

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

**SUPPLEMENTAL BRIEF FOR PETITIONERS
SUGGESTING MOOTNESS AND REQUESTING
VACATUR OF THE JUDGMENT BELOW**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
SUPPLEMENTAL BRIEF FOR PETITIONERS	1
I. The Intervening Proceedings.....	1
II. The Petition Is Moot	3
III. The Court Should Vacate the Tenth Circuit’s Judgment.....	4
A. Respondent Alone Made the Judgment Unreviewable	4
B. Non-Opposition to a Dismissal With Prejudice Is Not Forfeiture	6
C. The Consequences of Leaving the Opinion Standing Are Concrete	8
CONCLUSION	9
 SUPPLEMENTAL APPENDIX	
Appendix A: Plaintiff’s Motion to Dismiss and for Remand, D. Ct. Doc. 84 (Aug. 10, 2026)	1a
Appendix B: Order Granting Plaintiff’s Motion to Dismiss and for Remand, D. Ct. Doc. 85 (Sept. 10, 2026)	4a
Appendix C: Judgment, D. Ct. Doc. 86 (Sept. 10, 2026)	6a

TABLE OF AUTHORITIES

Cases

<i>Acheson Hotels, LLC v. Laufer</i> , 601 U.S. 1 (2023)	5
<i>Alvarez v. Smith</i> , 558 U.S. 87 (2009).....	6
<i>Arizonans for Official English v. Arizona</i> , 520 U.S. 43 (1997).....	3, 5
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	3
<i>Azar v. Garza</i> , 584 U.S. 726 (2018)	5
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	3
<i>Camreta v. Greene</i> , 563 U.S. 692 (2011).....	8
<i>Chapman v. Doe</i> , 143 S. Ct. 857 (2023).....	7, 8
<i>Ohlander v. Larson</i> , 114 F.3d 1531 (10th Cir. 1997).	6
<i>Royal Canin U.S.A., Inc. v. Wullschleger</i> , 604 U.S. 22 (2025).....	2, 5, 6
<i>Selig v. Pediatric Specialty Care, Inc.</i> , 551 U.S. 1142 (2007).....	5
<i>Tennessee v. Garner</i> , 471 U.S. 1 (1985)	3, 8
<i>U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship</i> , 513 U.S. 18 (1994).....	4, 6, 7, 9
<i>United States v. Munsingwear, Inc.</i> , 340 U.S. 36 (1950).....	1, 4, 5

Statutes

28 U.S.C. § 1367(c)(3).....	2
28 U.S.C. § 2106	4
42 U.S.C. § 1983.....	1, 2, 3, 5, 7

Rules

Fed. R. Civ. P. 12(b)(6)	3, 8
Fed. R. Civ. P. 41(a)(1)(A)(ii)	7
Fed. R. Civ. P. 41(a)(2)	6
Fed. R. Civ. P. 58(a)	2
Sup. Ct. R. 15.8	1

SUPPLEMENTAL BRIEF FOR PETITIONERS

Under this Court’s Rule 15.8, Petitioners call the Court’s attention to intervening proceedings in the district court that were not available when the petition and the brief in opposition were filed. On September 10, 2026, on Respondent’s own motion, the district court dismissed with prejudice the only federal claim in this case, the 42 U.S.C. § 1983 excessive-force claim on which the Tenth Circuit denied qualified immunity, and remanded the remaining state-law claim to New Mexico state court. Supp. App. 4a–6a. That dismissal leaves nothing for this Court to decide on the questions presented. It also leaves standing a published opinion of the Tenth Circuit that Petitioners can no longer challenge and that Respondent alone made unreviewable. The Court should grant the petition, vacate the judgment of the court of appeals, and remand with instructions to dismiss the appeal as moot. *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). Respondent’s counsel has advised that Respondent opposes vacatur.

