

No. 25-1108

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Respondent's First Amended Complaint complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and stated a plausible cause of action for purposes of Rule 12 (b)(6).
2. Whether the District Court and United States Court of Appeals for the 10th Circuit correctly declined to permit the review of video evidence in this Rule 12(b)(6) Motion.

PARTIES TO THE PROCEEDING

Respondent is Scott Fuqua, as personal representative of the Estate of Jason Roybal. Mr. Fuqua was Plaintiff-Appellee in the Court of Appeals.

Petitioners in this Court are Corporal Christopher Zook, Deputy Jacob Martinez, and Deputy Leonardo Guzman, all employees of the Santa Fe County Sheriff's Office in Santa Fe, New Mexico. These individuals were Defendants-Appellants in the Court of Appeals.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

None is required in this case.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS.....	ii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT.....	1
REASONS FOR DENYING THE WRIT.....	2
I. Video Evidence Could Not Be Considered.....	2
II. Respondent’s First Amended Complaint States a Plausible Claim for Relief.....	4
III. The Application of the Doctrine of Qualified Immunity Would Not Change The Result.....	6
CONCLUSION.....	7

TABLE OF AUTHORITIES

Cases	Pages
<i>Bailey v. City of Ann Arbor</i> , 860 F.3d 382 (6th Cir. 2017).....	3,4
<i>Cuervo v. Sorenson</i> , 112 F.4th 1307 (10th Cir. 2024)	2, 3
<i>Saalim v. Walmart, Inc.</i> , 97 F.4th 995 (6th Cir. 2024)	3
<i>Tal v. Hogan</i> , 453 F.3d 1244 (10th Cir. 2006)	2
<i>Tennessee v. Garner</i> , 471 U.S. 1 (1985).....	12
 Statutes and Rules	
Federal Rule of Civil Procedure 8(a).....	4
Federal Rule of Civil Procedure 12(d).....	2
Federal Rules of Evidence 201.....	2
42 U.S.C. Section 1983.....	4

PETITION FOR WRIT OF CERTIORARI

The opinions below, jurisdiction of the Court of Appeals and of this Court, and constitutional and statutory provisions involved are properly set forth in Petitioner's Petition.

STATEMENT OF CASE

Respondent does not agree that Mr. Roybal discharged what appeared to be a semi-automatic pistol, when it was only a BB gun. This is mere speculation. Mr. Roybal stopped the vehicle he was driving, opened the door, and fled on foot, unarmed, in the direction of an occupied vehicle. The BB gun was dropped as he exited the vehicle. There is no evidence that the occupied vehicle located in the direction he was fleeing was waiting for him or served as some sort of getaway car. Mr. Roybal had dropped his BB gun in view of the deputies as he departed the stolen car. Mr. Roybal was shot in the back by the deputies and killed.

REASONS FOR DENYING THE WRIT

I. Video Evidence Could Not Be Considered

Video evidence is not properly considered on a 12(6)(b) motion under well settled law. Even under the 6th Circuit cases permitting it to be considered, the video evidence would not be considered.

Respondent's pleading has been determined both by the District Court (Judge James Browning) and the panel of the 10th Circuit to state a plausible claim for relief. The operative pleading contains a short plain statement of the claim for relief.

Video evidence is not to be considered at the Motion to Dismiss stage unless the Court may take judicial notice of it under Rule 201 of the Federal Rules of Evidence. The video evidence in this case, if considered, would have converted this Motion to Dismiss into a Motion for Summary Judgment under Federal Rule of Civil Procedure 12(d).

The videos were not attached to Respondent's Complaint, were not incorporated by reference in the Complaint, and were not referred to in the Complaint. Under *Cuervo v. Sorenson*, 112 F.4th 1307 (10th Cir. 2024), therefore, the video evidence could not be considered.

Federal Rule of Evidence 201 allows Courts to judicially notice acts that are, (1), "generally known within the trial court's territorial jurisdiction.", or

those which (2) “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” The Tenth Circuit cited cases exemplifying the proper use of judicial notice on page 11 of the Opinion. The Tenth Circuit opinion further explains that the videos in this did not fall within either of Rule 201's categories and, therefore, could not be judicially noticed. (App.3a,10a). In *Tal v. Hogan*, 453 F.3d 1244 (10th Cir. 2006), the Court pointed out that even state public records could not be considered on a Motion to Dismiss because such motions “are not designed to weigh evidence or consider the truth or falsity of an adequately pled complaint.” *Id.* at 1265-66. Neither can the officers in this case try to use the videos to undermine and attack the veracity of the Complaint. *Id.* The pleading issue is merely whether a plausible claim for relief is pleaded.

