

No. _____

IN THE
Supreme Court of the United States

**CORPORAL CHRISTOPHER ZOOK,
DEPUTY JACOB MARTINEZ,
DEPUTY LEONARDO GUZMAN,**
Petitioners,

v.

**SCOTT FUQUA, as Personal Representative
of the Estate of Jason Roybal,**
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Brandon Huss
Counsel of Record
David Roman
New Mexico Association of Counties
444 Galisteo Street
Santa Fe, New Mexico 87501
505-820-8116
bhuss@nmcounties.org
Counsel for Petitioners

QUESTIONS PRESENTED

1. Video evidence standard at Rule 12(b)(6). Whether a district court may, or must, consider objective video evidence at the motion-to-dismiss stage when that evidence is central to the complaint and blatantly contradicts or utterly discredits the allegations of a plaintiff's complaint in a 42 U.S.C. § 1983 excessive-force action, given a circuit split between the Sixth and Eleventh Circuits (which permit consideration of such videos) and the Tenth Circuit (which does not)?

2. False Plausibility. Whether a § 1983 plaintiff can satisfy the plausibility standard of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), by strategically omitting known facts, here, that the decedent fled the police in a reckless manner by vehicle, fired a weapon at officers just prior to being shot, and was running toward an occupied civilian vehicle at the time of the shooting, when including those facts would defeat the claim?

3. Clearly established law and *Tennessee v. Garner*. Whether *Tennessee v. Garner*, 471 U.S. 1 (1985), standing alone, clearly establishes a Fourth Amendment violation sufficient to defeat qualified immunity at the pleading stage in a factually complex officer-involved shooting in which the decedent had moments earlier fired a weapon at officers, ignored repeated commands, and fled toward an occupied civilian vehicle, contrary to this Court's repeated instructions that clearly established law must be defined with specificity and particularity to the facts

of the case. See *White v. Pauly*, 580 U.S. 73 (2017);
Rivas-Villegas v. Cortesluna, 595 U.S. 1 (2021).

PARTIES TO THE PROCEEDING

Petitioners are Corporal Christopher Zook, Deputy Jacob Martinez, and Deputy Leonardo Guzman, law enforcement officers employed by the Santa Fe County Sheriff's Office in New Mexico. They were defendants-appellants in the court of appeals.

Respondent is Scott Fuqua, as personal representative of the Estate of Jason Roybal. He was plaintiff-appellee in the court of appeals.

Santa Fe County Sheriff's Office and Santa Fe County were also defendants below but are not parties to this petition.

RELATED PROCEEDINGS

Fuqua v. Santa Fe Cnty. Sheriff's Off., No. 1:23-CV-00685-JB-LF;

Fuqua v. Santa Fe Cnty. Sheriff's Office, Tenth Circuit No. 24-2152.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	iii
RELATED PROCEEDINGS	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE PETITION ..	6
I. THE COURTS OF APPEALS ARE IRRECONCILABLY DIVIDED ON WHETHER OBJECTIVELY RECORDED VIDEO EVIDENCE MAY BE CONSIDERED AT THE MOTION-TO-DISMISS STAGE IN § 1983 CASES.	7
<i>A. The Circuit Split.</i>	7
<i>B. The Question Is Important and Recurring.</i> ..	10
<i>C. This Case Is an Ideal Vehicle.</i>	12
II. THE DECISION BELOW CONFLICTS WITH IQBAL AND TWOMBLY BY PERMITTING STRATEGIC OMISSIONS OF KNOWN MATERIAL FACTS TO SUSTAIN FACIALLY IMPLAUSIBLE PLEADINGS. ...	14
<i>A. The Pleading Problem</i>	14
<i>B. The Majority's Rule Rewards Deception.</i> ..	16
<i>C. The Dissent's Analysis Is Correct.</i>	18
<i>D. The Complaint Independently Fails to Plead the Factual Predicates for a Graham Analysis.</i> ..	18
III. THE DECISION BELOW MISAPPLIES THIS COURT'S QUALIFIED IMMUNITY DOCTRINE BY	

RELYING ON <i>GARNER</i> AT AN IMPERMISSIBLY HIGH LEVEL OF GENERALITY.	20
<i>A. The Clearly Established Standard</i>	20
<i>B. Garner Cannot Do This Work</i>	21
<i>C. The Decision Below Cannot Be Reconciled With This Court's Precedents.</i>	22
CONCLUSION	24

