

No. \_\_\_\_\_

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In the  
Supreme Court of the United States

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ARCHIE WILLIAMS,

*Petitioner,*

v.

CITY OF BATON ROUGE; ALFRED CHARLES  
MONDRICK; MARJORIE GROHT; STEVEN  
WOODRING; FORMER LOUISIANA STATE  
POLICE FORENSIC SCIENTIST PATRICK LANE,  
FINGERPRINT EXAMINER SYBIL  
GUIDRY, SEROLOGIST NACE "JERRY" MILLER,

*Respondents.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. For the purposes of determining “clearly established” law under the qualified immunity analysis, does a Fourteenth Amendment claim alleging deprivations of due process arising out of the suggestiveness of a pretrial identification procedure require the same analysis as Fourth Amendment claims alleging unreasonable searches and seizures?

2. In a section 1983 action brought by a wrongfully convicted former prisoner, whose pretrial identification was accomplished by showing a rape and attempted murder victim three successive “six pack” photographic arrays, each of which depicted the plaintiff, over the course of a two-day period, did the Fifth Circuit panel improperly weigh evidence or judge witness credibility in favor of the moving party in granting summary judgment in Plaintiff’s Fourteenth Amendment claim challenging the suggestiveness of a pretrial identification procedure?

**PARTIES TO THE PROCEEDING**

Petitioner (plaintiff-appellant below) is Archie Williams.

Respondent (defendant-appellee below) is the City of Baton Rouge, a municipal corporation.

Respondent (defendant-appellee below) is Alfred Charles Mondrick, an individual.

Respondent (defendant-appellee below) is Marjorie Groht, an individual.

Respondent (defendant-appellee below) is Former Louisiana State Police Forensic Scientist Patrick Lane, an individual.

Respondent (defendant-appellee below) is Fingerprint Examiner Sybil Guidry, an individual.

Respondent (defendant-appellee below) is Serologist Nace “Jerry” Miller, an individual.

Respondent (defendant-appellee below) is Steven Wooding, an individual.

**STATEMENT OF RELATED PROCEEDINGS**

*Williams v. City of Baton Rouge*, No. 24-30723, 2025 WL 3084762 (5th Cir. Nov. 4, 2025) judgment entered on November 4, 2025; reprinted herein as Exhibit A.

*Williams v. City of Baton Rouge*, No. CV 20-00162-BAJ-SDJ, 2024 WL 4530112, judgment entered on October 18, 2024, reprinted herein as Exhibit C

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## **PETITION FOR WRIT OF CERTIORARI**

Archie Williams respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

### **OPINIONS BELOW**

The opinion of the Fifth Circuit Court of Appeals, dated November 4, 2025, reported at *Williams v. City of Baton Rouge*, No. 24-30723, 2025 WL 3084762 (5th Cir. Nov. 4, 2025)

The opinion of the United States District Court for the Middle District of Louisiana, reported at *Williams v. City of Baton Rouge*, No. CV 20-00162-BAJ-SDJ, 2024 WL 4530112

### **JURISDICTION**

The Fifth Circuit Court of Appeals entered judgment against Plaintiff and Appellee on November 4, 2025. This Court has jurisdiction under 28 U.S.C. Section 1254(1).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fourth Amendment to the U.S. Constitution provides:

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.

The Fourteenth Amendment to the U.S. Constitution provides:

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 provides:

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, to 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

### **STATEMENT OF THE CASE**

On December 9, 1982, Anne Eaton was raped and stabbed multiple times in her Baton Rouge residence which she shared with her husband and two children. The assailant, a black man who acted alone, forcibly entered the house, and took the woman to a second-story bedroom. *Williams v. City of Baton Rouge*, No. CV 20-00162-BAJ-SDJ, 2024 WL 4530112, at \*1 (M.D. La. Oct. 18, 2024). While the sexual assault was in progress, the woman's minor daughter arrived at the house, accompanied by Stephanie Alexander, an adult, and Ms. Alexander's minor daughter. After Ms. Alexander entered the house, she went to the bedroom and found the armed assailant and the woman, whose

hands were visibly bloody. After the assailant grabbed Alexander and told her to lie down on the floor, he fled the scene. The Police Defendants investigated Eaton's assault. *Id.*

It has always been undisputed that no physical evidence of any kind connected Williams to the crime scene. None of the fingerprints collected from the crime scene matched Mr. Williams. None of Mr. Williams' clothing or personal property was recovered from the crime scene, nor was any of Mr. Williams' blood or serological material recovered from the crime scene. *Williams v. City of Baton Rouge, et al.*, 2025 WL 503344, at \*50; *Williams v. City of Baton Rouge*, No. CV 20-00162-BAJ-SDJ, 2024 WL 4530112, at \*3 (M.D. La. Oct. 18, 2024), *aff'd*, No. 24-30723, 2025 WL 3084762 (5th Cir. Nov. 4, 2025.)

