

No. 23-617

In The

Supreme Court of the United States

CASONDRA POLLREIS,
Petitioner,
v.

LAMONT MARZOLF,
Respondent.

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

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

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COUNTER STATEMENT OF THE QUESTION PRESENTED

The Petitioner's question presented mischaracterizes the video evidence by stating that it does not "conclusively and comprehensively" capture the underlying events and also mischaracterizes the underlying events as "in dispute." Accordingly, the Respondent's counter statement of the petitioner's question presented is:

1. Is there a 'genuine' factual dispute in this case when both parties agree, and dashcam video clearly shows that (1) an Officer was on the scene alone at night; (2) that Officer was ordered to hold two potentially armed suspects at the scene; (3) an individual approached that Officer from behind and engaged him, which pulled his attention away from the potentially armed suspects he was holding at gun point in front of him; and (4) the individual approaching from behind did not immediately comply with the officer's directive to "get back" and continued to engage the officer from behind?
2. When an officer is on a scene alone, without backup, holding two potentially armed suspects and is approached by an individual from behind which pulls his attention away from the potentially armed suspects in front of him, and the individual approaching from behind does not immediately comply with the officer's directive to "get back," would an objectively reasonable officer believe that his safety is being threatened to the extent that that officer is objectively reasonable in

pointing a taser at the individual who is approaching and engaging him from behind?

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STATEMENT OF THE CASE

On January 8, 2018, Officer Josh Kirmer of the Springdale Police Department responded to a tip that Jennifer Price, who had outstanding warrants¹, was staying with Tomas Silva at 2100 Lynn Street, in Springdale, Arkansas. (Pet. App. 21a). Mr. Silva was known to Officer Kirmer as a gang member and a prior suspect in cases involving guns and drugs. (Pet. App. 21a). During his surveillance of Mr. Silva at 2100 Lynn Street, Officer Kirmer saw two males, one shorter and skinnier than the other, get into a Chevy Cobalt. (Pet. App. 21a). Officer Kirmer radioed this information to other officers in the area, and another officer tried to initiate a traffic stop of the Chevy Cobalt.² (Pet. App. 21a). Mr. Silva fled and eventually wrecked the Chevy Cobalt. *Id.*³ Four occupants, including Mr. Silva, fled the disabled car; two went south and two went north. (Pet. App. 21a). Over the radio, Officer Kirmer requested that a perimeter be set up, and Officer Marzolf responded to this call. (Pet. App. 21a).

¹ While not specifically noted by the District Court, it was an undisputed fact below that Sgt. Kirmer, Officer Gibbs, Officer Verhoeven, and Officer Eubanks were looking for Ms. Price due to outstanding warrants for her arrest and a possible connection to a previous shooting. (Pet. App. 21a).

² It was undisputed below that at this point, based on information from other investigations, officers believed Mr. Silva and Ms. Price were armed. (Pet. App. 22a).

³ The details of this chase include the following: The vehicle accelerated and turned off all its lights. It ran the stop sign at Chapman and 40th. The vehicle then ran up onto the curb while making the turn, driving through the yard of an occupied house. The vehicle was disabled from the impact with the curb and stopped. (Pet. App. 21a).

According to Officer Marzolf's dashcam, he received the dispatch call at time stamp 21:37:07. (*Id.*) He arrived at 40th Street and Luvene Avenue a minute and a half later. (*Id.*) Dispatch instructed Officer Marzolf to drive down to the intersection of Luvene and Lynn Street to watch for the suspects. (21:39:50). (*Id.*) As Officer Marzolf approached the intersection, someone announced over the radio that "the last time we made contact with Tomas, he had a gun." (29:39:29:). (Pet. App. 22a). In response Officer Marzolf said, "Shit." Someone asked over the radio, "is he the one that's on foot?" (*Id.*) Another responded, "Yeah, him and three others, one possibly a female by the name of Jennifer Price. (21:39:56). (Pet. App. 22a).