TABLE OF AUTHORITES

CASES

<i>Ashcroft v. al-Kidd</i> , 563 U.S. 731 (2011) -----	20
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)- i, 7, 13, 14, 17, 19	
<i>Bailey v. City of Ann Arbor</i> , 860 F.3d 382 (6th Cir. 2017) -----	5, 8
<i>Barnes v. Felix</i> , 605 U.S. 73 (2025)-----	16, 17, 22
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)i, 7, 13, 14, 16, 18	
<i>Bell v. City of Southfield</i> , 37 F.4th 362 (6th Cir. 2022)-----	8, 11
<i>Carr v. Castle</i> , 337 F.3d 1221 (10th Cir. 2003) ---	5, 23
<i>Chrestman ex rel. Wooden v. Metro. Gov’t of Nashville & Davidson County</i> , 156 F.4th 694 (6th Cir. 2025) -----	9, 12
<i>City of Tahlequah v. Bond</i> , 595 U.S. 9 (2021)-----	21
<i>Cruz v. City of Deming</i> , 138 F.4th 1257 (10th Cir. 2025) -----	24
<i>Estate of George v. City of Rifle</i> , 85 F.4th 1300 (10th Cir. 2023) -----	24
<i>Fuqua v. Santa Fe Cnty. Sheriff’s Office</i> , 157 F.4th 1288 (10 th Cir. Nov. 4, 2025) -----	1
<i>Graham v. Connor</i> , 490 U.S. 386 (1989)-7, 18, 19, 20, 21, 23	
<i>Hunter v. Bryant</i> , 502 U.S. 224 (1991)-----	11
<i>Johnson v. City of Atlanta</i> , 107 F.4th 1292 (11th Cir. 2024) -----	8
<i>Mullenix v. Luna</i> , 577 U.S. 7 (2015) -----	21
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009) -----	10, 11
<i>Plumhoff v. Rickard</i> , 572 U.S. 765 (2014)-----	23
<i>Rivas-Villegas v. Cortesluna</i> , 595 U.S. 1 (2021)-- ii, 6, 21, 22	

<i>Saalim v. Walmart, Inc.</i> , 97 F.4th 995 (6th Cir. 2024)-----	5, 8
<i>Scott v. Harris</i> , 550 U.S. 372 (2007) ----	iii, 4, 7, 11, 18
<i>Tennessee v. Garner</i> , 471 U.S. 1 (1985) ---	i, 5, 6, 7, 20, 21, 22, 23
<i>White v. Pauly</i> , 580 U.S. 73 (2017) -----	ii, 6, 20, 22

STATUTES

28 U.S.C. § 1254 -----	1
28 U.S.C. § 1291 -----	1
42 U.S.C. § 1983 -----	2, 4, 6
N.M. Stat. Ann. § 30-22-1 (1999) -----	23

RULES

Fed. R. Evid. 201 -----	5
-------------------------	---

TREATISES

Mitch Zamoff, <i>Assessing the Impact of Police Body Camera Evidence on the Litigation of Excessive Force Cases</i> , 54 GA. L. REV. 1 (2019)-----	7
--	---

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV -----	2
-----------------------------	---

PETITION FOR A WRIT OF CERTIORARI

Petitioners Corporal Christopher Zook, Deputy Jacob Martinez, and Deputy Leonardo Guzman respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at *Fuqua v. Santa Fe Cnty. Sheriff's Office*, 157 F.4th 1288 (10th Cir. Nov. 4, 2025) and is reproduced in the Appendix at App. 1a. The opinion of the district court is at *Fuqua v. Santa Fe Cnty. Sheriff's Off.*, No. 1:23-CV-00685-JB-LF, 2025 WL 1331667 (D.N.M. May 7, 2025), and is reproduced in the Appendix at App. 39a. The order of the court of appeals denying rehearing en banc is reproduced in the Appendix at App. 184a.

JURISDICTION

The court of appeals exercised jurisdiction under 28 U.S.C. § 1291, which permits interlocutory appeals of qualified immunity denials that turn on issues of law. The Tenth Circuit issued its opinion on November 4, 2025, and denied rehearing en banc on December 22, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1). The petition is timely filed within ninety days of the denial of rehearing en banc, on or before March 22, 2026.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution 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, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV

42 U.S.C. § 1983 provides in relevant part:

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.A. § 1983.

STATEMENT OF THE CASE

A. Factual Background

On a June 2021 night in Santa Fe, New Mexico, Jason Roybal drove a stolen car through residential streets. Officers learned that the vehicle was stolen and that Roybal had active arrest warrants, prompting them to attempt a traffic stop. Roybal refused to comply. He then led Corporal Zook, Deputy Martinez, and Deputy Guzman on a nighttime pursuit lasting more than five minutes, during which he swerved recklessly across lanes, ran red lights, and drove in reverse on both sides of the road.

Roybal's vehicle eventually came to a stop in the middle of a darkened low-traffic street. Officers ordered him to exit, but he refused. Roybal then extended his arm through the driver's window and discharged what appeared to be a semi-automatic pistol (which was later confirmed to be a BB gun) in the direction of an officer. Officers returned fire. After a pause of several seconds, Roybal suddenly opened his car door and fled on foot toward an occupied civilian vehicle. The gun fell to the ground as he fled. Officers discharged additional shots, fatally wounding Roybal.