Throughout the forty-plus year litigation surrounding this wrongful conviction case, it has been universally understood that the government's case was supported by little other than Anne Eaton's identification of Mr. Williams. *Id.*, at \*51. There were only two eyewitnesses capable of testifying as to what they saw on the morning of December 9, 1982, Stephanie Alexander and victim Anne Eaton. Stephanie Alexander was of marginal use to the government's case, as Ms. Alexander, who undisputedly was present during the attack and got a good look at the assailant, never identified Williams in a photographic lineup, and identified someone other than Archie Williams at the physical

lineup. *Williams v. City of Baton Rouge, et al.*, 2025 WL 503344, at \*50

The primary detectives involved in the investigation into the Eaton Assault were Detective Marjorie Groht and Detective Charles Mondrick. As to Ms. Alexander's description, she described the assailant as a light skinned black male with a short afro, 5'9 to 5'10 in height, and with a slim build. Based solely on Ms. Alexander's description, Ms. Groht prepared a lineup seeking to approximate light skinned black men with thin builds. The very first set of photo lineups presented to Ms. Eaton were based only upon the description given to detectives by victim Stephanie Alexander, as Ms. Eaton had not yet been interviewed, and detectives were unaware of any differences in the assailant's description that Ms. Eaton may have provided. After BPD Sergeant O'Brian had formulated an "identikit" with Ms. Alexander, the first photographic lineups were presented to Ms. Eaton. *Id.*, at \*18–19.

On December 15, 1982, detectives conducted an extensive interview of Ms. Eaton, presenting her with a total of eight photographic lineups, each containing six mugshots, which were intended to approximate Ms. Alexander's description of a light skinned black male of thin build. As confirmed by the police report, as to these eight photographic lineups, Ms. Eaton "stated she did not see the suspect that attacked her" in any of the 48 pictures contained in the eight photographic "six pack" arrays. *Id.*, at \*20–21.

The next day, on December 16, 1982, detectives Groht and Mondrick again approached victim Eaton at her hospital bedside and presented her with a single photographic lineup containing six (6) black males all with the same general description. Ms. Groht testified that this photographic array included men that approximated Ms. Eaton's description of her assailant, as well as the identikit likeness and composite sketch that Ms. Eaton prepared with a BRPD sergeant. None of these pictures were of Archie Williams. Ms. Groht's police report states: "The victim, after viewing the photo lineup for approximately one minute, stated that photographs number three and photograph number five were close in description to that of the black male who had attacked her." The photograph in position number three was a man named "Frank Cooper", and the photo in position four corresponded to "Sidney Wright." Detective Groht's report confirms that she remembers that Ms. Eaton said that Cooper and Wright were "close in description" her attacker. Although Victim Eaton stated that Cooper and Wright closely resembled her attacker, no follow up investigation was done as to either of these individuals.

When asked why no follow up identification was done as Victim Eaton's tentative identification of Frank Cooper and Sidney Wright, Detective Groht described the difference between (1) verifiable positive identifications of suspects, as compared to (2) the mere identification of suspect characteristics. *Id.*, at \*21-22, testifying that no follow up investigation was conducted" because "there was not

enough evidence in her mind to positively say, these two, or this one, or this one is the one that committed the crime. She could not positively identify him.” *Id.*, 2025 WL 503344, at \*22–25. At approximately 10:00 a.m. on the morning of January 3rd, detectives visited Anne Eaton at a residence and showed her an additional five photographic arrays, and Ms. Eaton said that none of the 30 mugshots presented to her depicted her assailant.

***First Showing of Williams' Photo*** - Based on information obtained by a confidential informant, BPD Detectives visited Anne Eaton on the afternoon of January 3, 1983 with an additional photographic lineup containing a photograph of Archie Williams. With the knowledge that an informant had implicated Williams fresh in their minds BRPD officers presented Ms. Eaton with another photographic array of six black men that contained Archie Williams' picture in position #4. When presented with this lineup, Ms. Eaton singled out two individuals, including Mr. Williams, in position #4, and another black man in position no. 2, named Samuel Seaberry. As between the mugshots of Seaberry, in position #2 and Williams, in position #4, Detective Groht's report stated without further explanation that, “after using a piece of paper to partially cover the photos, as to Seaberry's photo, the “neck was too big and the face was too fat”. In referencing Mr. Williams' photo, Ms. Eaton stated “When you start looking for a man, start looking for someone that looks just like this.” *Id.*, at \*27.

