No. 25-5265

IN THE

SUPREME COURT OF THE UNITED STATES

JESSICA M. GRAULAU MALDONADO,
Appellant

v.

ORANGE COUNTY PUBLIC LIBRARY SYSTEM,
Appellee

On Petition for Rehearing
To the Florida Sixth District Court of Appeal

APPELLANT'S PETITION FOR REHEARING

Jessica M. Graulau Maldonado,
Appellant
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QUESTION PRESENTED

Florida's jurisprudence created a legal loophole that provides for State courts not to enforce mandatory authorities from this Court without intervention from Florida Supreme Court due lack of conflict jurisdiction when *per curiam* affirmance is entered. In this case a state circuit court has interpreted an opinion from this Court as if it set a video evidence exemption that allows for not follow the legal principles established by this Court governing the federal summary judgment standard adopted in Florida since 2021.

The new issue presented for rehearing is:

Does circuit court's misinterpreted *Scott v. Harris*, 550 U.S. 372, 380 (2007) as if allows for usurp exclusive jury constitutional duties functions, and misconstrued it in oppose dicta requirements governing federal judgment standard established by this Court in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Electric Industrial Co. v. Zenith Radio Corpo.*, 475 U.S. 574 (1986)?

RELATED CASES

- *Jessica M. Graulau Maldonado v. Orange County Public Library System,* No. 2017-CA-6079, Florida 9th Circuit Court. Judgment June 2, 2023.
- *Jessica M. Graulau Maldonado v. Orange County Public Library System,* No. 6D23-2807, Florida 6th District Court. Judgment October 15, 2024.
- *Jessica M. Graulau Maldonado v. Orange County Public Library System,* No. SC2025-0619, Florida Supreme Court. Judgment May 6, 2025.
- *Jessica M. Graulau Maldonado v. Orange County Public Library System,* No. 25-5265, U.S. Supreme Court. Judgment October 6, 2025.
- *Jessica M. Graulau Maldonado v. Orange County Public Library System,* No. 5D18-2800, Florida 5th District Court. Judgment May 31, 2019.

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Florida 6th district court per curiam affirmance is unpublished [Pet. App. 1a]. Florida 9th circuit court final order [Pet. App. 2a] and final judgment [Pet. App. 6a] both are not for publication. Florida Supreme Court denied conflict jurisdiction due per curiam affirmance [Pet. App. 8a].

JURISDICTIONAL STATEMENT

Petitioner invokes the Court appellate jurisdiction under 28 U.S.C. § 1257 & U.S. Const. art. III, § 2, Clause 2 in the exercise of its supervisory power to review state circuit court final order [Pet. App. 2a] and final judgment [Pet. App. 6a] that dismissed a jury negligence tort claim applying federal summary judgment standard in a way contrary to dicta affirmed without opinion [Pet. App. 1a]. *Michigan v. Long*, 463 U.S. 1032 (1983)(granted review due state court's decision rested even in part upon federal grounds); *Alden v. Maine*, 527 U.S. 706 (1999)(granted review when conflict between court's relevant decisions). This petition seeks relief under equal protection of laws guaranteed under U.S. Const., amend. XIV, § 1 incorporated by reference in Fla. Const., art. I, § 2 to secure due process right for jury trial granted by Florida Constitution, art. I, § 22. *Payne* v. *Tennessee*, 501 U.S. 808, 825 (1991)("This Court had made clear that when evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief"). The issue on rehearing was also raised in

tribunals below. The new issue is different from the question presented on petition for certiorari because instead ask review over circuit court misinterpretation of this Court opinions and misconstruction of legal principles governing federal summary judgment standard. The district court per curiam affirmance without legal grounds provides also basis for review. *Glossip v. Okahoma*, 604 U.S. ___ (2025)("granting review due state law ground is not clear from the face of the opinion"). After Florida Supreme Court held lack of conflict jurisdiction, this Court is the only forum available to enforce biding precedents that circuit court refused to abide. Florida waived sovereign immunity in tort claims, and there is personal jurisdiction due Appellee is a State's lesser municipal corporation per Florida Statute § 768.28. See *Alden v. Maine Id.* ("sovereign immunity does not bar suit against state's lesser entities such municipal corporations"). A rehearing will be in harmony with the "balance test" between federal-state courts given by the Congress authority under 18 U.S.C. § 242 that prohibit state judges from deprive fundamental constitutional due process rights. Service has been made upon the office of Florida's Governor Attorney General. This petition is not frivolous made in good faith not for delay.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. VI. United States Constitution and the laws of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

U.S. Const. amend. XIV, § 1. No state shall deny to any person within its jurisdiction the equal protection of the laws nor shall any state deprive any person of property without due process of law.

Fla. Const. art. I, § 2. All natural persons are equal before the law and have inalienable rights.