Almost immediately after that, W.Y. and S.Y. became visible on the dashcam video. (Pet. App. 22a). Officer Marzolf's blue lights were flashing. (*Id.*) W.Y. and S.Y. were on the sidewalk on the east side of Lynn Street slowly walking side-by-side in the direction of Officer Marzolf's patrol car. (*Id.*) They both were wearing hoodies and light-colored pants. (Pet. App. 22a). The boy on the left was larger and taller than the boy on the right. (*Id.*). Officer Marzolf turned on his high beams and angled his car toward the boys. (*Id.*)⁴ He stopped the car and said, "Hey, what are you guys doing?" (Pet. App. 22a). The larger boy responded audibly and pointed past Officer Marzolf, but his response is not audible on the recording. (*Id.*)

⁴ While not specifically noted by the District Court, it was an undisputed fact below that Ofc. Marzolf had difficulty seeing as it was raining in the late evening during wintertime, and his blue lights were flashing. (Pet. App. 22a, 28a).

Officer Marzolf then said, “Hey stop, stop, turn away, turn away from me”. (Pet. App. 23a). W.Y. and S.Y. stopped and turned away from Officer Marzolf with their arms held out to their sides. (*Id.*) At this point, Officer Marzolf entered the frame from the left with his firearm in this right hand pointed at the boys. (*Id.*) (Pet. App. 23a).

Officer Marzolf said, “What are your names?” (21:40:21). (*Id.*) At the same time, Officer Marzolf pulled out his flashlight with his left hand and pointed it at the boys’ backs. (*Id.*) One of the boys (it is unclear which) audibly responded, and Officer Marzolf responded, “Huh?” (*Id.*) The same boy, in a louder voice, clearly said his name. (*Id.*) Officer Marzolf replies, “What?” (*Id.*) The boy reiterated his name a third time. (*Id.*) (21:40:27). Officer Marzolf audibly confirmed the boy’s name, and the boy responded, “Yes, sir.” (*Id.*) Officer Marzolf holstered the flashlight, but his weapon remained drawn and pointed at the boys. (Pet. App. 23a).

Then, a woman later identified as Casondra Pollreis, who is off-screen, says, “Officer, officer, may I have a word with you?” (21:40:33). (*Id.*) Officer Marzolf turned his head and looked behind him, and he lowered his firearm so that it was pointed at the ground. (*Id.*) Ms. Pollreis continued speaking, but the recording does not clearly pick up what she is saying. (*Id.*) Officer Marzolf then spoke into his radio, “45 Springdale, I’ve got [W.Y.] in front of me, I’ve got two juvenile individuals, dark hoodies and pants.” (*Id.*) Sgt. Kirmer responded, “Ok, detain both of those.” (Pet. App. 23a). Officer Marzolf then said to Ms. Pollreis, “Yeah, I can hear you.” (*Id.*). Ms. Pollreis can

be heard speaking with Officer Marzolf, but her words are not clear on the recording. (*Id.*) Officer Marzolf then radioed, “10-9.” Sgt. Kirmer responded, “Detain both of them. Is one taller than the other? The short one should be short and skinny.” (Pet. App. 24a). Officer Marzolf responded, “10-4.” Officer Kirmer then said, “Yeah, hold onto them please.” (*Id.*)