The encounter was recorded in its entirety by three dashcam videos and three body-worn camera videos. The footage was submitted to the district court by both parties, and Plaintiff's counsel confirmed at oral argument before the Tenth Circuit that he had reviewed and relied upon the videos when drafting

the complaint. However, he objected to the courts considering the video.

B. The Complaint

Scott Fuqua, as personal representative of Roybal's estate, filed suit under 42 U.S.C. § 1983 against Petitioners for alleged use of excessive force in violation of the Fourth Amendment. Fuqua's first amended complaint, the operative pleading, alleged only the following material facts: (1) officers pursued Roybal because they learned he had active warrants and possessed a stolen vehicle; (2) the chase culminated when each officer "unholstered" and "deliberately discharged" his firearm; and (3) "[t]he fatal shots were discharged by each of the individual [officers] as Mr. Roybal was unarmed and fleeing the [officers] on foot."

The complaint makes no mention of the BB gun, the reckless driving, the near-miss shooting at officers, or the occupied civilian vehicle toward which Roybal was running when he was shot. Plaintiff's counsel acknowledged at oral argument that he omitted these facts from the complaint, while admitting he had relied on the video footage when drafting it.

C. Proceedings Below

1. District Court. Petitioners moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) on the basis of qualified immunity. They argued that the complaint failed to state a plausible excessive-force claim and urged the court to consider the video footage in order to gain the essential context

that the complaint omitted. The district court denied the motion without entertaining the videos, concluding that the complaint alone alleged a plausible violation of Roybal's clearly established constitutional rights under *Tennessee v. Garner*, 471 U.S. 1 (1985) and *Carr v. Castle*, 337 F.3d 1221 (10th Cir. 2003).

2. Tenth Circuit. A divided panel of the Tenth Circuit affirmed. The majority addressed and rejected three separate bases for considering the video evidence: (a) the videos' presence in the record, submitted by both sides; (b) judicial notice under Fed. R. Evid. 201; and (c) the Sixth Circuit's "blatant contradiction" rule. *See Saalim v. Walmart, Inc.*, 97 F.4th 995 (6th Cir. 2024); *Bailey v. City of Ann Arbor*, 860 F.3d 382 (6th Cir. 2017). The majority declined to adopt the Sixth Circuit rule, holding that the Tenth Circuit's own precedent forecloses consideration of contradictory extrinsic evidence at the motion-to-dismiss stage regardless of its reliability or persuasive force. App. 13a. The court then held that the complaint, read in isolation without context, plausibly alleged a violation of clearly established law, citing only *Garner*. App. 25a–27a. Rehearing en banc was denied. App. 184a.

3. The Dissent. Judge Tymkovich dissented. He would have held that the videos, introduced by both parties and relied upon by Plaintiff's counsel in drafting the complaint, were central to the claims and thus properly considered as central to the complaint. App. 30a–31a. He further concluded that the videos blatantly contradicted the complaint's assertion that Roybal was "unarmed and posed no threat," and that

the resulting pleading bordered on falsity. App. 32a. Judge Tymkovich also concluded that the majority's *Garner*-based clearly-established-law analysis defined the constitutional rule at far too high a level of generality, in conflict with this Court's repeated admonitions in cases such as *White v. Pauly* and *Rivas-Villegas v. Cortesluna*. App. 34a–36a.

REASONS FOR GRANTING THE PETITION

The threshold question in this case is whether courts may consider video evidence at the motion-to-dismiss stage when that evidence blatantly contradicts a complaint's allegations. The courts of appeals are divided on that question. The Tenth Circuit's decision deepens the conflict and allows a § 1983 plaintiff to proceed to discovery based on allegations that clear video directly refutes. Two related questions, whether plaintiffs may manufacture plausibility by omitting known material facts, and whether *Garner* alone can defeat qualified immunity in a factually complex shooting, are independently cert-worthy and further illustrate the consequences of the rule adopted below.

Review is warranted under multiple provisions of Supreme Court Rule 10. Question 1 satisfies Rule 10(a): the Sixth and Eleventh Circuits permit consideration of recorded video evidence at the motion-to-dismiss stage when it blatantly contradicts the complaint, while the Tenth Circuit categorically prohibits it. The panel majority below expressly acknowledged and declined to follow the Sixth and Eleventh Circuits' rules, creating an entrenched and acknowledged split on an important procedural question. Questions 2 and 3 independently satisfy

Rule 10(c): they present important questions of federal law that this Court has not settled, whether deliberate omission of known material facts can manufacture plausibility under *Iqbal* and *Twombly*, and whether *Garner* alone can clearly establish a constitutional violation in a factually complex officer-involved shooting.

I. The Courts of Appeals Are Irreconcilably Divided on Whether Objectively Recorded Video Evidence May Be Considered at the Motion-to-Dismiss Stage in § 1983 Cases.