***Second Consecutive Showing of Williams' Photo -***

After Ms. Eaton failed to identify Williams, detectives returned to the police station with another picture of Williams which depicted a side (profile) view of his face, and approximately thirty minutes after they left, they returned to show Ms. Eaton a second lineup featuring Williams in position #2. As confirmed by Detective Groht's police report, even after showing Ms. Eaton two consecutive photographic lineups featuring Williams, Ms. Eaton still could not positively identify Williams as her attacker, as the report reads: "The victim, after viewing the side view lineup for approximately thirty (30) seconds, stated that photo #2 looked the most like the black male who raped her, but she could not positively say." *Id.*, at \*28–29.

***Third Consecutive photographic lineup featuring***

***Williams' Photo-*** The following morning, detectives went back to the residence armed with the *third consecutive* photographic lineup featuring Mr. Williams, and Ms. Eaton, after being shown three consecutive lineups each featuring Mr. Williams, then positively identifies Williams as her attacker. Williams would be arrested later that evening, based on Ms. Eaton's positive identification. *Id.*, at \*29.

On April 21, 1983, following a jury trial, Plaintiff Archie Williams was wrongfully convicted of the rape and attempted murder of victim Anne Eaton, and was incarcerated for a total of thirty-six years and seventy-six days for these crimes. Having always maintained his innocence, Plaintiff Williams was vindicated by a March 21, 2019 Order of the

19th Judicial District Court, which conclusively determined Mr. Williams to be factually innocent of these crimes, due to the discovery of fingerprint evidence definitively implicating another man, as the perpetrator of these crimes. *Williams v. City of Baton Rouge, et al.*, 2025 WL 503344, at \*12.

A due process violation based on improper identification procedures exists when the identification procedure “was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.” *Simmons v. U.S.*, 390 U.S. 377, 384 (1968). Suggestiveness occurs, among other ways, when an individual is in “some way emphasized” or the police indicate that “one of the persons pictured committed the crime.” *Id.* at 383. Even where a technique is impermissibly suggestive, there is no due process violation if the totality of the circumstances establishes that the identification is nevertheless reliable. *Manson v. Brathwaite*, 432 U.S. 98, 113–14 (1977). In making this determination, a court considers the following factors: (1) the witness's opportunity to observe the individual at the time of the crime; (2) the degree of attention focused on the individual by the witness; (3) the accuracy of the witness's description of the individual prior to the challenged procedure; (4) the level of certainty demonstrated by the witness during the challenged procedure; and (5) the length of time between the crime and the identification procedure. *United States v. Drake*, 543 F.3d 1080, 1082 (9th Cir. 2008) (quoting *Neil v. Biggers*, 409 U.S. 188, 199–200 (1972)).

On March 17, 2020, Williams filed suit asserting 42 U.S.C. § 1983 claims against the City and the Police Defendants. Among other claims, Williams alleged that the Police Defendants violated his Fourteenth Amendment right to due process by using an impermissibly suggestive photographic identification procedure

The City and the Police Defendants filed an opposed motion for summary judgment. The district court granted their motion for summary judgment on Williams's fabrication of evidence through impermissibly suggestive identification procedures, reasoning that the Police Defendants were entitled to qualified immunity.

Moreover, the district court granted summary judgment against Williams on his failure to train and supervisory liability claims because it found that there was no underlying constitutional violation. Finally, the district court granted summary judgment against Williams on his state law claims, citing the lack of evidentiary support and constitutional violation. Williams timely appealed.

### **REASONS FOR GRANTING THE PETITION**

This is a case of first impression. Since the advent of *Saucier's* two-part methodology, this Court's guidance concerning the parameters of the qualified immunity defense has almost exclusively involved Fourth Amendment claims,<sup>1</sup> and this Court

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<sup>1</sup>See *Mullenix v. Luna*, 577 U.S. 7, 14-15 (2015) (State trooper who fatally shot motorist in attempting to disable the

has yet to confront a case involving the qualified immunity defense in a § 1983 action for due process violations based on impermissibly suggestive identification procedures such as this one. As discussed below, the issues presented by this Fourteenth Amendment claim suggest an approach to the second prong of the qualified immunity analysis different than that which is required in Fourth Amendment cases.