I. The Intervening Proceedings

Petitioners filed their petition on March 19, 2026. Respondent filed his brief in opposition on July 15, 2026. In that brief, Respondent told the Court that he had obtained leave to file a Third Amended Complaint adding allegations about the low-speed chase and the BB gun, and that the amendment “makes no difference in Respondent’s claims for relief.” Br. in Opp. 6.

On August 10, 2026, Respondent moved to dismiss Count 2 of the Third Amended Complaint, the § 1983 claim, with prejudice. Supp. App. 1a (D. Ct. Doc. 84). Count 2 was “the only federal claim in the case.” *Id.* ¶ 3. Respondent gave a single reason: the federal claim “is not necessary to his obtaining adequate relief, since a New Mexico Tort Claim is also pleaded.” *Id.* ¶ 2. He asked that the surviving state-law count be remanded to the First Judicial District Court for Santa Fe County under 28 U.S.C. § 1367(c)(3). *Id.* ¶ 3. Petitioners did not oppose the motion. *Id.* ¶ 4.

On September 10, 2026, the district court granted the motion. Supp. App. 4a (D. Ct. Doc. 85). Acting under Federal Rule of Civil Procedure 41(a)(2), the court dismissed the § 1983 claim with prejudice. *Id.* Because the case then “lack[ed] a federal question,” the court remanded the state-law claim, citing this Court’s holding that remand is required once a plaintiff dismisses every claim arising under federal law. Supp. App. 5a (citing *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 43–44 (2025)). The court entered a separate judgment under Rule 58(a) the same day. Supp. App. 6a (D. Ct. Doc. 86).

There was no settlement. Petitioners paid nothing, agreed to nothing, and received nothing in exchange for their non-opposition. No stipulation was filed. Respondent’s motion does not mention the petition, the Tenth Circuit’s opinion, or any understanding between the parties, and there was none. Respondent decided on his own that he would rather pursue his state-law claim in state court without the federal claim and without learning the outcome of the pending petition before this Court.

II. The Petition Is Moot

The questions presented all concern the § 1983 claim. Question 1 asks whether video evidence may be considered on a Rule 12(b)(6) motion in a § 1983 excessive-force action. Question 2 asks whether the complaint's omissions defeated plausibility under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Question 3 asks whether *Tennessee v. Garner*, 471 U.S. 1 (1985), clearly established the unconstitutionality of the officers' conduct. Each asks whether Petitioners were entitled to dismissal of, or immunity from, a claim that no longer exists.

That claim cannot return. Respondent dismissed it with prejudice, and the same claim between the same parties is barred. No exception to the mootness doctrine applies. Respondent did not cease and reserve the right to resume; he ended the claim in perpetuity. And the questions presented will not evade future review in some other case; they arise in nearly every officer-involved shooting case pleaded around a video, and they will eventually reach this Court in a case that is still alive.

A live controversy is a prerequisite to this Court's jurisdiction at every stage, including the certiorari stage. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997). Counsel have a continuing obligation to bring developments bearing on mootness to the Court's attention. *Id.* at 68 n.23. Petitioners do so here, within days of the judgment that produced the mootness.

III. The Court Should Vacate the Tenth Circuit's Judgment

A. Respondent Alone Made the Judgment Unreviewable.

This Court may “direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.” 28 U.S.C. § 2106. Its “established practice” when a civil case becomes moot on its way to the Court’s conference is to vacate the judgment below and remand with a direction to dismiss. *Munsingwear*, 340 U.S. at 39. The remedy exists because a party “frustrated by the vagaries of circumstance” from obtaining review of an adverse ruling “ought not in fairness be forced to acquiesce in the judgment.” *U.S. Bancorp Mortgage Co. v. Bonner Mall P’ship*, 513 U.S. 18, 25 (1994). “The same is true when mootness results from unilateral action of the party who prevailed below.” *Id.* Vacatur is withheld when the losing party below mooted the case by its own voluntary conduct or by settlement, because in those circumstances the losing party “has voluntarily forfeited his legal remedy.” *Id.* The dispositive question is “whether the party seeking relief from the judgment below caused the mootness by voluntary action.” *Bonner Mall*, 513 U.S. at 24.