A. The Circuit Split.

In *Scott v. Harris*, this Court held that courts need not credit a plaintiff's account when objective video evidence "blatantly contradicts" it. 550 U.S. 372, 380 (2007). That is because police lapel- or dash-camera footage "capture[s] the perspective that is supposed to be outcome determinative as a matter of law: the perspective of the police officer." Mitch Zamoff, *Assessing the Impact of Police Body Camera Evidence on the Litigation of Excessive Force Cases*, 54 GA. L. REV. 1, 15 (2019) (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)). The circuits are divided over a threshold question: whether a court may even look at video evidence on a Rule 12(b)(6) motion if the video evidence is not explicitly referred to in the complaint, even if it is clearly central to and the basis for the complaint. The Sixth and Eleventh Circuits say yes. The Tenth Circuit says no. That split is squarely presented here.

The Sixth and Eleventh Circuits hold that objectively reliable video footage may be considered on a motion to dismiss when it blatantly contradicts or utterly discredits the plaintiff's allegations. In *Bell v. City of Southfield*, 37 F.4th 362, 364 (6th Cir. 2022) the Sixth Circuit explained that “it makes little sense to waste time and effort by ignoring the videos’ contents” when they are already in the record and resolve the case. The Eleventh Circuit reached the same conclusion in *Johnson v. City of Atlanta*, 107 F.4th 1292 (11th Cir. 2024), holding that video footage depicting events central to the plaintiff's claims may be considered at the Rule 12 stage, even when they are not referred to in the complaint. And in *Saalim v. Walmart, Inc.*, 97 F.4th 995, 1002 (6th Cir. 2024), the Sixth Circuit reaffirmed the standard while declining to apply it on the particular facts before it. To be sure, the Sixth Circuit's earlier decision in *Bailey v. City of Ann Arbor*, 860 F.3d 382, 386–87 (6th Cir. 2017), involved a complaint that referenced the dashcam video, and so could be explained under the incorporation-by-reference doctrine. But the Sixth Circuit's subsequent decisions in *Bell* and *Saalim* articulated the blatant-contradiction rule as an independent basis for considering video evidence, without requiring that the complaint reference the footage. The split thus extends beyond incorporation-by-reference to the distinct question whether video evidence may be considered when it blatantly contradicts allegations in a complaint that never mentions the video at all.

The Tenth Circuit takes the opposite view. Below, the majority explicitly acknowledged the Sixth Circuit's blatant-contradiction rule and declined to adopt it, holding instead that Tenth Circuit precedent

categorically bars consideration of extrinsic contradictory evidence at the motion-to-dismiss stage, even when that evidence consists of irrefutably recorded video of the very incident at issue. App. 13a–16a. The disagreement is methodological, not merely outcome-based. The Sixth and Eleventh Circuits apply a standard that permits consideration of video evidence and then asks whether the footage blatantly contradicts the complaint. The Tenth Circuit refuses to consider the footage at all. That threshold disagreement, whether courts may look at objective video evidence on a Rule 12(b)(6) motion, is the split that warrants this Court’s review.

The Tenth Circuit’s effort to minimize this conflict by invoking the Sixth Circuit’s recent decision in *Chrestman ex rel. Wooden v. Metro. Gov’t of Nashville & Davidson County*, 156 F.4th 694 (6th Cir. 2025), only underscores the divide. In *Chrestman*, the Sixth Circuit considered dashcam and body-camera videos at the motion-to-dismiss stage in a qualified-immunity case, examined the footage, and concluded on those facts that the videos did not blatantly contradict the complaint with respect to one particular defendant. Critically, however, the *Chrestman* complaint acknowledged that the plaintiff possessed weapons; the dispute concerned more granular details about timing and positioning. Here, the complaint omitted mention of the weapon entirely, a far more fundamental contradiction. Under the Sixth Circuit’s framework, courts would at least examine the footage and assess whether that omission constitutes a blatant contradiction. Under the Tenth Circuit’s categorical rule, they cannot. That is a square split on the governing legal standard,

regardless of how the Sixth Circuit applied that standard to different facts.

B. The Question Is Important and Recurring.

Officer-involved shooting cases brought under § 1983 are among the most common and consequential categories of civil rights litigation in the federal courts. The proliferation of body-worn cameras and dashcams means that video evidence is now routinely available from the outset of such cases. Today, many law enforcement agencies require officers to wear body cameras, and many officer-involved shootings are recorded from multiple angles. Yet the availability of this evidence does courts and defendants little good if it cannot be considered until summary judgment, by which point the costs of discovery have already been imposed on individual officers and the qualified immunity doctrine has been substantially undermined.