Officer Marzolf then approached the boys and told them to get on the ground. (Pet. App. 24a). His gun was drawn and pointed at them. (*Id.*) They complied. (*Id.*) Officer Marzolf said, “Put your hands out,” and they put their arms out to their sides. (*Id.*) Ms. Pollreis then entered the camera’s view from the left, walking towards Officer Marzolf, and she said, “What happened?” (Pet. App. 24a). Officer Marzolf responded, “Hey, step back.” (*Id.*) While taking a sideways step, she said, “They’re my boys.” (*Id.*) In a louder voice, Officer Marzolf said, “Get back.” (*Id.*) He then stepped towards her, his gun in his right hand still pointed at the boys on the ground. (*Id.*) Ms. Pollreis says, “Are you serious?” (*Id.*) Officer Marzolf responded, “I am serious, get back.” (*Id.*) At the same time, with his gun still pointed at the boys, he drew his taser with this left hand and pointed it at Mr. Pollreis. (Pet. App. 24a). Ms. Pollreis said, “Its OK boys.” (*Id.*). Officer Marzolf holstered his taser but again commanded Ms. Pollreis to get back. (*Id.*) Ms. Pollreis said, “Where do you want me to go?” He responded, “I want you to go back to your house.” (*Id.*) Ms. Pollreis said, “Are you serious?” They’re 12 and 14 years old.” (*Id.*) Officer Marzolf responds, “And I’m looking for two kids about this age right now, so get back in your house.” (*Id.*) Ms. Pollreis said, “Oh, my God. You’re OK guys, I promise.” (*Id.*) Ms. Pollreis

went back to her house and does not appear on the dashcam video again. (Pet. App. 4a).

On October 17, 2018, Ms. Pollreis sued Officer Marzolf for, among other claims, excessive force on behalf of herself. (Pet. App. 29a). On October 22, 2019, Officer Marzolf filed a motion for summary judgment, asserting that qualified immunity barred Ms. Pollreis's excessive force claim. (Pet. App. 29a). On March 13, 2020, the district court entered an order granting qualified immunity for Officer Marzolf, finding that Officer Marzolf's action in pointing his taser in the direction of Ms. Pollreis did not violate clearly established law. (Pet. App. 60a). On April 27, 2023, the United States Court of Appeals for the Eighth Circuit affirmed the district court's order on this issue. (Pet. App. 1a). The Eighth Circuit based its holding on the undisputed evidence in the video that (1) Officer Marzolf was on the scene alone; (2) Officer Marzolf was ordered to hold two potentially armed suspects at the scene; (3) Pollreis approached Officer Marzolf from behind, which pulled his attention away from the potentially armed suspects in front of him; and (4) the event occurred at night. The Eighth Circuit also noted that it is clear on the dashcam video that Pollreis did not immediately comply with Officer Marzolf's directive to "get back." (Pet. App. 9a).

REASONS FOR DENYING THE PETITION

- I. The Petitioner has not identified a conflict in the United States Court of Appeals on the questions presented in this case, nor has she identified an important question of federal law that has not been, but should be, settled by this Court, nor has she persuasively argued that the Eighth Circuit decided this case in a way that conflicts with relevant decisions of this Court.**

Rule 10 of this Court's rules says, "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Ms. Pollreis's argument in favor of this Court granting her petition consists entirely of assertions that the Eighth Circuit made erroneous factual findings as to what facts were undisputed and misapplied properly stated rules of law. Essentially, Ms. Pollreis disagrees with how the Eighth Circuit applied precedents from this Court, namely *Scott v. Harris*, 550 U.S. 372 (2007) to this specific case. In *Taylor v. Riojas*, Justice Alito's concurring opinion stated:

Every year, the courts of appeals decide hundreds if not thousands of cases in which it is debatable whether the evidence in a summary judgment record is just enough or not quite enough to carry the case to trial. If we began to review these decisions

we would be swamped, and as a rule we do not do so.

141 S.Ct. 52, 55 (2020).

This case does not satisfy this Court's criteria for granting review. *Taylor*, 141 S.Ct. at 55 (Alito, J., concurring in the judgment). Ms. Pollreis has not identified a conflict in the United States courts of appeals applicable to the Eighth Circuit's ruling in this case, nor has she identified an important question of federal law applicable in this case that has not been, but should be settled by the Court, nor has she persuasively argued that the Eighth Circuit decided this case in a way that conflicts with relevant decisions of this Court. Instead, she is asking this Court to intervene in order to correct what she thinks is an incorrect result in a single case. This is not a case where either the district court or the Eighth Circuit "...conspicuously disregarded governing Supreme Court precedent...[,"] therefore, this is not a case warranting this Court's review. *Taylor*, 141 S.Ct. at 55 (Alito, J., concurring in the judgment).