Petitioners did not. Respondent prevailed in the Tenth Circuit. Respondent moved to dismiss the federal claim on his own accord. Respondent chose to dismiss it with prejudice. Respondent stated his own reason for doing so, and that reason had nothing to do with Petitioners. Once he made that choice, the rest followed as a matter of law: the district court was

bound to remand the state-law claim, *Royal Canin*, 604 U.S. at 43–44, and this Court lost the power to reach the questions presented. That is the paradigm of mootness through “the unilateral action of the party who prevailed in the lower court.” *Arizonans*, 520 U.S. at 71–72 (citation modified).

Vacatur under these circumstances is well-established and routine. The Court vacated in *Azar v. Garza*, 584 U.S. 726, 729 (2018) (per curiam), recognizing that “One clear example where ‘[v]acatur is in order’ is ‘when mootness occurs through . . . the unilateral action of the party who prevailed in the lower court,’” adding that “[i]t would certainly be a strange doctrine that would permit a plaintiff to obtain a favorable judgment, take voluntary action that moots the dispute, and then retain the benefit of the judgment.” (citations omitted). Similarly, in *Selig v. Pediatric Specialty Care, Inc.*, 551 U.S. 1142 (2007), a § 1983 action in which the Eighth Circuit had affirmed the denial of qualified immunity on interlocutory appeal, the plaintiffs unilaterally dismissed their claims while the defendants’ petition was pending; the Court granted certiorari, vacated, and remanded with instructions to dismiss the appeal as moot. As recently as 2023, in *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 5 (2023), where the plaintiff’s voluntary dismissal mooted the case, the Court vacated the First Circuit’s judgment and observed that “[o]ur *Munsingwear* practice is well settled.” In keeping with its longstanding practice, it should vacate here as well.

B. Non-Opposition to a Dismissal With Prejudice Is Not Forfeiture.

Respondent could point to one sentence of his motion: “Defendants are unopposed to the relief sought in this Motion.” Supp. App. 2a ¶ 4. That sentence does not convert Respondent’s unilateral act into a settlement.

Bonner Mall withholds vacatur from a party who has “voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur.” 513 U.S. at 25. Forfeiture generally requires a choice by the losing party: a settlement in which it trades away its right to review for something it values more, or a voluntary act of its own that ends the controversy. *See id.* at 25; *Alvarez v. Smith*, 558 U.S. 87, 95–96 (2009). Petitioners made no such choice. They did not move for anything. They did not stipulate to anything. They were told that the plaintiff no longer wished to pursue the highest value claim against them, and they did not object.

Nor could an objection have preserved review. A district court may normally deny a Rule 41(a)(2) dismissal only to protect the defendant from legal prejudice. *See Ohlander v. Larson*, 114 F.3d 1531, 1537 (10th Cir. 1997). A dismissal with prejudice ends the claim and bars any refiling; it is the most favorable disposition a defendant can obtain, and it inflicts no prejudice a court could recognize. Had Petitioners opposed the motion, the district court would have granted it, and Respondent would have been entitled to the same remand under *Royal Canin*. The only difference would have been that it is likely the district court would have granted it after this

Court decided the petition, making the case procedurally unnecessarily complicated. A defendant has no cognizable interest in forcing a plaintiff to keep suing him so that the defendant may carry the plaintiff's claim to this Court. *Bonner Mall* simply asks who “caused the mootness by voluntary action,” 513 U.S. at 24, and here the answer is Respondent.