This Court recognized in *Pearson v. Callahan*, 555 U.S. 223, 231 (2009), that qualified immunity “is effectively lost if a case is erroneously permitted to go to trial” and the same logic applies to erroneous denials of dismissal that force officers into expensive, time-consuming, and invasive discovery. The rule adopted below, that courts must accept a plaintiff’s selective, misleading account of events even when contradicted by clear video already in the record, causes concrete harm to individual officers, municipalities, and the rule of law, and it does so in every case in which this issue arises. The holdings below also run afoul of this Court’s direction that qualified immunity decisions be resolved “at the

earliest possible stage in litigation.” *Hunter v. Bryant*, 502 U.S. 224 (1991) (per curiam).

The Tenth Circuit sought to cabin this problem by emphasizing that every case Petitioners cited was resolved at summary judgment, not on a Rule 12(b)(6) motion. App. 16a–17a. But that distinction does not bear the weight the court placed on it. The entire premise of *Scott v. Harris* is that objective video evidence can be so clear that it eliminates the need for competing inferences, that courts need not credit a plaintiff’s “visible fiction” when the record tells a different story. 550 U.S. at 380–81. That principle is grounded in the nature of video evidence, not Rules of Civil Procedure. A video that blatantly contradicts a complaint’s allegations is no less contradictory because the defendant filed a motion to dismiss rather than a motion for summary judgment. Tethering the *Scott* principle to a particular procedural posture creates a formalistic loophole: officers who possess dispositive video evidence must nonetheless fund and endure full discovery before a court will watch the tape if the plaintiff simply omits mention of the video in the complaint. That result is irreconcilable with this Court’s repeated instruction that qualified immunity protects officers from the burdens of litigation, not merely from ultimate liability. See *Pearson*, 555 U.S. at 231–32; see also *Bell v. City of Southfield, Michigan*, 37 F.4th 362, 364 (6th Cir. 2022) (considering videos at the Rule 12 stage “for good reason. Qualified immunity isn’t just a defense to liability—it’s immunity from the costs and burdens of suit in the first place.”)

C. This Case Is an Ideal Vehicle.

The facts here present the question in its starkest form and the contrast with *Chrestman* highlights why. In *Chrestman*, the Sixth Circuit applied the blatant-contradiction test and found it was not met with respect to one particular defendant, because the complaint already acknowledged the plaintiff's possession of weapons, and the videos showed conduct consistent with the complaint's narrative arc: the plaintiff was moving toward officers with a weapon when officers fired. 156 F.4th 694. Here, by contrast, the complaint does not merely omit granular details, it omits the existence of a weapon altogether, along with Roybal's reckless attempts to escape pursuit, the firing at officers, and the proximity of an occupied civilian vehicle. Plaintiff's counsel admitted at oral argument that he reviewed the videos before drafting the complaint, yet held to his narrative in which Roybal "posed no threat" and was simply "unarmed and fleeing." These omissions are not ones of nuance; they are the concealment of the central facts that motivated the officers' use of force, and concealment of the facts that enable a reasoned analysis.

The Tenth Circuit panel majority, the dissent, and the district court all viewed and described the same footage, yet the majority concluded it could play no role in the pleading analysis. Under the Sixth Circuit's framework, the court would have examined the videos and assessed whether a complaint that omits any mention of a weapon, when the footage

shows the decedent firing one at officers seconds before the shooting, constitutes a blatant contradiction. That assessment may or may not have changed the result, but it would have occurred. The Tenth Circuit's categorical rule forecloses the inquiry entirely. This Court can resolve that methodological conflict on a record in which the videos are undisputed, both parties submitted them to the court, and plaintiff's counsel conceded reliance on them.

The Tenth Circuit's categorical refusal to adopt the blatant contradiction rule ensures that similarly situated officers in different circuits will receive fundamentally different treatment at the pleading stage. It also provides a roadmap from which skilled litigators may avoid dismissal of implausible claims at the Rule 12 phase. In this case, Respondent was able to avoid a true plausibility analysis by merely neglecting to say he drew the facts from the video. Had he so noted in the complaint, the courts would have considered the videos under the incorporation doctrine. Under the Tenth Circuit's analysis, which framework will be used to evaluate a claim of qualified immunity under these circumstances depends solely on whether the plaintiff's counsel used the word "video" in the complaint, even when the events depicted in the video are central to the complaint. This Court should resolve the circuit split by considering whether a plaintiff may avoid consideration of video evidence at the Rule 12 phase by omitting central facts and declining to note that the facts were taken from the video.

II. The Decision Below Conflicts With *Iqbal* and *Twombly* by Permitting Strategic Omissions of Known Material Facts to Sustain Facially Implausible Pleadings.

This question is independently cert-worthy, but it is inextricably linked to Question 1. Because the Tenth Circuit refused to consider the video evidence, the plausibility analysis proceeded solely on the complaint's sanitized narrative. Once the video record is considered, as the Sixth and Eleventh Circuits would permit, the strategic omissions that manufactured the complaint's facial plausibility become apparent. The questions are thus mutually reinforcing: the video-consideration rule determines the factual universe, and the factual universe determines whether the complaint is plausible.

