

No. 25-1420

IN THE
Supreme Court of the United States

BETTY JO SHELBY,

Petitioner,

v.

MICHAEL MANNING, AS ADMINISTRATOR OF
THE ESTATE OF TERENCE CRUTCHER, SR., *et al.*,

Respondents.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Respondent answers a different petition. Officer Shelby does not ask this Court to resolve any disputed fact in her favor. For purposes of this petition, she accepts the panel’s premise that, at the instant she fired, Crutcher’s hands were raised, the driver’s-side window was mostly rolled up, and no weapon was within reach. App. A at 8a. The question presented is legal: whether the panel could translate those assumed facts into the labels “unarmed” and “nonthreatening,” omit the surrounding circumstances the panel itself recited, and deny immunity without identifying a case in which an officer taking similar actions in similar circumstances was held to have violated the Constitution. *Zorn v. Linton*, 146 S. Ct. 926, 930–31 (2026).

The opposition never squarely answers that question. It invokes *Tolan v. Cotton*, 572 U.S. 650 (2014), as though crediting the nonmovant’s evidence resolves the clearly established inquiry. It does not. *Tolan* governs the factual context; *Zorn* still requires precedent involving similar actions in similar circumstances that placed the unlawfulness beyond debate. 572 U.S. at 656–57. Within that plaintiff-favorable context, *Zorn* still requires precedent involving similar actions in similar circumstances that placed the unlawfulness of the officer’s conduct beyond debate. *Zorn* itself arose at summary judgment, accepted the plaintiff-favorable view of the facts, and summarily reversed anyway, because the court of appeals defined the right too generally and identified no precedent governing the officer’s specific conduct. 146 S. Ct. at 929 n.1, 930–31. Respondent’s reading of *Tolan* would have required a different result in *Zorn*.

The panel did not reverse because of a factual error “and that reason alone,” as respondent asserts. BIO 1–2. Its published opinion also held the district court “too granular” in defining the right and adopted a competing methodology for identifying clearly established law. App. A at 12a–16a. That methodology—not any dispute about the final seconds—is the subject of the petition. And respondent’s own submission that *Zorn* “made no new law,” BIO 4, 27, concedes the premise: the requirement the panel disregarded was settled long before September 2016.

I. RESPONDENT’S RULE 56 ARGUMENT DOES NOT ANSWER THE QUESTION PRESENTED.

A. Shelby Accepts the Panel’s Plaintiff-Favorable Assumptions.

Respondent asserts the panel reversed because the district court resolved three factual disputes in Shelby’s favor, “and for that reason and that reason alone.” BIO 1–2. The record refutes that account. The district court expressly recognized each dispute respondent identifies: Crutcher’s compliance with commands, whether he lowered his hands, whether he reached into the driver’s-side window, and the window’s position. App. B at 28a–29a. Construing those disputes in the Estate’s favor, its clearly established law analysis assumed Crutcher approached the SUV “with his hands up” and did no more than “lower[] his arm” upon reaching it. *Id.* at 37a & n.39. The panel rejected that last assumption. App. A at 7a–8a. Shelby accepts the panel’s assumption.¹ But correcting one factual

1. Respondent’s account also disregards the Estate’s own admissions. The Estate admitted without qualification that:

premise does not establish the district court resolved three disputes in the officer's favor, and it does not touch the question presented.

B. Plaintiff-Favorable Facts Do Not Authorize a Plaintiff-Favorable Level of Generality.

Respondent's central premise is that once the disputes are taken in the Estate's favor, the encounter can be restated as the shooting of an "unarmed individual who poses no immediate threat." BIO i, 2, 15. But "poses no immediate threat" is the conclusion reached under *Graham*, not a description of the officer's actions and the circumstances she faced. If that conclusion supplied clearly established law, the second prong would do no independent work in any deadly-force case that survives the first.