The Court has vacated on facts less favorable to the losing party than these. In *Chapman v. Doe*, 143 S. Ct. 857 (2023), a state court clerk petitioned for certiorari from an Eighth Circuit decision denying her quasi-judicial and qualified immunity in a § 1983 action. After the petition was filed and this Court called for a response, the plaintiff dismissed her action under Rule 41(a)(1)(A)(ii), a rule that required a stipulation signed by the clerk, and the clerk signed it. The Court granted the petition, vacated the judgment, and remanded with instructions to dismiss as moot. *Id.* Justice Jackson dissented alone. She reasoned that the clerk “contributed to the mootness of this case insofar as she stipulated to its dismissal,” and that, as she read the record, the stipulation had been given in exchange for the plaintiff's agreement not to object to vacatur. *Id.* at 858 (Jackson, J., dissenting). Neither concern is present here. Petitioners signed no stipulation; Respondent moved alone, under a rule that required nothing from Petitioners, and the district court, not the parties, ended the claim. Respondent gave nothing for Petitioners' non-opposition, has agreed to nothing since, and opposes vacatur now. And Petitioners have never withdrawn or abandoned their petition. If a signed stipulation exchanged for a promise not to oppose vacatur did not forfeit the remedy in

Chapman, silence in the face of a motion Petitioners could not have defeated does not forfeit it here.

Camreta v. Greene, 563 U.S. 692 (2011), confirms the point in this setting. There the Court vacated the portion of a Ninth Circuit opinion holding that officers had violated the Fourth Amendment, because the case had become moot before the officers could obtain review and the ruling would otherwise stand as circuit law. *Id.* at 712–714. “The point of vacatur is to prevent an unreviewable decision from spawning any legal consequences, so that no party is harmed by what we have called a ‘preliminary’ adjudication.” *Id.* at 713 (citation modified). The Court found that concern acute in the qualified-immunity context, where an appellate holding that officers acted unlawfully governs the conduct of every officer in the circuit who next confronts the same facts. *Id.* at 704–705, 713.

C. The Consequences of Leaving the Opinion Standing Are Concrete.

The Tenth Circuit’s opinion is published. It holds, as circuit law, that a district court may not consider video of the encounter on a Rule 12(b)(6) motion even when both parties have placed it in the record and the plaintiff drafted the complaint from its contents but without specifically referencing it; that a complaint alleging only that a suspect was “unarmed and fleeing” states a plausible excessive-force claim regardless of what it omits; and that *Garner* clearly establishes a violation on those allegations. Each holding binds every district court in the circuit and every officer sued there. Those holdings cannot be tested here now. Respondent secured that result and

then withdrew the claim that produced it, at a moment of his choosing, four months after Petitioners sought this Court's review. Vacatur is the equitable answer to that sequence. *Bonner Mall*, 513 U.S. at 25–26. It leaves Respondent where he chose to be: in state court, on his state-law claim, with the federal claim gone.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the court of appeals vacated, and the case remanded to the United States Court of Appeals for the Tenth Circuit with instructions to dismiss the appeal as moot.

Respectfully submitted,

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September 18, 2026

APPENDIX TABLE OF CONTENTS

Appendix A: Plaintiff's Motion to Dismiss
and for Remand, D. Ct. Doc. 84 (Aug. 10, 2026) . . . 1a

Appendix B: Order Granting Plaintiff's
Motion to Dismiss and for Remand, D. Ct.
Doc. 85 (Sept. 10, 2026) 4a

Appendix C: Judgment, D. Ct. Doc. 86
(Sept. 10, 2026). 6a

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

**SCOTT FUQUA PERSONAL REPRESENTATIVE
OF THE ESTATE OF JASON ROYBAL**
Plaintiff,

vs.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, CORPORAL
CHRISTOPHER ZOOK, DEPUTY JACOB
MARTINEZ, DEPUTY LEONARDO GUZMAN**
Defendants.

Case No.
1:23-CV-00685-SCY-LF

**PLAINTIFF'S MOTION TO DISMISS
AND FOR REMAND**

Plaintiff, by and through his undersigned counsel,
for his Motion to Dismiss and for Remand would show
the Court the following:

1. Plaintiff hereby moves the Court for an Order dismissing Count 2 (Fourteenth Amendment Right to Bodily Integrity and Fourth Amendment Right to be Free from Excessive Force Claim for Relief) in its Third Amended Complaint with prejudice.

