

IN THE
Supreme Court of the United States

JARED COSPER, IN HIS
INDIVIDUAL CAPACITY, *et al.*,

Petitioners,

v.

PERLA ENRIQUEZ BACA, AS PERSONAL
REPRESENTATIVE OF AMELIA BACA, DECEASED,

Respondent.

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

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	ii
STATEMENT OF THE CASE	1
PROCEDURAL POSTURE.....	2
REASONS FOR DENYING CERTIORARI.....	3
I. The Tenth Circuit Considered The Totality Of The Circumstances	3
II. There Is No Disagreement Between The Circuits.....	5
III. The Law Was Clearly Established	8
CONCLUSION	11

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases:	
<i>Anderson v. Creighton</i> , 483 U.S. 635 (1987)	8, 9
<i>Baca v. Cosper</i> , 128 F.4th 1319 (10th Cir. 2025)	1
<i>Barnes v. Felix</i> , 605 U.S. 73 (2025)	4, 5
<i>Est. of Larsen ex rel. Sturdivan v. Murr</i> , 511 F.3d 1255 (10th Cir. 2008)	3-4
<i>Graham v. Connor</i> , 490 U.S. 386 (1989)	3, 5
<i>Hope v. Pelzer</i> , 536 U.S. 730 (2002)	9
<i>Kisela v. Hughes</i> , 584 U.S. 100 (2018)	9
<i>Napouk v. Las Vegas Metro. Police Dep’t</i> , 123 F.4th 906 (9th Cir. 2024)	6
<i>Smith v. LePage</i> , 834 F.3d 1285 (11th Cir. 2016)	7
<i>Sova v. City of Mt. Pleasant</i> , 142 F.3d 898 (6th Cir. 1998)	5, 6

Cited Authorities

	<i>Page</i>
<i>Teel v. Lozada</i> , 826 Fed.Appx. 880 (11th Cir. 2020)	7
<i>Tenorio v Pitzer</i> , 802 F.3d 1160 (10th Cir. 2015).....	3, 4, 8, 10
<i>Walker v. City of Orem</i> , 451 F.3d 1139 (10th Cir. 2006).....	4, 8, 10
<i>White v. Pauly</i> , 580 U.S. 73 (2017).....	8, 9
<i>U.S. v. Lanier</i> , 520 U.S. 259 (1997).....	9
<i>Zuchel v. City & Cnty. Of Denver</i> , 997 F.32d 730 (10th Cir. 1993).....	4, 8, 10
Constitutional Provision:	
U.S. Const. amend. IV	2
Statutes:	
42 U.S.C. § 1983.....	2
Rules:	
U. S. Sup. Ct. Rule 10	5

STATEMENT OF THE CASE

On the day she was killed, Amelia Baca was seventy-five years old, five-feet-one-inch tall, and suffering from dementia. When Police Officer Jared Cosper first encountered Ms. Baca, the scene was calm and quiet, with two women- Ms. Baca's daughter and adult granddaughter- standing with her just inside the front door of Ms. Baca's home. Officer Cosper, standing outside the front door with his firearm already drawn, instructed the two younger women to exit the home, which they did quietly. As Ms. Baca's granddaughter passed by Officer Cosper, she said to him "please be very careful with her." At that point, "Officer Cosper saw Ms. Baca, [and] the calm scene he encountered ended." See Pet. App. 5a; *Baca v. Cosper*, 128 F.4th 1319, 1323 (10th Cir. 2025).

Ms. Baca stood approximately ten feet away from Officer Cosper, holding a kitchen knife in each hand, pointed to the ground. No one else was in the room with her. Officer Cosper "immediately pointed his firearm at Ms. Baca and began yelling at her to drop the knives." *Id.* Within a few seconds, Ms. Baca's granddaughter told Officer Cosper that Ms. Baca was "mentally sick", to which he responded "Okay, back up!" *Id.*

The incident was recorded by Officer Cosper's body-worn camera, which depicts Ms. Baca looking confused and bewildered as Officer Cosper repeatedly yelled at her. Rather than consider her dementia or change his approach to de-escalate, Officer Cosper got louder and more aggressive, with "Drop The Knife!" giving way to "Drop The Fucking Knife!" *Id.*

Another officer arrived at that time and moved Ms. Baca's daughter and granddaughter to the end of the driveway. At no point did Officer Cosper ask the other officer to help him resolve the situation with Ms. Baca. He simply continued yelling at Ms. Baca to "Drop The Knives!" as she remained visibly confused and mostly standing still.