II. The question presented by the Petitioner mischaracterizes the video evidence in stating that it does not "conclusively and comprehensively" capture the underlying events; the question presented by the Petitioner also mischaracterizes the underlying events as "in dispute."

In finding that Officer Marzolf's show of force was objectively reasonable, the Eighth Circuit relied on undisputed evidence from the dashcam video that

(1) Officer Marzolf was on the scene alone; (2) Officer Marzolf was ordered to hold two potentially armed suspects at the scene; (3) Ms. Pollreis approached Officer Marzolf from behind, which pulled his attention away from the potentially armed suspects in front of him; and (4) the event occurred at night. In reaching its holding the Eighth Circuit also noted that, “We can also see from the dashcam video that Pollreis did not immediately comply with Officer Marzolf’s directive to “get back.” (Pet. App. 10a). These facts are not disputed by the parties, and the dashcam video clearly shows all of these facts occurring. Therefore, these facts need not be viewed in the light most favorable to the nonmoving party because there is no ‘genuine’ dispute as to those facts. (Pet. App. 10a), *citing Scott v. Harris*, 550 U.S. 372, 380 (2007). Based on these undisputed facts, the Eighth Circuit correctly held that Officer Marzolf’s show of force by pointing his taser in the direction of Ms. Pollreis under these circumstances was objectively reasonable. The Eighth Circuit correctly applied applicable precedent to the what the district court determined the undisputed material facts to be in concluding that Officer Marzolf’s show of force in pointing his taser in Ms. Pollreis’s direction was objectively reasonable; however, Ms. Pollreis now argues that the Eighth Circuit affirmed the district court’s grant of summary judgment in error because it improperly relied on *Scott v. Harris* in drawing factual inferences in Officer Marzolf’s favor where facts were in dispute. Specifically, Ms. Pollreis argues that the Eighth Circuit erroneously drew inferences in Officer Marzolf’s favor with regard to the following two, “factual issues:” (1.) whether and the extent to which Cassis posed a threat to Officer Marzolf, and

(2) whether and the extent to which Cassi complied with his demands. Writ, 18. Ms. Pollreis' argument is based on her assertion that that there is a triable issue of fact; however, as this Court has previously stated, “—the existence, ...of a triable issue of fact—is the kind of issue that trial judges, not appellate judges, confront almost daily. Institutionally speaking, appellate judges enjoy no comparative expertise in such matters.” *Pierce v. Underwood*, 487 U.S. 552, 560–561, 108 S.Ct. 2541, 2547–2548, 101 L.Ed.2d 490 (1988); *id.*, at 584, 108 S.Ct., at 2560 (White, J., concurring in part and dissenting in part) (noting that the “special expertise and experience of appellate courts” lies in “assessing the relative force of ... applications of legal norms”) (internal quotation marks omitted). In fact, the Eighth Circuit correctly considered the undisputed material facts which were determined by the district court in reaching its conclusion that Officer Marzolf’s actions in drawing his taser were objectively reasonable. *Johnson v. Jones*, 515 U.S. 2151, 2159 (8th Cir. 1995); *See also, Stoner v. Watlington*, 735 F.3d 799, 802 (8th Cir. 2013), *citing Lockridge v. Bd. of Trs. of the Univ. of Ark.*, 315 F.3d 1005, 1008 (8th Cir. 2003). The Eighth Circuit and this Court would usurp the district court’s expertise in determining the relevant undisputed facts if it were to now overturn its determination of the undisputed material facts in this case find there were factual disputes underlying the grant of summary judgment in this case.