Zorn forecloses that collapse. The Court there accepted the protester was nonviolent and passively resistant and the wristlock caused pain. 146 S. Ct. at 928–29. It still required precedent addressing the particular use of a wristlock after the warnings and resistance presented there, and it held the Second Circuit could not substitute the conclusion the force was "gratuitous" for that comparison. *Id.* at 930–31. A generalized principle

(1) because of Crutcher's "continued disobedience and non-compliance," Shelby radioed, "I have a subject that won't show me his hands," and (2) Shelby formed the opinion Crutcher had a weapon based on his movements toward his pockets. 10th Cir. App. Vol. 2 at 230–31, ¶¶ 26, 33; *id.* Vol. 3 at 408. Those admissions establish what confronted Shelby, not that Crutcher was armed. The panel itself observed the district court "merely describe[d] what can be seen in the helicopter video." App. A at 7a n.5.

is insufficient, the Court explained, when it does not “obviously resolve” the officer’s particular conduct because it fails to specify which circumstances make the force unlawful. *Id.* at 931. The labels “unarmed” and “nonthreatening” have the same defect: they announce the conclusion without identifying which circumstances made Shelby’s use of force unlawful.

Nor does the panel’s reliance on *Hope v. Pelzer*, 536 U.S. 730 (2002), rescue the analysis. App. A at 12a–13a. *Hope* excuses the absence of a factually identical case; it does not excuse the absence of any case addressing similar actions in similar circumstances, least of all where force is used within the “hazy border between excessive and acceptable force.” *Brosseau v. Haugen*, 543 U.S. 194, 201 (2004) (per curiam).

The surrounding chronology also remains relevant even with every dispute about the final instant resolved in the Estate’s favor.² *Tolan* requires a court to accept the nonmovant’s version of genuinely disputed facts. It does not authorize a court to omit undisputed context when determining whether existing precedent governed the officer’s conduct—and the panel omitted a great deal of it.

2. *Barnes v. Felix* rejected a final-frame approach to Fourth Amendment reasonableness, explaining the “totality of the circumstances” inquiry “has no time limit” and earlier events may bear on how a reasonable officer understood later conduct, including why otherwise ambiguous conduct would be perceived as threatening or innocuous. 605 U.S. 73, 77, 80–81 (2025). *Barnes* addressed the constitutional prong, not clearly established law, but its holding that earlier circumstances may bear on how a reasonable officer understood later events reinforces the relevance of the surrounding chronology when particularizing the right.

II. THE PANEL’S AUTHORITIES DO NOT SATISFY *ZORN*.

A. Both of the Errors *Zorn* Identified Are Present Here.

Respondent’s principal answer is neither error identified in *Zorn* appears in the opinion below, because *Zuchel*, *Walker*, and *Zia Trust*—unlike the decision on which the Second Circuit relied—actually held uses of deadly force unlawful. BIO 18–21. Both errors are present.

First, holding deadly force was unlawful in some circumstances is not notice it was unlawful in these. The defect in *Zorn* was not that the cited decision involved a different kind of force. It was that precedent addressing a “wide range of aggressive conduct” did not clearly establish the officer’s materially different “specific conduct was unlawful.” 146 S. Ct. at 931 (quoting *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021) (per curiam)). The pre-2016 decisions here share that defect. *Zuchel* involved deadly force used almost immediately after officers arrived and were told the individual had a knife. 890 F.2d 273, 274–76 (10th Cir. 1989). *Walker* involved a suicidal man holding a blade to his own wrist who, on the plaintiff-favorable facts, was not advancing toward anyone. 451 F.3d 1139, 1154–61 (10th Cir. 2006). *Zia Trust* involved an officer who, shortly after arriving and before any meaningful interaction, shot the driver of an immobilized van without knowing who he was or what role he had in the reported dispute. 597 F.3d 1150, 1152–55 (10th Cir. 2010). None involved a subject who disregarded repeated commands while proceeding toward an unattended running vehicle. That is the case respondent needed to identify and did not.

Second, the panel here framed the right without the specificity *Zorn* requires. It acknowledged “factual variations” among the three decisions and synthesized them into the proposition that a reasonable officer would have recognized each plaintiff as “unarmed and nonthreatening.” App. A at 15a. Respondent likewise extracts a generalized rule that officers may not use “deadly force against a person posing no immediate threat.” BIO 4, 18. That is a rule “cast at a high level of generality,” *City of Tahlequah v. Bond*, 595 U.S. 9, 12 (2021) (per curiam), not “a case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment,” *Rivas-Villegas*, 595 U.S. at 6.