After approximately 45 seconds of yelling at her with virtually no response, Ms. Baca transferred both knives to her right hand (still pointing down to the ground) and took two slow, small steps toward him. Officer Cosper then shot her twice in the chest, killing her. *Id.* at 6a; 128 F.4th at 1324.

PROCEDURAL POSTURE

Plaintiff sued Officer Cosper under 42 U.S.C 1983 for violation of her Fourth Amendment right against excessive force. The District Court entered summary judgment on that claim, finding Officer Cosper was entitled to qualified immunity as a matter of law. Plaintiff's claims for supervisory and municipal liability were derivative of her claim against Officer Cosper and were also dismissed as moot.

On February 24, 2025, the Tenth Circuit reversed the District Court by unanimous decision, holding a reasonable jury could find Officer Cosper's actions unreasonable and that the law was clearly established. Officer Cosper seeks review of the Tenth Circuit's decision, primarily based on the faulty premise that the Tenth Circuit somehow ignored the totality of the circumstances in this case.

REASONS FOR DENYING CERTIORARI

The Petition presents three questions for review. As discussed below, each of those questions mischaracterize the Tenth Circuit’s holding and attempts to create a circuit split where one does not exist. The Tenth Circuit did not apply the wrong rule, did not ignore precedent of this Court, nor is there disagreement between the Circuits. The Petition should be denied.

I. The Tenth Circuit Considered The Totality Of The Circumstances.

The Petition suggests the Tenth Circuit ignored the standards set by this Court and instead applied the so-called “*Tenorio Rule*” to this case, a reference *Tenorio v Pitzer*, 802 F.3d 1160 (10th Cir. 2015). There is no “*Tenorio Rule*.” Rather, in a routine application of the qualified immunity framework, the Tenth Circuit held the facts of this case are sufficiently analogous to *Tenorio* (and other cases) to find (1) a reasonable jury could find Officer Cosper’s actions were unreasonable and (2) the law was clearly established at the time Officer Cosper shot and killed Ms. Baca.

Contrary to what is claimed in the Petition, the Tenth Circuit did not ignore the totality of the circumstances. The Tenth Circuit provided a detailed recitation of the undisputed facts (informed largely by the Tenth Circuit’s own review of the video recording of the incident). Pet. App. 2a-7a; 128 F.4th at 1321-1324. Beginning its analysis of the objective reasonableness of Officer Cosper’s actions, the Tenth Circuit listed the factors set forth in *Graham v. Connor*, 490 U.S. 386, 396-97 (1989) and *Est. of Larsen*

ex rel. Sturdivan v. Murr, 511 F.3d 1255 (10th Cir. 2008), noting the *Larsen* factors are “guides in determining whether, from the perspective of a reasonable officer on the scene, **the totality of the circumstances justified the use of force.**” Pet. App. 10a; 128 F.4th at 1325 (emphasis added).

The Tenth Circuit relied on its own precedent, including *Tenorio, Walker v. City of Orem*, 451 F.3d 1139, 1160 (10th Cir. 2006), and *Zuchel v. City & Cnty. Of Denver*, 997 F.32d 730, 735-36 (10th Cir. 1993), noting a “jury could find that Ms. Baca was holding only a knife, was not charging Officer Cosper and made no slicing or stabbing motions toward him,” the Tenth Circuit held summary judgment was inappropriate. Pet. App. 12a; 128 F.4th at 1326.

The Petition cites this Court’s recent holding in *Barnes v. Felix*, 605 U.S. 73 (2025), in which the Court held the totality of circumstances includes what happens in the time leading up to an officer’s decision to use deadly force. Pet. at 17. While it is true the Tenth Circuit did not have the benefit of *Barnes* when it issued its opinion in this case, it is unclear why Officer Cosper thinks *Barnes* would have helped him below.

First, as noted above, the Tenth Circuit did consider the totality of the circumstances. Second, the undisputed facts of this case are that Officer Cosper’s actions in the minute or so leading up to the moment he killed Amelia Baca do not paint his actions in a better light.