Fla. Const. art. I, § 22. The right of trial by jury shall be secure to all and remain inviolable.

Fla. Stat. **§768.81(2).** In negligence action contributory fault chargeable to the claimant does not bar recovery.

Celotex Corp. v. Catrett, 477 U.S. 317 (1986)(Summary judgment cannot be entered in the existence of genuine dispute as to any material fact).

Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)(Genuine dispute of material fact exist when record taken as whole could lead for a reasonable jury to find for nonmoving party).

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)(At summary judgment stage a judge should not weight on evidence for determine the truth of a matter that is within the jury's functions).

Scott v. Harris, 550 U.S. 372, 380 (2007)(courts are required to view the facts and draw reasonable inferences in the light most favorable to the party opposing the summary judgment motion--a video cannot be used for summary judgment if there are allegations or indications of such video been doctored or altered in any way, or there is any contention the video depict different of what actually happened)(emphasis added).

Lopez v. Wilsonart, LLC, 275 So. 3d 831 (Fla. 5DCA 2019)(held trial court erred when concluded that the video evidence blatantly contradicts the eye witness testimony by relying on *Scott v. Harris*--By finding that video evidence negate eyewitness testimony the trial court improperly weighed competing evidence on material facts).

Wilsonart, LLC v. Lopez, 308 So. 3d 961, 964 (Fla. 2020)(Florida Supreme Court answered certified question about summary judgment standard and affirmed Fifth District Court's biding precedent opinion in Lopez v. Wilsonart, LLC).

McCain v. Florida Power Corporation, 593 So. 2d 500 (Fla. 1992)(where reasonable persons could differ whether the facts established *proximate causation* or whether the injury was foreseeable then the resolution of the issue must be left to the fact finder)(emphasis added).

Gibson v. Avis Rent-A-Car System, 386 So. 2d 520 (Fla. 1980) (the question whether an *intervening cause* is foreseeable is for the trier of the facts).

In re: Amendments to Florida rule of Civil Procedure 1.150, No. SC20-1490 (Fla. Apr. 29, 2021)(Florida adopted federal summary judgment standard by amending Fla. R. Civ. P. 1.510 to incorporate Fed. R. Civ. P. 56. The "federal summary judgment standard" refers to the principles announced in *Celotex Corp. v. Catrett*; *Anderson v. Liberty Lobby, Inc.*; and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, and case law interpreting Rule 56).

STATEMENT OF THE CASE

I. Factual Background

Petitioner (hereinafter Mrs. Graulau) visited Respondent (hereinafter Library)'s branch and during her visit while she was making copies at the photocopier machine (hereinafter Copier), the Copier's bottom drawer's door without any warning suddenly flew opened on its own causing her to trip and fall which was confirmed by statement provided by the branch's manager in the incident reportbased on the Library's security video. Mrs. Graulau brought a trip and fall tort action and demand for jury trial claiming negligence on two counts: 1) breach of duty of care failure to provide reasonable care in maintenance for premises before the incident occurred, and 2) breach of duty to warn claiming Library's constructive notice that in the exercise of reasonable care would have discovered the Copier's unsafe condition.

II. Relevant Procedural History

On appeal, the Fifth District Court entered a biding precedent opinion published as *Maldonado v. Orange Cnty. Pub. Library*, 273 So. 3d 278 (Fla. 5DCA 2019) holding that Mrs. Graulau's complaint sufficiently stated a cause of action establishing a *prima facie* case for negligence and commanded for circuit court must held further proceedings in accordance with the laws of the State of Florida [R. 1621-1624]. During discovery, Mrs. Graulau obtained evidences found on record proving Library's negligence after failed to have a valid contract to provide maintenance for the Copier as its legally required which remained expired for over a year before Mrs. Graulau's incident, and due the Library never requested any inspection neither a single maintenance for the Copier as required under provisions of same expired contract [R. 1025-1057 Ex. 1] as acknowledged by trial judge at hearing for summary judgment [Pet. App. 10a Tr. pg. 42 ln. 1-4 "performing inspections which are mentioned in the contract"]. At deposition, attorney for the Library conceded that the Library's security video does not depict Mrs. Graulau as confirmed in deposition transcript submitted with their request for summary judgment [R. 805-884 Ex. D Tr. pg. 82 ln. 14-15 Attorney can you see my face on the video? No]. Mrs. Graulau's first motion in limine [R. 690-725] was ruled as premature due the video was not authenticated neither offered nor admitted into evidence yet but allowed to re-file objections for the video if the Library later offered as shows hearing transcript on record [R. 1448-1454 Tr. pg. 11 ln. 9-25 "until they

offer it I can't make a ruling on this..If they offer it in, let's say a summary judgment motion, then it would be incumbent"]. Then when the Library requested summary judgment [R. 805-884] based on same objected video not authenticated or admitted into evidence yet, Mrs. Graulau filed a second motion in limine [R. 927-944] suggesting the video could be doctored or altered and objecting the video contending it does not depict the reality of the events. While Mrs. Graulau 2nd motion in limine was still pending for ruling, the circuit court granted summary judgment to dismiss the case under federal summary judgment standard base on the objected video after weighted on evidences to determine credibility of eyewitnesses as appear on the face of the order:

> "in the incident reports taken at the time were not statements she made but rather where the observations of the employee...nothing on the video would lead any employee watching the incident to make the statement Plaintiff now claims...the video does not show that she was approached by the employee she claims made the statement...submissions from the repair company repairing the door after the underlying incident show that something was done following the incident" [Pet. App. 2a, par. 4-12].

The circuit court dismissed the case after interpreted opinions from this Court as if provides legal grounds to dismiss under federal summary judgment standard based on an objected video evidence as shows hearing transcript on record:

> "Under the new federal standard-summary judgment standard—there is a case law out of the U.S. Courts that under our new standard if there is a video that clearly refutes a witness's testimony, then the court can make finding that there is no material fact, even though someone says something different" [R. 1471-1521 Tr. pg. 7 ln. 20-22, pg. 14 ln. 21-25, pg. 15 ln. 1-2].

REASONS FOR GRANT PETITION

1. *Circuit Court's Decision is Oppose to the Court Dicta.* Florida is a fact-pleading jurisdiction that follows Second Restatement of Tort, *McCain v. Florida Power Corporation*, 593 So. 2d 500 (Fla. 1992). Since year 2021 Florida adopted federal summary judgment standard, *In re: Amendments to Florida rule of Civil Procedure 1.150*, No. SC20-1490 (Fla. Apr. 29, 2021). Even before Florida adopted federal summary judgment standard, the legal principles established in *Celotex Corp. v. Catrett*, *Anderson v. Liberty Lobby, Inc.*, and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.* were enforceable in all state courts as "the only federal court that bind Florida Courts are those that emanate from the U.S. Supreme Court", quoting *State v. Dwyer*, 332 So. 2d 333 (Fla. 1976). See also *Doe v. Pryor*, 344 F.3d 1282, 1286 (11th Cir. 2003)("the only federal court whose decisions bind state courts is the United States Supreme Court"). By weighing on controverted evidences to determining credibility of Mrs. Graulau and the Library's manager as eyewitnesses; to determine proximate causation; to allocate Mrs. Graulau's portion of contributive negligence and her percent of fault; to find that an intervening cause was not foreseeable at all by the Library; and by dismissing under federal summary judgment standard in the existence of genuine dispute of material facts, the circuit court with knowledge willfully striped off the jury from its constitutional duty functions depriving Mrs. Graulau from equal protection of laws under U.S. Const. amend. XIV, § 1 violating fundamental constitutional due process

right to have a trial by jury granted by Fla. Const. art. I, § 22. *Haines v. Kerner*, 404 U.S. 519 (1972)("the 'fundamental principle' for allowing litigants as pro se to ensure access to the court without struggle"). "State court unreasonable applied clearly established federal law when its shows the court unreasonably applied the holding as opposed to the dicta", quoting *White v. Woodall*, 572 U.S. 415, 419 (2014); *Howes v. Field*, 565 U.S. 499, 505 (2012)(same citation). The circuit's decision is opposed to:

> *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)(Summary judgment cannot be entered in the existence of genuine dispute as to any material fact); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)(At summary judgment stage a judge should not weight on evidence for determine the truth of a matter that is within the jury's functions); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)(Genuine dispute of material fact exist when record taken as whole could lead for a reasonable jury to find for nonmoving party).

Florida biding precedents preclude summary judgment in this case due record suffice shows conflicting evidences remained as to whether what caused the Copier's door to open; whether Library breached its duty of care; whether Library is chargeable with constructive notice. See *Montgomery v. Florida Jitney Jungle Stores, Inc.*, 281 So. 2 302 (1973)("Sufficient proof, albeit circumstantial in nature, existed to allow the trial court to properly submit the question of defendant's negligence to the jury"). An answer to all these questions would allow a jury to apportion chargeable fault to the Library. A percent of fault does not bar Mrs. Graulau from recovery pursuant Fla. Stat. §768.81(2). On contrast, none of the