Respondent’s *a fortiori* argument does not close the gap. The argument is that the individuals in the cited cases presented greater threats than Crutcher, so those decisions necessarily established the unlawfulness of Shelby’s conduct. BIO 18–21. Respondent’s *a fortiori* inference assumes the encounters differ only in degree of threat. They do not. The officers in *Zuchel* and *Zia Trust* fired within moments of arriving, without the repeated commands and observed noncompliance present here; none of the three involved a subject moving toward an unattended running vehicle; and none involved the extended sequence of commands and noncompliance the panel itself recited. Ranking those encounters on a single scale of threat conceals precisely the circumstances that made this one different. The question is not how materially different encounters rank after the fact. It is whether an officer could have read the cited decisions beforehand and known her conduct in the circumstances she faced was prohibited. *Zorn*, 146 S. Ct. at 930–31; *City of Escondido v. Emmons*, 586 U.S. 38, 43 (2019) (per curiam).

The circumstances the panel’s abstraction omitted were undisputed below. Shelby had formed the opinion Crutcher had a weapon based on his movements toward his pockets; she was specifically concerned he could reach the SUV and access a gun; and Crutcher proceeded approximately 27 steps over about 18 seconds toward the driver’s door while disregarding repeated commands to stop and kneel. 10th Cir. App. Vol. 2 at 231–33, ¶¶ 33, 39, 41–42; *id.* Vol. 3 at 408–10. Those admissions do not establish Crutcher possessed or could reach a weapon. They establish what confronted Shelby before the final instant—and *Zorn* confirms that preceding circumstances matter to the precedent comparison, because the Court there specifically considered whether warnings preceded the force. 146 S. Ct. at 930–31. Whether Crutcher was in fact unarmed, a fact known only afterward, is a different question from the circumstances confronting Shelby at the time. *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Finally, *Zorn* cannot be confined to its facts. Respondent’s proposed distinction—wristlock cases demand factual specificity while deadly-force cases may be resolved through the labels “unarmed” and “nonthreatening”—is backwards. This Court has repeatedly said specificity is especially important in Fourth Amendment excessive-force cases. *Kisela v. Hughes*, 584 U.S. 100, 104–05 (2018) (per curiam); *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam); *Brosseau*, 543 U.S. at 201. And in *Scott v. Harris* the Court refused to treat *Garner* as a “magical on/off switch” governing materially different circumstances. 550 U.S. 372, 382 (2007). The three pre-2016 decisions did not give Officer Shelby the particularized notice *Zorn* requires.

B. Later Decisions Cannot Supply the Content Missing From the Pre-2016 Cases.

The panel formulated the right through *Finch v. Rapp*, 38 F.4th 1234 (10th Cir. 2022), and *Clerkley v. Holcomb*, 121 F.4th 1359 (10th Cir. 2024), describing them as “how subsequent cases have framed the right.” App. A at 13a–15a. It then used *Clerkley*’s 2024 synthesis of *Zuchel*, *Zia Trust*, and *Walker* to bridge their acknowledged factual variations. *Id.* at 15a. The panel’s footnote says later decisions may be used only to fix the appropriate level of generality. *Id.* at 14a n.7. But the level of generality is not a neutral framing choice antecedent to the analysis; it can determine the outcome. A rule that later decisions may set the level of generality is therefore a rule that later decisions may determine what preexisting law communicated to an officer in 2016. This Court has held they cannot. *Brosseau*, 543 U.S. at 200 n.4 (post-event decisions could not have given fair notice and were “of no use in the clearly established inquiry”).

The panel separately noted that a court reviewing qualified immunity may consider relevant precedent the parties did not cite. App. A at 15a n.8. Shelby does not dispute that proposition. *See Elder v. Holloway*, 510 U.S. 510, 516 (1994). But authority to identify overlooked precedent is not authority to use later decisions to supply what the preexisting law did not. The question remains what precedent existing in September 2016 communicated to a reasonable officer, and the panel answered it with a 2024 synthesis holding in each earlier case “a reasonable officer would have recognized the plaintiff was unarmed and nonthreatening.” App. A at 15a. That synthesis cannot establish what the law placed beyond debate eight years earlier.