Specifically, the district court determined that the relevant undisputed material facts in this case are that, while Officer Marzolf had his weapon drawn and pointed at two potentially armed suspects:

Ms. Pollreis, who is off-screen, says “officer, officer may I have a word with you? Officer Marzolf turns his head and looks behind him, and he lowers his firearm so that it is pointing at the ground. Ms. Pollreis continues speaking, but the recording does not clearly pick up what she is saying. Officer Marzolf then speaks into his radio, “45 Springdale, I’ve got [W.Y.] in front of me, I’ve got two juvenile individuals, dark hoodies and pants.: Officer Kirmer responds, “ok, detain both of those.” Officer Marzolf then says to Ms. Pollreis, “yeah, I can hear you.” Ms. Pollreis can be heard speaking with Officer Marzolf, but her words are not clear on the recording. Officer Marzolf then radios, “10-9”. Officer Kirmer responds, “Detain both of them. Is one taller than the other? The short one should be short and skinny.” Officer Marzolf responds, “10-4.” Officer Kirmer then says, “Yeah, hold onto them please.” Officer Marzolf then approaches the boys and tells them to get on the ground. His gun is drawn and pointed at them. They comply. Officer Marzolf says “Put your hands out,” and they put their arms out to their sides. Ms. Pollreis then enters the camera’s view from the left, walking towards Officer Marzolf, and she says, “What happened?” Officer Marzolf responds, “hey, step back.” While taking a sideways step, she says, “They’re my boys.” In a louder voice, Officer Marzolf says, “Get

back.” He then steps towards her, his gun in his right hand still pointed at the boys on the ground. Ms. Pollreis says “Are you serious?” Officer Marzolf responds, “I am serious, get back.” At the same time with his gun still pointed at the boys, he draws his taser with his left hand and points it at Ms. Pollreis. Ms. Pollreis then says, “it’s OK, boys.” Officer Marzolf then holsters his taser and commands Ms. Pollreis to, “get back.” Ms. Pollreis says, “Where do you want me to go?” He responds, “I want you to go back to your house.” Ms. Pollreis retorts, “Are you serious? They’re 12 and 14 years old.”

(Pet. App. 31a). Notably, the petitioner does not dispute any of these facts in her petition for writ of certiorari. The petitioner also concedes that the video evidence does not contradict any of these facts. (Pet. App. 10a). The Eighth Circuit relied on these facts, in a summary fashion, in determining that Officer Marzolf’s pointing of his taser in Ms. Pollreis’ direction was objectively reasonable:

The evidence we rely on to reach our legal conclusion that the momentary seizure was not unreasonable is...that (1) Officer Marzolf was on the scene alone; (2) Officer Marzolf was ordered to hold two potentially armed suspects at the scene; (3) Ms. Pollreis approached Officer Marzolf from behind, which pulled his attention away from the potentially armed suspects in front of him; and (4) the event occurred at

night. In reaching its holding the Eighth Circuit also noted that, “We can also see from the dashcam video that Pollreis did not immediately comply with Officer Marzolf’s directive to “get back.”

(Pet. App. 10a). Therefore, because all of these facts are clearly seen on the video evidence and/or none of these facts are blatantly contradicted by the video evidence, the district court or Eighth Circuit did not draw any factual inferences in Officer Marzolf’s favor, and no material facts are in dispute. Ms. Pollreis’s petition should be denied.

III. The Eighth Circuit correctly decided this case because when the Officer Marzolf pointed his taser in the direction of the petitioner, the law was not clearly established that an objectively reasonable officer faced with the circumstances present in this case would not reasonably believe that his safety was being threatened.

According to this Court’s precedent, at the summary judgment stage, once the court has determined the relevant set of facts and drawn all inferences in favor of the nonmoving party a court’s review of the reasonableness of force “is a pure question of law,” *Mullinax v. Luna*, 136 S.Ct. 305, 307 (2015) (quoting *Scott v. Harris*, 550 U.S. 372, n.8 (2007)). Under this standard set out by the United States Supreme Court, the Eighth Circuit was required to apply the relevant Eighth Circuit precedent to what the District Court determined to be

the relevant set of facts and reasonable inferences in favor of the nonmoving party in order to determine the reasonableness of Officer Marzolf's show of authority in this case. Here, the District Court determined the relevant set of facts and drew all inferences in favor of the Plaintiff (Pwt. App. 29a). The Eighth Circuit correctly relied on those facts and determined that Officer Marzolf's show of authority in wielding his taser was objectively reasonable and not in violation of clearly established law. Ms. Pollreis's petition for this court to reverse that determination should be denied.