In resolving questions of qualified immunity at summary judgment, courts engage in a two-pronged inquiry. The first asks whether the facts, “[t]aken in the light most favorable to the party

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vehicle that motorist was using to flee from arrest did not violate clearly established law regarding excessive force under Fourth Amendment, and thus, trooper was entitled to qualified immunity in § 1983 action brought by motorist's estate.); *Kisela v. Hughes*, 584 U.S. 100, 105-06 (2018) (Police officer's non-fatal shooting of a woman holding a large kitchen knife, when responding to 911 emergency call, did not violate clearly established law, and thus, officer was entitled to qualified immunity in woman's § 1983 action asserting Fourth Amendment excessive force claim.); *White v. Pauly*, 580 U.S. 73, 78 (2017) (Police officer did not violate a clearly established right when, having arrived late on scene and having heard only “we have guns” before taking cover behind a stone wall, officer fatally shot victim through window of his house, without warning, during an investigation into an earlier road-rage incident involving victim's brother, for purposes of officer's qualified immunity defense to a § 1983 claim brought by representative of victim's estate for excessive force; officer's conduct did not constitute a run-of-the-mill Fourth Amendment violation, and no identified precedent held that a Fourth Amendment violation had occurred under similar circumstances.)

asserting the injury, ... show the officer's conduct violated a [federal] right [.]” *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The second prong of the qualified-immunity analysis asks whether the right in question was “clearly established” at the time of the violation. *Hope v. Pelzer*, 536 U.S. 730, 739, (2002). Governmental actors are “shielded from liability for civil damages if their actions did not violate ‘clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Ibid.* “[T]he salient question ... is whether the state of the law” at the time of an incident provided “fair warning” to the defendants “that their alleged [conduct] was unconstitutional.” *Id.*, at 741.

Courts have discretion to decide the order in which to engage these two prongs. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). But under either prong, courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment. See *Brosseau v. Haugen*, 543 U.S. 194, 195, n. 2, (2004); *Saucier*, *supra*, at 201; *Hope*, *supra*, at 733, n. 1. This is not a rule specific to qualified immunity; it is simply an application of the more general rule that a “judge's function” at summary judgment is not “to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, (“*Anderson*”) 477 U.S. 242, 255 (1986). Summary judgment is appropriate only if “the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. Rule Civ. Proc.

56(a). In making that determination, a court must view the evidence “in the light most favorable to the opposing party.” *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); see also *Anderson, supra*, at 255, 106 S.Ct. 2505. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. *Anderson v. Liberty Lobby, Inc.*, (“*Anderson*”) 477 U.S. 242, 255, (1986); *Tolan v. Cotton*, 572 U.S. 650, 657-58 (Fifth Circuit panel improperly weighed evidence and resolved disputed issues in favor of moving party in excessive force case by failing to credit key evidence offered by suspect, warranting reversal of summary judgment.) Hence, regardless of which prong of the analysis a court engages in, the robust consensus of this Court's cases extols the importance of drawing inferences in favor of the nonmovant, even when a court decides only the clearly-established prong of the standard.

As to the second prong of the analysis, in cases arising in the context of Fourth Amendment claims, this Court has repeatedly admonished lower courts to not define the clearly established law, prong at a high level of generality. *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011); *Brosseau v. Haugen*, 543 U.S. 194, 198, (2004); *Mullenix v. Luna*, (*Mullenix*) 577 U.S. 7, 12 (2015) (Such specificity is especially important in the Fourth Amendment context, where the Court has recognized that “[i]t is

sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts.”) In cases alleging unreasonable searches or seizures, this Court has instructed that courts should define the “clearly established” right at issue on the basis of the “specific context of the case.” *Saucier, supra*, at 201; see also *Anderson v. Creighton*, 483 U.S. 635, 640–641(1987). Accordingly, this Court has repeatedly held that courts must take care not to define a case's “context” in a manner that imports genuinely disputed factual propositions. *See Brosseau, supra*, at 195, 198, (inquiring as to whether conduct violated clearly established law “ ‘in light of the specific context of the case’ ” and construing “facts ... in a light most favorable to” the nonmovant).

