

No. 25-1062

IN THE
Supreme Court of the United States

JESSICA PITTS, OFFICER, *et al.*,

Petitioners,

v.

TAYLOR BURKE, AS SPECIAL ADMINISTRATOR OF
THE ESTATE OF THOMAS GAY, DECEASED,

Respondent.

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

REPLY BRIEF FOR PETITIONERS

SCOTT B. WOOD
Counsel of Record
WOOD, PUHL & WOOD, P.L.L.C.
4037 East 49th Street
Tulsa, OK 74135
(918) 742-0808
okcoplaw@aol.com

Counsel for Petitioners

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	ii
REPLY BRIEF.....	1
I. This Case Presents A Purely Legal Question. . . .	2
II. Respondent’s Opposition Confirms The Error Corrected In <i>Zorn</i>	3
III. The Decision Below Treats An Unresolved <i>Barnes</i> Question As Settled Law	5
IV. The Decision Below Cannot Be Reconciled With <i>Bond</i>	6
V. This Case Is An Appropriate Vehicle For Review.....	8
CONCLUSION	8

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES:	
<i>Ashcroft v. al-Kidd</i> , 563 U.S. 731 (2011)	6
<i>Barnes v. Felix</i> , 605 U.S. 73 (2025)	2, 5, 6
<i>Carr v. Castle</i> , 337 F.3d 1221 (10th Cir. 2003)	4
<i>Cavanaugh v. Woods Cross City</i> , 625 F.3d 661 (10th Cir. 2010)	4
<i>City of Escondido v. Emmons</i> , 586 U.S. 38 (2019)	1, 7
<i>City of Tahlequah v. Bond</i> , 595 U.S. 9 (2021)	1, 6, 7, 8
<i>Estate of Ceballos v. Husk</i> , 919 F.3d 1204 (10th Cir. 2019)	4
<i>Johnson v. Jones</i> , 515 U.S. 304 (1995)	3, 8
<i>Kisela v. Hughes</i> , 584 U.S. 100 (2018)	1, 7
<i>Lee v. Tucker</i> , 904 F.3d 1145 (10th Cir. 2018)	4

Cited Authorities

	<i>Page</i>
<i>Rivas-Villegas v. Cortesluna</i> , 595 U.S. 1 (2021).....	1, 7
<i>Shepherd v. Robbins</i> , 55 F.4th 810 (10th Cir. 2022)	4
<i>Smith v. Scott</i> , --- S.Ct. ---, 2026 WL 1052063 (U.S. Apr. 20, 2026)	4, 8
<i>Tennessee v. Garner</i> , 471 U.S. 1 (1985).....	4
<i>Tenorio v. Pitzer</i> , 802 F.3d 1160 (10th Cir. 2015).....	4
<i>White v. Pauly</i> , 580 U.S. 73 (2017).....	1, 7
<i>Zorn v. Linton</i> , 146 S. Ct. 926 (2026).....	1, 2, 3, 4, 5, 7, 8

STATUTES AND OTHER AUTHORITIES:

U.S. Const., amend. IV	2, 3, 5
------------------------------	---------

REPLY BRIEF

After Petitioners filed their petition, this Court summarily reversed another denial of qualified immunity in an excessive-force case, reiterating that clearly established law must be grounded in precedent addressing the officer’s specific conduct under the particular circumstances confronted. *Zorn v. Linton*, 146 S. Ct. 926, 930 (2026).

Respondent’s opposition illustrates why this Court’s intervention in *Zorn* was necessary. Unable to identify a decision of this Court—or a robust consensus of persuasive authority—squarely governing the circumstances confronting Petitioners, Respondent instead relies upon a collection of Tenth Circuit decisions and generalized excessive-force principles to argue that the law was clearly established. That is the methodology this Court has repeatedly rejected. See *White v. Pauly*, 580 U.S. 73 (2017); *Kisela v. Hughes*, 584 U.S. 100 (2018); *City of Escondido v. Emmons*, 586 U.S. 38 (2019); *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021); *City of Tahlequah v. Bond*, 595 U.S. 9 (2021); and, most recently, *Zorn v. Linton*, 146 S. Ct. 926 (2026).

The same error appears here. Respondent identifies no decision of this Court involving circumstances materially similar to those confronting Petitioners. Instead, Respondent pieces together generalized principles from a collection of materially distinguishable Tenth Circuit decisions and urges this Court to define clearly established law at a high level of generality—the very approach *Zorn* rejected.