Respondent never explains why the panel here could rely on decisions from 2022 and 2024 to formulate the right and synthesize materially different pre-2016 cases when its own discussion of *Kisela* recounts this Court’s rejection of reliance on a post-event decision because it “could not have provided the officer defendant with fair notice” and was “of no use in the clearly established inquiry.” BIO 25 (citing *Brosseau*, 543 U.S. at 200 n.4). In *Kisela*, the Ninth Circuit likewise attempted to characterize its reliance on the later decision as merely “illustrative, not as indicative” of clearly established law; this Court found no apparent difference. 584 U.S. at 107. The objection here likewise is not to citation of a later opinion. It is that the formulation and synthesis doing the analytical work were supplied only after Officer Shelby acted.

III. THE OPPOSITION DOES NOT ANSWER THE CONFLICT WITH THIS COURT’S PRECEDENT.

Respondent emphasizes the absence of an inter-circuit split and characterizes the petition as fact-bound error correction, invoking Rule 10’s caution that review is rarely granted where the asserted error is “the misapplication of a properly stated rule of law.” BIO 2, 9–10, 31; Sup. Ct. R. 10. That description does not fit this case. The panel did not misapply a properly stated rule in an unpublished order. It published an opinion holding the district court’s approach “too granular,” rejecting the search for analogous precedent as a “scavenger hunt,” instructing officers may be placed on notice through training and “commonsense parallels,” and using later decisions to fix the level of generality. App. A at 12a–16a. Those holdings now bind every district court in the circuit. Rule 10(c) separately recognizes review when a court of appeals

decides an important federal question in conflict with this Court’s decisions, and this Court’s summary dispositions in *White*, *Bond*, *Rivas-Villegas*, and *Zorn* did not depend on a developed circuit split. Each enforced the specificity requirement where a lower court had transformed general excessive-force principles into clearly established law.

Nor does the opposition answer the petition’s showing this is a recurring problem in the Tenth Circuit. That court’s decision in *Casey v. City of Federal Heights*, 509 F.3d 1278, 1284 (10th Cir. 2007), adopted a sliding scale under which “the more obviously egregious the conduct,” the less factual specificity is required of prior case law. The panel applied that framework here, App. A at 12a–13a, and the circuit continues to treat it as binding, *See Pitts v. Burke*, [Tenth Circuit reporter citation], petition for cert. pending, No. 25-1062 (U.S. filed Mar. 2, 2026); see also FOP Amicus Br. 4–13. The question is not whether an officer might draw a “commonsense parallel” from materially different cases. It is whether precedent was specific enough that “every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.” *Zorn*, 146 S. Ct. at 930 (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018)). Respondent recites that standard but never explains how the panel’s ‘commonsense parallels’ methodology satisfies it.

Respondent’s submission that *Zorn* “made no new law” strengthens the case for review rather than undermining it. BIO 4, 27. *Zorn* announced no new rule. It summarily enforced a settled requirement after a court of appeals recited the correct standard and then applied it at an impermissible level of generality. If that requirement was settled, it was settled in September

2016, when Officer Shelby acted. The published decision below, issued one week after *Zorn*, repeats the same error without addressing *Zorn*'s demand for precedent involving similar actions in similar circumstances. Respondent treats the panel's silence as proof *Zorn* had no bearing. BIO 31 n.3. But *Zorn* was controlling precedent when the panel issued its decision. And *Zorn* itself demonstrates that reciting the specificity standard is not enough: a court may state the correct rule yet apply it at an impermissible level of generality. The panel's failure to apply *Zorn*'s particularized inquiry despite having that decision before it makes the conflict more troubling, not less.

The case is also a clean vehicle. The district court granted immunity on the clearly established prong alone, and the panel reversed because it disagreed with that analysis. App. A at 12a–16a; App. B at 39a–40a. No factual dispute must be resolved to decide the question presented. Trial is set for February 2027, BIO 9, and immunity from suit is “effectively lost if a case is erroneously permitted to go to trial.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).

The petition should be granted. If plenary briefing is unnecessary, the Court should summarily reverse. At a minimum, because the decision below conflicts with *Zorn* and with the line of decisions *Zorn* reaffirmed, the judgment should be vacated and the case remanded for reconsideration in light of those decisions.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should summarily reverse the judgment of the court of appeals, or vacate that judgment and remand for further consideration in light of *Zorn v. Linton*.

Respectfully submitted,

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