In contrast to the case-specific and circumstance-driven “objective reasonableness” standard associated with the determination of liability in Fourth Amendment excessive force cases, (*See Graham v. Connor*, 490 U.S. 386, 394 (1989)), which routinely complicates the analysis of what prior cases may constitute “clearly established law”, the components of a due process violation based on improper identification procedures are readily definable, having been articulated, and affirmed for decades in the seminal cases of *Neil v. Biggers*, (*Neil*) 409 U.S. 188, 199–200 (1972), and *Manson v. Brathwaite*, (*Manson*) 432 U.S. 98, 113–14 (1977), and distilled into a five-factor analysis that has governed the analysis to the present.

Specifically, under *Neil* and *Manson*, a due process violation based on improper identification procedures exists when the “identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.” *Simmons v. U.S.*, 390 U.S. 377, 384 (1968). Suggestiveness occurs, among other ways, when an individual is in “some way emphasized” or the police indicate that “one of the persons pictured committed the crime.” *Id.* at 383. Even where a technique is impermissibly suggestive, there is no due process violation if the totality of the circumstances establishes that the identification is nevertheless reliable. *Manson v. Brathwaite*, 432 U.S. 98, 113–14 (1977). In making this determination, a court considers the following factors: (1) the witness's opportunity to observe the individual at the time of the crime; (2) the degree of attention focused on the individual by the witness; (3) the accuracy of the witness's description of the individual prior to the challenged procedure; (4) the level of certainty demonstrated by the witness during the challenged procedure; and (5) the length of time between the crime and the identification procedure. *United States v. Drake*, 543 F.3d 1080, 1082 (9th Cir. 2008) (quoting *Neil v. Biggers*, 409 U.S. 188, 199–200 (1972)).

It follows that, unlike the case specific analysis attendant to the determination of “clearly established” law in Fourth Amendment claims alleging unreasonable searches or seizures, the contours of the “clearly established law” governing alleged due process violations based on improper

identification procedures have been clearly established by this Court, and have been for decades. Accordingly, since the governing law is, and has been, squarely addressed by *Neil* and *Manson*, a Fourteenth Amendment claim alleging improper identification procedures does not require a lower court to scour the prior jurisprudence of its circuit and this Court to find a case with analogous facts to the case before it.

Here, in focusing its analysis primarily on the second prong of the qualified immunity analysis, the district court went to great lengths to distinguish the facts of this case from the facts of other dissimilar cases, which both pre-dated and post-dated this incident, and in so doing, failed to view the evidence at summary judgment in the light most favorable to Williams with respect to the central facts of this case. *Williams v. City of Baton Rouge*, No. CV 20-00162-BAJ-SDJ, 2024 WL 4530112, \*4, \*5.

Here, because no physical evidence connected Mr. Williams to this crime, the government's case relied almost solely on the testimony of Ms. Eaton. In holding that the defendants' actions did not violate clearly established law, the district court failed to credit evidence that distinguished Williams' case from other factually dissimilar cases. Although the Fifth Circuit affirmed based primarily on the first prong of the qualified immunity analysis, it adopted the same factual analysis employed by the district court, and when the panel determined that "Williams failed to prove that the Police Defendants' photographic identification procedure violated his

constitutional or statutory rights”, it was working under the same factual analysis relied upon by the district court, that failed to draw inferences in favor of Mr. Williams, as the nonmoving party. As such, both courts improperly “weigh[ed] the evidence” and resolved disputed issues in favor of the moving parties. *Id.*; *Anderson*, 477 U.S., at 249; *Williams v. City of Baton Rouge*, No. 24-30723, 2025 WL 3084762, at \*\*2-5, \*12 (5th Cir. Nov. 4, 2025.)

In adopting the district court’s very limited factual analysis, the Fifth Circuit panel completely ignored the following facts favorable to Mr. Williams: (1) that no physical evidence of any kind connected Williams to the crime scene; (2) that none of the fingerprints collected from the crime scene matched Mr. Williams; (3) that none of Mr. Williams’ clothing or personal property was recovered from the crime scene, (4) that none of Mr. Williams’ blood or serological material recovered from the crime scene, (5), that witness Stephanie Alexander identified someone *other than Williams* at the in-person lineup, (6) that witness Stephanie Alexander never identified Williams in a photographic lineup, (7) that on December 16, 1982, Ms. Eaton stated that two photographs were “close in description to that of the black male who had attacked her.” The photograph in position number three was a man named “Frank Cooper”, and the photo in position four corresponded to “Sidney Wright”, each of whom were never investigated as potential suspects. (8) That on the afternoon of January 3, 1983 when Ms. Eaton first identified Mr. Williams, she stated “When you start looking for a man, start looking for someone that

looks just like this.” (By contrast, the panel interpreted Ms. Eaton to say that Williams looked “very, very close to her attacker” during this encounter.) *See Williams v. City of Baton Rouge*, No. 24-30723, 2025 WL 3084762, \*3 (5th Cir. Nov. 4, 2025). (9) That when presented with this lineup, Ms. Eaton singled out two individuals, including Mr. Williams and another black man named Samuel Seaberry, and somehow excluded Mr. Seaberry with the aid of a piece of paper, the circumstances of which remain unclear. All of these facts suggest that Ms. Eaton’s identification of Mr. Williams was far from certain prior to the third showing of his likeness.