2. Plaintiff seeks to dismiss this claim primarily due to his determination that the federal civil rights claim is not necessary to his obtaining adequate relief, since a New Mexico Tort Claim is also pleaded.
3. The civil rights claim stated in Count 2 is the only federal claim in the case. Plaintiff's other claim under Count 1 is a state tort claim and is not being dismissed. Remand of that claim is requested. Plaintiff therefore requests the Court to remand this case to the First Judicial District Court for Santa Fe County for determination of the state law tort claims cause of action, pursuant to 28 U.S.C § 1367 (c)(3)(d).
4. Defendants are unopposed to the relief sought in this Motion.

WHEREFORE, Plaintiff prays that the claims under Count 2 be dismissed with prejudice, that this case be remanded to the First Judicial District Court for Santa Fe County, and for such other and further relief as the Court may deem to be just and proper.

RESPECTFULLY SUBMITTED,

*/s/ Doug Perrin*_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of August 2026, I filed the foregoing electronically through the file and serve system, which caused all counsel of record to be served by electronic means.

/s/ Doug Perrin

Doug Perrin

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

SCOTT FUQUA PERSONAL REPRESENTATIVE
OF THE ESTATE OF JASON ROYBAL,
Plaintiff,

v.

No. 1:23-cv-00685-MLG-LF

BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY, CORPORAL CHRISTOPHER
ZOOK, DEPUTY JACOB MARTINEZ, and DEPUTY
LEONARDO GUZMAN,
Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS AND FOR REMAND

This matter is before the Court on Plaintiff Scott Fuqua's Motion to Dismiss and for Remand, Doc. 84, filed August 10, 2026. The motion is unopposed. *Id.* Having reviewed the parties' filings, the Court finds that dismissal of the requested claim and remand to state court is appropriate.

This case was previously removed. Doc. 1. Plaintiff now seeks to return to state court, where he will pursue only New Mexico state law claims. Doc. 84. For that reason, Plaintiff requests dismissal with prejudice of his lone federal cause of action, which asserts liability pursuant to 42 U.S.C. § 1983. Doc. 78.

Pursuant to Federal Rule of Civil Procedure 41(a)(1)-(2), if a plaintiff has not filed “(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared,” then “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” The claim under 42 U.S.C. § 1983 is hereby dismissed with prejudice.

As this case now lacks a federal question, this matter should proceed in state court. *See Royal Canin U.S.A., Inc. v. Wulfschleger*, 604 U.S. 22, 43-44 (2025) (holding that when a plaintiff dismisses all the claims that arise under federal law, the district court must remand the case to state court). This matter is hereby remanded to the First Judicial District Court of Santa Fe County for the State of New Mexico, County of Santa Fe. The parties shall bear their own costs and fees.

It is so ordered.

/s/

UNITED STATES DISTRICT JUDGE
MATTHEW L. GARCIA

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SCOTT FUQUA PERSONAL REPRESENTATIVE
OF THE ESTATE OF JASON ROYBAL,
Plaintiff,

v.

No. 1:23-cv-00685-MLG-LF

BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY, CORPORAL CHRISTOPHER
ZOOK, DEPUTY JACOB MARTINEZ, and DEPUTY
LEONARDO GUZMAN,
Defendants.

JUDGMENT

Pursuant to Federal Rule of Civil Procedure 58(a), and consistent with the Order Granting Plaintiff's Motion to Dismiss and For Remand filed contemporaneously herewith, the Court issues its separate judgment finally disposing of this civil case. It is ordered that this civil action is dismissed with prejudice.

It is so ordered.

/s/

UNITED STATES DISTRICT JUDGE
MATTHEW L. GARCIA