With respect to whether Ms. Pollreis posed a threat, the panel majority correctly concluded that, "threats to an officers' safety can justify the use of force,' even if someone is not actively resisting arrest. (Pet. App. 9a), quoting *Brown v. City of Golden Valley*, 574 F.3d 491, 497 (8th Cir. 2009). The panel majority applied the correct standard in determining that Officer Marzolf would reasonably perceive a threat to his safety by judging the reasonableness of the show of force 'from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (Pet. App. 9a), citing, *Loch v. City of Litchfield*, 689 F.3d 961, 965 (8th Cir. 2012)(quoting *Graham v. Conner*, 490 U.S. 386, 396 (1989). Under this standard, the question is not whether Ms. Pollreis remained calm or unthreatening, but, as the panel majority noted, whether an objectively reasonable officer on the scene would be concerned for his safety. (Pet. App. 9a). This question is a question of reasonableness, which is a question of law to be to be decided by the Court. See *Littrell*, 388 F.3d 578, 586 (8th Cir. 2004) & *Scott*, 550 U.S. at 381 n.8.

Based on the facts shown on the video as cited by the panel majority, the confrontation took place at night, in the rain, Officer Marzolf was alone on the scene, and was placed in a position where he had two possible armed suspects in front of him and a third unknown individual approaching from behind who had failed to comply with previous orders to stay back. There is no case factually on point from the Eighth Circuit or the United States Supreme Court which clearly establishes that Officer Marzolf's briefly pointing his taser in Ms. Pollreis's direction under these circumstances violates clearly established law. *See, White v. Pauly*, 580 U.S. 73, 79 (2017).

Notably, there is no case from this Court or the Eighth Circuit at all addressing the objective reasonableness of the mere **pointing** of a taser at an individual and qualified immunity was appropriately granted on that basis alone; however, the case law that does exist from the Eighth Circuit actually demonstrates that Officer Marzolf's actions were objective reasonable.

In *Brown v. City of Golden Valley*, the Eighth Circuit held that, "A threat to an officer's safety can justify the use of force in cases involving relatively minor crimes and suspects who are not actively resisting arrest or attempting to flee." 574 F.3d 491, 497 (8th Cir. 2009). While the Eighth Circuit in *Brown* held that the officer's tasing of a female suspect who was not fleeing or actively resisting was objectively unreasonable because, under the facts in *Brown*, the officer would not reasonably believe his safety was threatened, the Court contrasted the facts

in *Brown* to the facts in *Draper v. Reynolds*, 369 F.3d 1270 (11th Cir. 2004), an 11th Circuit case, which held an officer **did not** use excessive force when he tased a nonviolent, nonfleeing, nonresistant suspect. *Brown*, 574 F.3d at 497. The Eighth Circuit noted the important distinction in *Draper*: that there was only **one** officer on the scene of a late-night traffic stop, while in *Brown*, **four** officers were handling the late-night traffic stop. *Id.* Given that fact (among others), the Eighth Circuit noted that the suspect posed a reasonable threat to the officer on the scene, and therefore the officer's tasing of the suspect was objectively reasonable. *Id.*

This case is comparable to *Draper*, given that Officer Marzolf faced what he reasonably perceived to be a threatening, tense, uncertain, and rapidly evolving situation, late at night, and he was alone on the scene with no back-up. *See Draper*, 369 F.3d at 1277. The reasonableness of this perception is a conclusion of law to be reached by a Court. *Littrell*, 388 F.3d at 586 & *Scott*, 550 U.S. at 381 n.8. This analysis doesn't even take into account the factual distinction in this case that Officer Marzolf **did not tase** Ms. Pollreis, he merely briefly pointed his taser in her direction to maintain control of a potentially dangerous and uncertain scene involving two potentially armed and dangerous suspects. A denial of qualified immunity in this case would not only plainly contradict this Court's instruction on the standard to apply in determining clearly established law (given there is no factually similar case which establishes that Officer Marzolf's conduct was excessive force), *See, White*, 580 U.S. 73 at 79, but it would plainly contradict the standard applied by this

