for a conclusion that the law is clearly established, they are not necessary to such a finding. The same is

true of cases with "materially similar" facts. Accordingly, pursuant to *Lanier*, **the salient question that the Court of Appeals ought to have asked is whether the state of the law in 1995 gave respondents fair warning that their alleged treatment of Hope was unconstitutional.**

536 U.S. at 739-741 (emphasis added). The holdings of *Wallace* and *Guerra* notwithstanding, the Court below has also expressly applied this concept of "fair warning" in the determination of the "clearly established" right prong of qualified immunity in the recent case of *Bailey v. Iles*, 22-30509 (5th Cir. Aug 25, 2023), which provided as follows:

For a right to be "clearly established," "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). "The defendant's acts are held to be objectively reasonable unless all reasonable officials in the defendant's circumstances would have then known that the defendant's conduct violated the United States Constitution or the federal statute as alleged by the plaintiff." *Thompson v. Upshur Cnty.*, 245 F.3d 447, 457 (5th Cir. 2001) (emphasis in original). **"The central concept is that of 'fair warning': The law can be clearly established 'despite notable factual distinctions between the**

precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights." *Kinney v. Weaver*, 367 F.3d 337, 350 (5th Cir. 2004) (en banc) (quoting *Hope v. Pelzer*, 536 U.S. 730, 740 (2002)).

Id. at p.5 (emphasis added). Indeed, contrary to the aberrant provisions of *Wallace* and *Guerra*, the jurisprudence of the Supreme Court and of the Court below has undoubtedly rejected the proposition that specific factual or legal precedents are required for a right to be "clearly established" in applying qualified immunity: a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question. See *Taylor v. Riojas*, 141 S. Ct. at 53-54.

In this case, the wrongful conduct alleged by Petitioner is the knowing use of false evidence and statements by Defendant, Deputy Robert Stoltz ("Dep. Stoltz"), in support of an arrest warrant that the Defendant was aware was otherwise unsupported by probable cause. It is beyond question that Dep. Stoltz was on notice/had fair warning that his knowing use of false evidence to obtain a warrant for Petitioner's arrest violated Petitioner's right to be free from an arrest unsupported by probable cause. This notice and fair warning was not eliminated, nor diminished in any way, because Petitioner chose to bring her claim under the newly recognized Section 1983 claim of malicious prosecution, as opposed to a claim for false arrest. As such, the Court below was in error in

applying the decisions in the cases of *Wallace v. Taylor* and *Guerra v. Castillo* to find that Respondents were entitled to the application of the doctrine of qualified immunity. With respect, those decisions, to the extent that they stand for the proposition that qualified immunity applies in this case, should be abrogated by this Court and the decision of the District Court should be reversed.

CONCLUSION

Based on the arguments above, the January 9, 2024 decision of the Fifth Circuit affirming April 25, 2023 Judgment, and the Order and Reasons upon which it is based, pertaining to the granting of the defendant's Motion to Dismiss/Motion for Summary Judgment, dismissing Petitioner's claims (and particularly dismissing Petitioner's Section 1983 claims with prejudice) should be reversed; and the case should be remanded back to the District Court for further proceedings.

June 24, 2024

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