The opposition also mischaracterizes the petition. Petitioners do not challenge the facts assumed by the court of appeals; they accept those assumed facts for purposes of this Court's review. The petition instead presents two purely legal questions: (1) whether the court below improperly treated an unresolved officer-created-danger theory as clearly established law after *Barnes v. Felix*, 605 U.S. 73 (2025), and (2) whether clearly established law may be derived from generalized excessive-force principles and materially distinguishable precedent.

Far from undermining the petition, the opposition confirms that the recurring error addressed in *Zorn* continues to warrant this Court's review.

I. This Case Presents A Purely Legal Question.

Respondent's threshold argument is that this Court lacks jurisdiction because Petitioners allegedly challenge the factual assumptions adopted below.

That is incorrect.

Petitioners do not seek review of any factual determination. Petitioners do not ask this Court to resolve evidentiary disputes, evaluate witness credibility, or determine what actually occurred inside the residence. Petitioners expressly accept the facts assumed by the court of appeals.

The petition instead presents the legal question whether existing precedent clearly established that Petitioners' conduct violated the Fourth Amendment under those assumed facts.

This Court routinely reviews that legal question on interlocutory review. *Johnson v. Jones*, 515 U.S. 304, 313-18 (1995). Petitioners ask this Court to decide only whether, accepting the facts assumed below, existing precedent clearly established that Petitioners violated the Fourth Amendment.

Indeed, Respondent's jurisdictional argument underscores the importance of the petition. Unable to identify precedent squarely governing the circumstances confronting Petitioners, Respondent attempts to transform a legal dispute concerning clearly established law into a factual dispute concerning what occurred. But the facts assumed below are accepted. The only remaining question is whether existing precedent placed the constitutional question beyond debate.

II. Respondent's Opposition Confirms The Error Corrected In *Zorn*.

After the petition was filed, this Court summarily reversed another denial of qualified immunity in an excessive-force case. *Zorn v. Linton*, 146 S. Ct. 926 (2026). There, the Court reiterated that clearly established law must be grounded in precedent addressing the officer's specific conduct under the particular circumstances confronted and may not be derived from generalized excessive-force principles. *Id.* at 930.

Respondent's opposition confirms the error corrected in *Zorn*.

The opposition identifies no decision of this Court involving materially similar circumstances. Instead,

Respondent relies primarily upon *Tennessee v. Garner*, 471 U.S. 1 (1985), *Lee v. Tucker*, 904 F.3d 1145 (10th Cir. 2018), *Cavanaugh v. Woods Cross City*, 625 F.3d 661 (10th Cir. 2010), *Shepherd v. Robbins*, 55 F.4th 810 (10th Cir. 2022), *Tenorio v. Pitzer*, 802 F.3d 1160 (10th Cir. 2015), *Carr v. Castle*, 337 F.3d 1221 (10th Cir. 2003), *Estate of Ceballos v. Husk*, 919 F.3d 1204 (10th Cir. 2019), and related Tenth Circuit decisions. Respondent's theory depends upon combining multiple materially distinguishable decisions to derive a broad constitutional principle that no individual decision establishes. Those authorities involve different officers, different factual settings, different threat levels, different uses of force, and different circumstances. Yet respondent derives from those decisions a generalized rule that Petitioners' conduct was unconstitutional. *Zorn* rejected that approach. 146 S. Ct. at 930. The relevant question is not whether prior cases share certain common themes. The question is whether existing precedent addressed the officer's specific conduct under the particular circumstances confronted and placed the constitutional question beyond debate.

Respondent identifies no such authority because none exists. Nor was *Zorn* confined to its own facts. Shortly after deciding *Zorn*, this Court granted, vacated, and remanded another excessive-force qualified-immunity case for further consideration in light of *Zorn*. *Smith v. Scott*, --- S.Ct. ----, 2026 WL 1052063 (U.S. Apr. 20, 2026) (mem.). The Court thus immediately applied *Zorn* in another excessive-force qualified-immunity case, underscoring the significance of the principles reiterated in *Zorn*. *Smith*, 2026 WL 1052063.

That is why the opposition necessarily assembles generalized propositions from a series of materially

distinguishable decisions. *Zorn* holds that such an approach cannot satisfy qualified immunity’s demanding specificity requirement. 146 S. Ct. at 930.

The opposition therefore confirms—not refutes—the petition’s central contention that the decision below cannot be reconciled with this Court’s repeated insistence upon factual specificity in excessive-force cases.

III. The Decision Below Treats An Unresolved *Barnes* Question As Settled Law.

The opposition likewise fails to answer Petitioners’ *Barnes* argument. In *Barnes v. Felix*, this Court expressly reserved the question whether and how an officer’s alleged creation of a dangerous situation factors into the Fourth Amendment analysis. 605 U.S. 73, 83–84 (2025).