The Sixth Circuit permits video evidence to be considered at the Motion to Dismiss stage if the video blatantly contradicts the Complaint. *Saalim v. Walmart, Inc.*, 97 F.4th 995, 1002 (6th Cir. 2024); *Bailey v. City of Ann Arbor*, 860 F.3d 382, 386-387 (6th Cir. 2017). In the *Saalim* case, the Sixth Circuit declined to consider the videos because the video was “consistent with the complaint.” *Saalim*, 97, F.4th at 1002. The Court in *Bailey* considered video evidence, but the Complaint in that case referenced the video, thereby placing it within *Cuervo v. Sorenson*, 112 F.4th 1307 (10th Cir. 2024). Respondent's Complaints in this case do not mention the videos.

The videos in this case also do not blatantly contradict the Complaint. The videos show that Mr. Roybal had dropped the BB gun, was running away from the officers when they shot him in the back, and that he was fleeing in the general direction of an occupied vehicle. The Sixth Circuit declined in *Bell v. City of S.field*, 37 F.4th 362, 366 (6th Cir. 2022), to consider the portion of a video “that did not clearly show what happened.” The videos in this case do not blatantly contradict or utterly discredit Respondent's allegations that the officers shot Roybal when he “was unarmed and posed no threat to them. Appendix 71a. District Judge Browning pointed out in his Order that just because the videos are readily available does not mean they can be judicially noticed. App. 154a. The videos in this case did not convey “a set of uncontroverted facts”. App. 152a.

The 10th Circuit opinion agrees that the video evidence in this case would not blatantly contradict or utterly discredit Respondent's allegations. App. 15a.

II. Respondent's First Amended Complaint States A Plausible Claim For Relief.

The First Amended Complaint contains a short plain statement of the claim for relief as required by Rule 8(a) of Federal Rules of Civil Procedure. Both District Judge James Browning and the United States Court of Appeals for the Tenth Circuit agree. A plausible claim for relief under 42 U.S.C. Section 1983 for excessive use of force has been stated. The case is simply that Mr. Roybal stopped his truck, got

out of his truck, dropped his BB gun on the ground, and began to run away unarmed. He was shot in the back as he fled. His case falls squarely within the parameters of *Tennessee v. Garner*, 471 U.S. 1 (1985). For the instant case, there is no conflict between the Sixth Circuit and Tenth Circuit approach to video evidence, since the video evidence does not blatantly contradict Respondent's allegation in the Complaint, regardless of Petitioner's breathless exclamations to the contrary.

Adopting the 6th Circuit opinion in *Bailey* would not change the result in this case. There is no conflict between the circuits on the facts of this case.

The 6th Circuit standard of blatant contradiction between the videos and the Complaint would also be unworkable in practice. What is “blatant”? In this case, Mr. Roybal held a BB gun out the window of the vehicle he was driving. Does that contradict the Respondent’s claim for relief? Does the low-speed chase or the BB gun blatantly contradict the fact that Mr. Roybal was shot in the back, unarmed, as he was running away? Does the presence of a car in the direction he was running blatantly contradict that he was running away unarmed? The answer to each question would appear to be an obvious no. The contradiction must be “blatant”, but that must also mean that it also makes the allegations of the pleading untrue. They are not untrue.

No special pleadings rules exist for civil rights cases. No heightened pleading requirement exists in the Rules of Civil Procedure for a civil rights death

claim, nor is there any need to change the rules for this kind of case.

Petitioners are the parties in this case with vivid imaginations. Petitioners invent a world in which Mr. Roybal is somehow arranging for a getaway car at a precise location while he steers with one hand and holds a BB gun in the other. Petitioners invent a legal world in which long followed and honored rules of pleading are no longer sufficient for their needs and wants. Petitioners do not want Rule 8 to apply and ask the Court to change the law on consideration of video evidence in a case in which it would make no difference in the determination of the Rule 12(b)(6) Motion.

Respondent moved for leave to file a Third Amended Complaint in the District Court. Petitioners did not oppose the proposed Amendment. An order allowing the amendment has been entered. The amendment adds a paragraph about the low-speed chase and the presence of the BB gun. Petitioners argued these things were omitted and that this was somehow false and a blatant contradiction of the allegations of the Complaint. Now they are included, and their inclusion makes no difference in Respondent's claims for relief.

III. The Application of the Doctrine of Qualified Immunity Would Not Change The Result

The law on excessive force is well explained, and its application to this case is clear, both in the

District Court opinion (139A-147A) and by the Tenth Circuit opinion (17A-27A). Even if the video evidence was considered, the Rule 12(b)(6) Motion would not be granted.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied. No error requires this Court's intervention. Video evidence is not admissible at this stage in this case and Respondent's pleadings are simple and plain and clear. But even if it was, the rule for which Petitioner now advocates would not change the result in this case on the Rule 12(b)(6) Motion. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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