The Tenth Circuit’s recitation of the undisputed facts includes that Officer Cosper arrived to find a calm situation, which only ended when he pointed his firearm

and flashlight at Ms. Baca's chest and began shouting at her. Officer Cosper was told and did acknowledge that Ms. Baca was suffering from an episode of mental illness but did nothing to slow down or quiet the situation or to inquire about her dementia. While Officer Cosper believed Ms. Baca was trying to talk to him, her speech was unintelligible. Officer Cosper never changed his approach to a frail elderly woman whose confusion about what was happening was apparent. Another officer was on the scene, but the first time Officer Cosper asked for his assistance with Ms. Baca was after he shot her twice in the chest, when he ordered the officer to handcuff her as "her face lay in the collecting pool of blood." Pet. App. 6a; 128 F.4th at 1324. If the Tenth Circuit had the benefit of *Barnes* when it ruled in this case, the result would be the same.

The Tenth Circuit properly stated the rule of law as set forth by this Court in *Graham* and other cases. At most, Officer Cosper asserts the Tenth Circuit misapplied the facts to that rule of law, under which circumstances a "petition for writ of certiorari is rarely granted." U. S. Sup. Ct. Rule 10. The Petition should be denied.

II. There Is No Disagreement Between The Circuits.

Again, the Petition suggests the Tenth Circuit ignored the totality of the circumstances and attempts to depict a circuit split where there is none. Indeed, as noted above, the Tenth Circuit did not ignore the totality of the circumstances in this case.

First, the Petition points to *Sova v. City of Mt. Pleasant*, 142 F.3d 898 (6th Cir. 1998), a case in which the

Sixth Circuit reversed a summary judgment finding of qualified immunity in a case where a man shot by police officers was wielding knives and having a mental health episode. In that case the Sixth Circuit held the District Court did not “view the evidence about how the shooting happened in the plaintiff’s favor...” *Id.* at 903.

Next, the Petition cites *Napouk v. Las Vegas Metro. Police Dep’t*, 123 F.4th 906 (9th Cir. 2024)¹, a case in which the Ninth Circuit granted qualified immunity. In that case, the totality of the circumstances included a man wielding what appeared to be machete or large knife, engaged in a standoff with police officers for several minutes while ignoring commands and making comments to the effect that the officers would “have to shoot him.” *Id.* at 913. After making several aggressive movements and comments to the officers, he advanced toward an officer who said “one more step and you’re dead,” to which the man replied “I know” and continued advancing” and was then shot by the officers. *Id.* at 913-14.

These, of course, are starkly different facts than what is presented in the instant case. Ms. Baca was a five-foot-one-inch elderly woman who expressed no intention to harm herself or the officer. To the contrary, her expressions were solely of bewilderment. The Ninth Circuit in *Napouk* and the Tenth Circuit below both considered the totality of the circumstances, they were just presented with very different circumstances.

1. The Petition’s heading and first paragraph refer to the Sixth, Seventh and Eleventh Circuits, but the body of the argument cites cases from the Sixth, Ninth, and Eleventh Circuits. Pet. 18-19. Respondent presumes the reference to the Seventh Circuit is a drafting error and therefore does not address prevailing Seventh Circuit law.

Finally, Petitioner takes us to the Eleventh Circuit, citing *Smith v. LePage*, 834 F.3d 1285 (11th Cir. 2016). In *Smith*, the Eleventh Circuit denied qualified immunity to officers who shot a man holding a knife, even after their use of a taser did not subdue him. *Id.* at 1290-91.

Further, it should be noted since *Smith* was decided, the Eleventh Circuit issued its holding in *Teel v. Lozada*, 826 Fed.Appx. 880 (11th Cir. 2020) (unpublished). In *Teel*, the Eleventh Circuit held material issues of fact existed to preclude summary judgment on qualified immunity where a woman amidst a mental health episode holding a knife was shot by a police officer. In considering the totality of the circumstances, the Eleventh Circuit noted although the decedent was holding a knife, her “walk was gradual and she never picked up pace or made any sudden movement. She was diminutive in size.” *Id.* at 886. The Eleventh Circuit also noted the officer had another officer available “or [could have used] a non-lethal method to subdue Mrs. Teel,” but instead the officer explained once he drew his gun, “he would not de-escalate to less-than-lethal force.” *Id.* 886-87. Similarly, in the instant case, Officer Cosper drew his gun before even seeing Ms. Baca, and despite having alternatives to lethal force, chose not to de-escalate or use those alternatives.