A. The Pleading Problem.

Iqbal and *Twombly* require a plaintiff to plead enough factual content to render a claim "plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted). Courts "are not bound to accept as true a legal conclusion couched as a factual allegation," and bare assertions of unlawfulness are insufficient. *Id.* at 678–79. The plausibility standard was specifically designed to weed out cases that, while not impossible, lack the factual grounding that entitles a plaintiff to impose the burdens of litigation upon a defendant. *Twombly*, 550 U.S. at 557–558.

Critically, the plausibility inquiry works in both directions. *Iqbal* requires that a complaint contain enough factual matter to "nudge" a claim "across the

line from conceivable to plausible.” *Twombly*, 550 U.S. at 570; see *Iqbal*, 556 U.S. at 680. That standard necessarily presupposes an honest account of the relevant facts. A plaintiff who adds factual detail to cross the plausibility threshold is doing what *Twombly* demands. But a plaintiff who crosses that threshold by subtracting known facts, removing the context that makes a claim implausible so that what remains appears plausible, is not satisfying the plausibility standard; he is evading it. The decision below permits precisely this maneuver and, in doing so, transforms *Iqbal*’s plausibility requirement from a substantive gatekeeping function into one that can be defeated by artful omission.

The decision below guts this framework in the § 1983 qualified-immunity context. Here, the complaint asserted that officers shot Roybal “with knowledge that Mr. Roybal was unarmed and posed no threat to them.” The allegation that Roybal was unarmed is literally true only in a misleading sense: at the precise moment the fatal shots were fired, Roybal’s gun had fallen as he jumped out of his truck. But the complaint omitted the full and material context: that Roybal had, seconds earlier, fired that weapon at officers; that officers had no opportunity to verify whether he was still armed; and that he was running toward an occupied car. These are not “defensive” facts that a plaintiff has no obligation to plead. They are facts affirmatively known to plaintiff that render the complaint’s “unarmed and fleeing” narrative implausible when examined alongside the full record. The officers’ knowledge and lack of threat allegations are conclusory statements at best.

B. The Majority's Rule Rewards Deception.

The majority below effectively held that omitting known adverse facts from a complaint does not render it implausible so long as the remaining allegations, read in isolation, could support the claim. App. 22a–24a. This standard creates a perverse incentive: plaintiffs with weak cases can systematically omit any fact that might undermine their theory, survive the motion-to-dismiss stage, and impose the full costs of discovery on defendant officers, costs that can themselves coerce settlement even in meritless cases. *See Twombly*, 550 U.S. at 558–59 (recognizing that “[i]t is no answer to say that a claim just shy of a plausible entitlement to relief can, if groundless, be weeded out early in the discovery process”).

This Court has repeatedly emphasized that the plausibility standard must have genuine bite in § 1983 cases, where discovery imposes unique burdens and where individual officers are entitled to immunity not merely from liability but from the litigation process itself. The Tenth Circuit's rule effectively nullifies that protection whenever a plaintiff can craft a misleading but technically accurate narrative. This Court recently reaffirmed in *Barnes v. Felix*, 605 U.S. 73 (2025), that courts assessing use-of-force claims must consider the full context of a suspect's conduct, including events immediately preceding the use of force. To be sure, the full-context principle in *Barnes* aided the plaintiff in that case, where the prior circumstances revealed a trivial offense and officer escalation. But the principle is neutral: it requires courts to consider all relevant context, whether it favors the plaintiff or the

defendant. Here, the omitted context, the gunfire, the reckless attempts to evade pursuit, the civilian-occupied vehicle, is precisely the kind of prior circumstance that *Barnes* holds must inform the reasonableness analysis, and it is precisely the context the complaint was crafted to conceal.

The officers' inability to know what Roybal knew compounds the pleading deficiency. Roybal alone knew that the weapon he had just fired was a BB gun. Roybal alone knew whether he was still armed, whether he had additional weapons, and what his intentions were toward the officers, the occupants of the nearby civilian vehicle, and the public at large. The complaint's bald assertion that the officers "knew" Roybal was unarmed and posed no threat asks the Court to accept as true something that was unknowable to any reasonable officer in the moment, and that is precisely the kind of conclusory allegation *Iqbal* instructs courts to disregard. *See* 556 U.S. at 678 ("threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice").

The perverse consequences of the majority's rule are best illustrated by considering *Iqbal* itself. In that case, the plaintiff alleged that Attorney General Ashcroft and FBI Director Mueller had personally adopted a policy of detaining Arab Muslim men based on race, religion, or national origin. *See* 556 U.S. at 666–68. Under the approach endorsed by the majority below, a plaintiff in *Iqbal*'s position could have survived a motion to dismiss simply by omitting the facts that gave context to the defendants' conduct and pleading only the bare conclusion that he was

detained because Ashcroft and Mueller said so. That is precisely what happened here. By stripping away every fact that made the officers' conduct reasonable, the complaint crossed the plausibility threshold not by adding factual content, but by subtracting it. That is the precise inversion of what *Iqbal* and *Twombly* require.