***Plaintiff’s evidence regarding the “repeated suspect effect” was not considered by the panel.*** Until Ms. Eaton was shown Mr. Williams’ photo for the third consecutive time over a two day period, she could not positively identify Mr. Williams as her attacker. The panel failed to consider Mr. Williams’ expert declaration, which identified a well recognized and peer reviewed phenomena within the scientific community known as the “repeated suspect effect”, which holds that the act of repeatedly presenting a witness with a suspect (or the suspect's photo) creates witness familiarity with that suspect's face which, in turn, contaminates any later identification involving that same witness and suspect, which causes the suspect's face to stand out in the witness’ mind in subsequent presentations to the witness. As this can offer a plausible explanation for why Ms. Eaton could not definitively identify Mr. Williams’ photo as her attacker prior to being repeatedly

shown his photo in three consecutive photographic arrays, it should have been considered by the panel, but was ignored. *Williams v. City of Baton Rouge*, 2025 WL 503344, at \*17.

Another fundamental problem with the panel's failure to consider the evidence presented by Mr. Williams at summary judgment concerned the panel's implicit affirmation of Ms. Eaton's credibility, in contravention of the well settled principle that when evidence is viewed in favor of the nonmovant, credibility determinations are the province of the jury. *Anderson v. Liberty Lobby, Inc.*, (“*Anderson*”) 477 U.S. 242, 255, (1986). Along these lines, the panel gave significant credence to the movant's evidence concerning Ms. Eaton's identification of a scar, the size, shape, and character of which remain unclear, which has been alternatively described as being on Mr. Williams' shoulder and right arm. *Williams v. City of Baton Rouge*, No. 24-30723, 2025 WL 3084762, at \*3; *Williams v. City of Baton Rouge, et al.*, , 2025 WL 822878, at \*8–9.

***The law pertaining to the suggestiveness of pretrial identifications was “clearly established” for decades, and did not require any references to factually similar cases to satisfy the second prong of the qualified immunity analysis***

Unlike the malleable case-specific and circumstance-driven “objective reasonableness” standard associated with the determination of liability in Fourth Amendment excessive force cases

that require sufficiently similar facts to satisfy the “clearly established law” standard, here the applicable Fourteenth Amendment jurisprudence regarding deprivations of due process due to improper identification procedures has remained fixed and well defined for several decades, and holds as follows:

Under *Neil* and *Manson*, a due process violation based on improper identification procedures exists when the “identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.” *Simmons v. U.S.*, 390 U.S. 377, 384 (1968). Suggestiveness occurs, among other ways, when an individual is in “some way emphasized” or the police indicate that “one of the persons pictured committed the crime.” *Id.* at 383. Even where a technique is impermissibly suggestive, there is no due process violation if the totality of the circumstances establishes that the identification is nevertheless reliable. *Manson v. Brathwaite*, 432 U.S. 98, 113–14 (1977). In making this determination, a court considers the following factors: (1) the witness's opportunity to observe the individual at the time of the crime; (2) the degree of attention focused on the individual by the witness; (3) the accuracy of the witness's description of the individual prior to the challenged procedure; (4) the level of certainty demonstrated by the witness during the challenged procedure; and (5) the length of time between the crime and the identification procedure. *United States v. Drake*, 543 F.3d 1080,

1082 (9th Cir. 2008) (quoting *Neil v. Biggers*, 409 U.S. 188, 199–200 (1972)).

For these reasons, the determination of “clearly established law” pertaining to impermissibly suggestive identification procedures does not, and should not, require references to any factually similar cases to satisfy the second prong of the qualified immunity analysis.

Further, because the Fifth Circuit panel improperly weighed evidence and resolved disputed issues of fact in favor of the moving party, this Court should vacate the judgment of the Fifth Circuit, and remand this matter for further proceedings.

### CONCLUSION

For all the foregoing reasons, this Petition should be granted in its entirety, and this matter should be remanded for trial.

Respectfully submitted,

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