To the extent Petitioner argues totality of the circumstances includes the physical characteristics, statements and actions of the subject, the parties agree. And so does the Tenth Circuit. *See, e.g.*, Pet. App. 17a-18a; 128 F.4th at 1329, n.6 (noting Ms. Baca’s age and diminished mental capacity in weighing the threat she posed to others). Had this case been filed in the Sixth, Ninth or Eleventh Circuits, the result would have been

the same. There is no circuit split here, and the Petition should be denied.

III. The Law Was Clearly Established.

Petitioner's third question is whether the law was clearly established for purposes of a qualified immunity inquiry. In reversing the District Court, the Tenth Circuit held at the time Ms. Baca was killed, it was clearly established that a police shooting violates the Constitution on facts similar to those before the Court, including where "Ms. Baca was not charging Officer Cosper and made no slicing or stabbing motions toward him." *Id.* 16a-17a; 128 F.4th at 1328. The Tenth Circuit drew on earlier holdings, including *Tenorio*, *Zuchel*, and *Walker*, *supra*, as "clearly establishing that where an officer had reason to believe that a suspect was only holding a knife, not a gun, and the suspect was not charging the officer and had made no slicing or stabbing motions toward him, that it was unreasonable for the officer to use deadly force against the suspect." Pet. App. 15a; 128 F.4th at 1327-28 ((quoting *Walker*, 451 F.3d at 1160); *accord Zuchel*, 997 F.2d at 735-36.))

The Petition asserts the Tenth Circuit applied these holdings at a "high level of generality." Pet. 27. As stated in the Petition, it is true this Court has explained "the clearly established law must be particularized to the facts of the case." *White v. Pauly*, 580 U.S. 73, 79 (2017). Otherwise, plaintiffs would be able to convert the rule of qualified immunity ... into a rule virtually unqualified liability simply by alleging violation of extremely abstract rights." *Anderson v. Creighton*, 483 U.S. 635, 639 (1987). However, a plaintiff need only show an officer's conduct

violates “clearly established statutory or constitutional rights of which a reasonable person would have known. Because the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct.” *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (internal citations omitted). A plaintiff is not required to point to “a case directly on point for a right to be clearly established,” but “existing precedent must have placed the statutory or constitutional question beyond debate. *Id.* (citing *White*, 580 U.S. at 79).

This Court has held it is “clear that officials can be on notice that their conduct violates established law even in novel factual situations. Indeed, the Court expressly rejected a requirement that previous cases be “fundamentally similar.”” *Hope v. Pelzer*, 536 U.S. 730, 731 (2002) (citing *U.S. v. Lanier*, 520 U.S. 259 (1997)). The “salient question is... whether the state of the law [at the time of incident at issue] gave respondents fair warning that [plaintiff’s] alleged treatment was unconstitutional.” *Id.* Indeed, “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’” *Id.* at 741 (citing *Anderson* at 640).

Applying this Court’s qualified immunity framework, the Tenth Circuit held its existing caselaw gave Officer Cosper fair warning that shooting Ms. Baca was unconstitutional where she was not charging at or making aggressive motions toward him.

The Tenth Circuit analyzed and compared the facts of the instant case to *Tenorio*, *Walker*, and *Zuchel*, giving particular attention to the threat Officer Cosper claimed was posed by Ms. Baca and explaining why Officer Cosper's arguments were not credible. Pet. App. 16a-17a; 128 F. 4th at 1328-29. The Court ultimately held “[t]aking the facts in the light most favorable to the Estate, a reasonable jury could conclude that Officer Cosper violated Ms. Baca's clearly established constitutional rights by shooting her.” Pet. App. 18a; 128 F.4th at 1329.

The Tenth Circuit did not apply the qualified immunity analysis at a high level of generality. Officer Cosper was on notice that shooting Ms. Baca would violate her constitutional rights. The Petition should be denied.

CONCLUSION

The Petition is based on the premise the Tenth Circuit ignored the totality of the circumstances in this case, which is not true. The Tenth Circuit considered all the facts presented to it and correctly found a reasonable jury could find Officer Cosper violated clearly established law. The Petition should be denied.

Respectfully submitted,

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