C. The Dissent's Analysis Is Correct.

Judge Tymkovich's dissent correctly identified the complaint as “lackluster and deceptive pleading” that “unfairly places Defendants in a position to defend themselves without adequate notice of the underlying allegations.” App. 29a. He would have held that the complaint, which alleged Roybal was “unarmed and posed no threat” while omitting that he had just fired a weapon at officers, fails the plausibility standard precisely because context matters, and the known, omitted context renders the allegation implausible. *See Scott*, 550 U.S. at 380 (courts need not adopt a plaintiff's fictitious facts as true). This Court should grant certiorari to resolve which approach is correct.

D. The Complaint Independently Fails to Plead the Factual Predicates for a *Graham* Analysis.

Even setting aside the video evidence entirely, the complaint fails on its own terms. An excessive-force claim requires the court to assess reasonableness under the three *Graham* factors: the severity of the crime, whether the suspect poses an immediate threat, and whether the suspect is resisting or fleeing. *Graham v. Connor*, 490 U.S. 386, 396 (1989). The complaint here alleges a car chase that “culminated” in a shooting, but provides no facts about the critical

transition between the two. It does not say how the chase ended, what the suspect did when his vehicle stopped, why the officers drew their weapons, what commands were given, what the distance was between the officers and the suspect, or what prompted the officers to fire. The complaint simply skips from “pursuit” to “unarmed and fleeing on foot” without a single fact explaining how a suspect who was just leading officers on a reckless evasion came to pose “no threat.”

That narrative gap is not notice pleading; it is no-notice pleading. *Iqbal* requires the complaint to provide enough factual content for “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 556 U.S. at 678. But a court cannot draw that inference in an excessive force case without the factual predicates for the *Graham* analysis. The complaint’s conclusory assertions that Roybal was “unarmed,” “defenseless,” and posed “no threat” are precisely the kind of “threadbare recitals of the elements of a cause of action” that *Iqbal* holds insufficient. *Id.* They state the legal conclusion the plaintiff needs, no threat, therefore unreasonable force, without the underlying facts from which a court could independently assess whether that conclusion is plausible. A complaint that alleges a pursuit ending in a shooting but says nothing about the encounter’s most critical moments has not nudged the claim from conceivable to plausible; it has asked the court to skip the analysis entirely and accept the plaintiff’s conclusion on faith. Rather than turning on the video at all, this point simply illustrates that plaintiffs cannot plead threadbare recitals to meet plausibility. In the context of an excessive force claim, a plaintiff

may not meet the plausibility requirements set by this Court without including the facts relevant to the *Graham* factors. The district court and the Tenth Circuit both applied the plausibility test at a far too general level and this Court should grant certiorari to address the proper pleading standards in this, and similar, cases.

III. The Decision Below Misapplies This Court’s Qualified Immunity Doctrine by Relying on *Garner* at an Impermissibly High Level of Generality.

The clearly-established-law analysis suffers from the same structural deficiency as the plausibility analysis. Because the Tenth Circuit declined to consider the video evidence, it assessed whether the officers violated clearly established law based solely on the complaint’s characterization of Roybal as “unarmed and fleeing.” If the video evidence is properly before the court, the factual predicate for the clearly established inquiry changes fundamentally and, with it, the answer.

A. The Clearly Established Standard.

For a right to be “clearly established,” “existing precedent must have placed the statutory or constitutional question beyond debate.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). Critically, clearly established law should not be defined “at a high level of generality” but must be “particularized” to the facts of the case. *White v. Pauly*, 580 U.S. 73, 79 (2017) (per curiam) (citation modified). This Court has repeatedly

reversed lower court decisions that found clearly established law based on broad general propositions rather than close factual analogues. *See, e.g., Rivas-Villegas*, 595 U.S. at 5–6; *City of Tahlequah v. Bond*, 595 U.S. 9, 12 (2021); *Mullenix v. Luna*, 577 U.S. 7, 12-13 (2015) (per curiam). The decision below repeats that same error, relying on *Garner*'s general prohibition on shooting unarmed, nonthreatening suspects to deny qualified immunity in a case involving a felony suspect who had just fired a weapon at officers. If that level of generality suffices, *Garner* would defeat qualified immunity in virtually every fleeing-suspect case, regardless of the suspect's prior conduct, precisely the outcome this Court's decisions in *White*, *Rivas-Villegas*, and *Tahlequah* were designed to prevent.

B. *Garner* Cannot Do This Work.

Tennessee v. Garner held that police may not use deadly force against an unarmed, nonthreatening, fleeing felon solely to prevent escape. 471 U.S. at 11. That holding was important and correctly decided. But this Court has since made clear that *Garner* and *Graham* do not by themselves create clearly established law outside “an obvious case.” *White*, 580 U.S. at 80. The inquiry demands a more “particularized” analysis.