Yet the court below relied upon Tenth Circuit precedent holding officers liable when they allegedly “unreasonably created the need to use force.” Pet. App. 38a-41a.

Respondent never disputes that *Barnes* reserved the issue. Instead, Respondent argues the Tenth Circuit correctly applied its own precedent. That answer demonstrates precisely why review is warranted.

If *Barnes* left the constitutional question unresolved, a court of appeals cannot simultaneously treat its own answer to that question as clearly established law sufficient to defeat qualified immunity. *Barnes*, 605 U.S. at 83-84, (expressly reserving whether and how an officer’s creation of a dangerous situation factors into the Fourth Amendment analysis). At minimum, an issue this

Court expressly reserved cannot place the constitutional question “beyond debate.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

The decision below therefore presents an important and recurring issue concerning the role of alleged officer-created-danger after *Barnes*.

IV. The Decision Below Cannot Be Reconciled With *Bond*.

Respondent never meaningfully explains why *City of Tahlequah v. Bond*, 595 U.S. 9 (2021), does not control. *Bond* is not merely another excessive-force decision. It was this Court’s unanimous summary reversal of the Tenth Circuit for denying qualified immunity based upon generalized excessive-force principles rather than precedent squarely governing the officers’ specific conduct under the particular circumstances they confronted. *Bond*, 595 U.S. at 12–14.

That is the same analytical error presented here.

The opposition identifies no decision of this Court—or any robust consensus of persuasive authority—involving materially similar circumstances to those confronting Petitioners. Instead, Respondent relies upon a collection of Tenth Circuit decisions involving different officers, different factual settings, different threat levels, different uses of force, and materially different circumstances. Respondent then pieces together generalized constitutional principles from those decisions and argues that those principles clearly established the unlawfulness of Petitioners’ conduct.

That is the methodology *Bond* rejected. So, most recently, did *Zorn*.

Indeed, Respondent effectively asks this Court to hold that a collection of materially distinguishable Tenth Circuit decisions may collectively establish clearly established law. This Court has never endorsed that approach. To the contrary, its qualified-immunity decisions repeatedly require precedent—not a mosaic of generalized principles—that places the constitutional question beyond debate.

Nor does the opposition explain why reliance upon generalized excessive-force principles and materially distinguishable precedent was impermissible in *Bond* but permissible here. Likewise, Respondent identifies no decision of this Court issued after *Bond* authorizing the approach employed below.

Instead, this Court has repeatedly reaffirmed the opposite principle in a series of summary reversals. Beginning with *White v. Pauly*; continuing through *Kisela v. Hughes*, *City of Escondido v. Emmons*, *Rivas-Villegas v. Cortesluna*, *City of Tahlequah v. Bond*, and, most recently, *Zorn v. Linton*, this Court has repeatedly instructed that clearly established law must be grounded in precedent addressing the officer's specific conduct under the particular circumstances confronted.

The decision below therefore cannot be reconciled with this Court's repeated summary reversals correcting the same error. That recurring conflict warrants this Court's review.

V. This Case Is An Appropriate Vehicle For Review.

Petitioners accept the facts assumed by the court of appeals, eliminating any jurisdictional concerns under *Johnson v. Jones*, 515 U.S. 304 (1995). The court of appeals expressly relied upon an officer-created-danger rationale, and the questions presented are fully developed. Moreover, after the petition was filed, this Court decided *Zorn* and shortly thereafter granted, vacated, and remanded another excessive-force qualified-immunity case for further consideration in light of *Zorn*. *Smith v. Scott*, --- S. Ct. ----, 2026 WL 1052063 (U.S. Apr. 20, 2026) (mem.). This case therefore presents an appropriate vehicle for the Court to provide additional guidance regarding the specificity required to overcome qualified immunity. The questions presented are cleanly presented, fully preserved, and dispositive of Petitioners' entitlement to qualified immunity.

CONCLUSION

Respondent's opposition confirms that the recurring error this Court corrected in *City of Tahlequah v. Bond* and reiterated in *Zorn v. Linton* persists. Rather than identifying precedent squarely governing Petitioners' specific conduct under the particular circumstances confronted, Respondent again relies upon generalized excessive-force principles and materially distinguishable precedent to defeat qualified immunity.

The petition for a writ of certiorari should be granted. At a minimum, the Court should grant the petition, vacate the judgment below, and remand for further consideration in light of *Zorn v. Linton*, as it recently did in *Smith v. Scott*.

Respectfully submitted,

SCOTT B. WOOD

Counsel of Record

WOOD, PUHL & WOOD, P.L.L.C.

4037 East 49th Street

Tulsa, OK 74135

(918) 742-0808

okcoplaw@aol.com

Counsel for Petitioners