Court for decades in evaluating the objective reasonableness of police officers' uses of force which requires the reasonableness of uses of force to be judged 'from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (Pet. App. 9a)(listing cases). Thus, Ms. Pollreis's petition should be denied because based on the relevant precedent as applied to the undisputed facts which are seen on the dash cam video, Officer Marzolf's actions did not violate clearly established law.

The issue raised in the question presented by Ms. Marzolf is simply not present in this case based on the lower courts decisions. Therefore, this case is not a good vehicle to decide the issue raised by Ms. Pollreis's question presented. Ms. Pollreis's petition should be denied.

IV. There is no issue of fact regarding whether Ms. Pollreis complied with Officer Marzolf's commands.

Ms. Pollreis and the dissent argue that there is a disputed fact over whether Ms. Pollreis complied or attempted to comply with Officer Marzolf's request. The video evidence clearly shows this simply is not true. On the video at 21:41:24, Ms. Pollreis can be seen approaching Officer Marzolf. She clearly takes five steps past Officer Marzolf's patrol vehicle. When he tells her at 21:41:24 to, "step back," there was plenty of room to step back. But instead of doing so, she responded, "they're my boys," and started walking to the side, in no way "getting back." Officer Marzolf again orders her to "Get back," and she continues

walking to the side out of the view of the camera. 21:29. Finally, after Officer Marzolf ordered her to go back into her house, from off the screen she can be heard stating “Are you serious?” At that point, at 21:30, Officer Marzolf for the third time orders her to get back while drawing his taser and pointing it in her direction. Even after that, Officer Marzolf has to order her once more to, “Get back.” Ms. Pollreis simply refused at the very least one order from Officer Marzolf to get back, and she continued to engage Officer Marzolf as he held two potentially dangerous unknown suspects at gunpoint. This is clear on the video, and cannot be disputed. No inference was construed in the moving party’s favor when the District Court made these factual findings. Further, these findings were made by the District Court and this Court is bound by the factual findings as determined by the District Court unless it determines the findings are blatantly contradicted by the record. *Thompson v. Murray*, 800 F.3d 979, 984 (8th Cir. 2015). Based on the law as set out above, Officer Marzolf’s actions in pointing his taser at Ms. Pollreis given this set of facts was objectively reasonable and did not violate any clearly established law. Thus, Ms. Pollreis’s petition should be denied.

CONCLUSION

Much of Pollreis’s arguments in her Petition for Writ of Certiorari come from Judge Kelly’s dissent in the panel opinion. However, the problem with Judge Kelly’s dissent is that it is premised on the misplaced notion that a jury could find that Officer Marzolf’s actions were not objectively reasonable in that a reasonable officer would not have believed Ms. Pollreis

posed a threat to Officer Marzolf. (Pet. App. 13a); however, the question of whether an officer's actions were objectively reasonable in light of clearly established law is a legal question for the courts. *Littrell*, 388 F.3d at 586; *Scott*, 550 U.S. at 381 n.8 (2007).

The district court did not misconstrue *Scott v. Harris* in relying on the video to determine the undisputed facts. Nor did the Eighth Circuit misconstrue *Scott v. Harris* by relying on those very facts. Neither did the panel majority make inferences in the movant's favor by reaching the legal conclusion that based on the facts set out by the video evidence, Officer Marzolf could reasonably believe Ms. Pollreis posed a threat to his safety. Finally, there is no factually similar case which clearly establishes that Officer Marzolf's pointing his taser during this incident violated clearly established law. Therefore, Petitioner's writ should be denied and the panel majority's grant of qualified immunity should be upheld.

WHEREFORE, For the reasons set forth above, Ms. Pollreis's petition for writ of certiorari should be denied.

Respectfully submitted,

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