The facts here are materially different from *Garner*. *Garner* involved an officer who shot a fleeing, unarmed teenager who had committed a burglary and shown no threatening conduct whatsoever. 471 U.S. at 3. Here, Roybal had fired a weapon at the officers moments before they discharged their weapons. The

officers confronted a suspect who had just engaged in threatening conduct, in the dark, and who was then running toward a civilian-occupied vehicle. No reasonable officer could have known with certainty that Roybal had dropped his gun, that he would not retrieve it, that he did not have another weapon, or that he posed no threat to the officers or the civilians in his path. As this Court confirmed in *Barnes*, 605 U.S. 73, the relevant inquiry must account for the totality of the suspect’s behavior leading up to the moment force was used, not merely the split second of the shooting viewed in artificial isolation. And as four Justices emphasized in concurrence, when a suspect abruptly flees during a police encounter, that evasion itself “could suggest that the driver is preparing to commit or has committed a more serious crime,” and the use of force may still be found reasonable even under a full totality-of-the-circumstances analysis. *Id.* at 86 (Kavanaugh, J., concurring). Here, Roybal did not merely flee; he fired a weapon at the officers and then ran toward civilians. If flight alone can support the reasonableness of deadly force, the officers’ conduct here was, at a minimum, within the range of reasonable responses, making the question of clearly established law at least debatable, which is all that qualified immunity requires.

C. The Decision Below Cannot Be Reconciled
With This Court's Precedents.

The Tenth Circuit reached its clearly-established-law conclusion by accepting the plaintiff’s account, that Roybal was simply “unarmed and fleeing”, and finding that account controlled by *Garner*. But that analysis commits the precise error this Court warned

against in *White* and *Rivas-Villegas*: defining the constitutional question at such a high level of generality that virtually any shooting of a fleeing suspect would be deemed clearly unlawful, regardless of whether the suspect had just attacked the officers. No prior case, not *Garner*, not *Carr v. Castle*, 337 F.3d 1221 (10th Cir. 2003), not any decision of this Court, has clearly established that officers necessarily violate the Fourth Amendment when they use deadly force against a suspect who, seconds before, fired a weapon at them, even if the suspect had since dropped that weapon.

The complaint itself acknowledges that Roybal had active arrest warrants and was driving a stolen vehicle, both felonies under New Mexico law. But the video record establishes a third and more serious felony: assault on a peace officer. *See* N.M. Stat. Ann. § 30-22-1 (1999). A suspect who has just committed a violent felony against the very officers pursuing him presents a materially different threat profile than the unarmed, nondangerous fleeing felon *Garner* addressed. The first *Graham* factor therefore weighs substantially more heavily in favor of the officers than the majority's analysis acknowledged.

This Court and the courts of appeals have consistently granted qualified immunity in cases involving less threatening conduct than what Roybal exhibited. In *Mullenix v. Luna*, 577 U.S. 7 (2015), this Court granted qualified immunity where a fleeing suspect had threatened to shoot officers but had not fired. In *Plumhoff v. Rickard*, 572 U.S. 765 (2014), this Court found no Fourth Amendment violation, and alternatively granted qualified immunity, where a

fleeing suspect used his vehicle as a weapon but never discharged a firearm. In the Tenth Circuit, *Estate of George v. City of Rifle*, 85 F.4th 1300 (10th Cir. 2023), granted qualified immunity where an armed, fleeing suspect had a handgun near civilization but never pointed it at officers, and *Cruz v. City of Deming*, 138 F.4th 1257 (10th Cir. 2025), granted qualified immunity where a suspect held what appeared to be a rifle and made hostile motions but never fired. The few cases denying qualified immunity for shooting a fleeing suspect involve a far clearer dissipation of the threat: suspects who were visibly surrendering, on the ground, or backing away with weapons lowered, not suspects who had fired at officers seconds earlier in darkness and whose disarmament the officers had no opportunity to confirm. If qualified immunity attaches when a suspect threatens to shoot, brandishes a weapon, or uses a vehicle as a weapon without ever discharging a firearm, the law was, at most, unsettled when officers confronted a suspect who had actually fired at them and whose abandonment of his weapon was not apparent. That is the precise circumstance in which qualified immunity must apply.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. The courts of appeals are irreconcilably divided on whether objectively recorded video evidence may be considered at the pleading stage. The decision below permits plaintiffs to manufacture plausibility through strategic omission of known, material facts, and then to defeat qualified immunity without identifying a case on point. Both

errors compounded each other in this case, and the Tenth Circuit corrected neither. This Court's intervention is warranted.

Respectfully submitted,

Brandon Huss
Counsel of Record
David Roman
with him on the brief
New Mexico Association of Counties
444 Galisteo Street
Santa Fe, New Mexico 87501
bhuss@nmcounties.org
droman@nmcounties.org
505-820-8116
Counsel for Petitioners