evidences submitted by the Library in support summary judgment can prove nor disprove Mrs. Graulau's prima facie case for Library's negligence occurred before the incident which this Court held when there is no evidence to support, summary judgment is not available. *Celotex*, 477 U.S. at 323. For more than forty years Florida Supreme Court has held that "summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law", *Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985). The questions of proximate causation and whether the injury was foreseeable are only for the jury to decide, *McCain v. Florida Power Corporation Id.* ("where reasonable persons could differ whether the facts established *proximate causation* or whether the injury was foreseeable then the resolution of the issue must be left to the fact finder"); *Gibson v. Avis Rent-A-Car System*, 386 So. 2d 520 (Fla. 1980)("the question whether an *intervening cause* is foreseeable is for the trier of the facts"). When an issue has been decided by the Florida Supreme Court the lower courts are bound to adhere its ruling when considering similar issues, *State v. Dwyer Id.* "A court abuses its discretion when applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner or follows improper procedures in making a determination", quoting *Aycock v. R.J. Reynolds Tobacco Co.*, 769 F. 3d 1063, 1068 (11th Cir. 2014). No "fairmind" jurist would grant summary judgment in a negligence tort case by jury base on objected video with record full evidences that controvert. See *Harrington v. Richter*, 562 U.S. 86, 101 (2011)("an unreasonable

application, in turn, is one with which no fairminded jurist would agree"). "The court is advised to take extra care with pro se litigants and seek to reassure itself by examination of the record before granting summary judgment against a pro se litigant", Fed. R. Civ. P. 56 Committee Notes of Rule-2010 Amendment incorporated in Rule 1.510 of Florida Rules of Civil Procedure.

2. *Scott v. Harris' Rule for Contended Video On Summary Judgment.* In *Harris* this Court makes clear that under established principles video evidence cannot be used to grant summary judgment under federal standard if there any allegation or indication of the video been doctored, or if there is any contention that the video depict different from real events. *Scott v. Harris*, 550 U.S. 372, 380 (2007)("courts are required to view the facts and draw reasonable inferences in the light most favorable to the party opposing the summary judgment motion--a video cannot be used for summary judgment if there are allegations or indications of such video been doctored or altered in **any** way, or there is **any** contention the video depict different of what actually happened")(emphasis added). In the instance case, Mrs. Graulau contended that the video does not depict what really happened because she cannot be seen on the video as conceded by opposing counsel during deposition, the video shows 20 minutes different time 10:45 A.M. from the time the incident actually occurred at 10:25 A.M. as reported by Library's manager in the incident report; does not shows when the Library's manager approached Mrs. Graulau when she was crying for the pain and provided with first aid ice pack or

when Mrs. Graulau applied the ice on her knees neither when Library's employee secured the Copier's door with clear tape. These events are found reported within Library's Incident Report; Library's Accident Submission Form; Library's Work Order List which are non-objected scheduled join evidences on record admitted by trial court.

When in *Lopez v. Wilsonart, LLC*, 275 So. 3d 831 (Fla. 5DCA 2019) the Fifth District Court of Appeal certify question asking whether should be an exception to the Florida's summary judgment standard when video evidence refutes any conflicting evidence and there is no evidence or suggestion that the video has been doctored or altered, Florida Supreme Court answered: NO, and did it without reinterpretation or receding of any existing State's jurisprudence and without adopting an ad hoc video evidence exception on the eve of the switch to federal summary judgment standard neither reached any opinion about the application of the decision in *Harris*. See *Wilsonart, LLC v. Lopez*:

> "the Fifth District Court of Appeal certified question of great public importance involving Florida's summary judgment standard. Lopez v. Wilsonart, LLC, 275 So. 3d 831 (Fla. 5th DCA 2019), our answer is no. We cannot say that the jurisprudence underlying Florida's existing summary judgment standard is erroneous, so we will not recede from that jurisprudence or "reinterpret" it here—we see no reason to adopt an ad hoc video evidence exception to the existing summary judgment standard on the eve of amendment.—having answered the certified question we do so without reaching any conclusion about the application of the Supreme Court's decision in *Harris* to the record in this case", *Wilsonart, LLC v. Lopez*, 308 So. 3d 961, 964 (Fla. 2020).

Florida Fifth District Court of Appeal reversed summary judgment when lower court relied on *Harris* to dismiss base on video evidence after found trial court improperly weighed competing evidence on material facts in its biding precedent opinion:

> "held trial court erred when concluded that the video evidence blatantly contradicts the eye witness testimony relying on Scott v. Harris--By finding that video evidence negate eyewitness testimony the trial court improperly weighed competing evidence on material facts---In ruling on a motion for summary judgment the court may neither adjudge the credibility of the witnesses nor weigh of conflicting evidence in determining whether a genuine issue of material fact exists", *Lopez v. Wilsonart, LLC,* 275 So. 3d 831 (Fla. 5DCA 2019).

"In the absence of inter-district conflict or contrary precedent from Florida Supreme Court, a decision of a district court of appeal is binding through the State", quoting *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). There are no precedents from Florida Supreme Court about interpretation of *Harris* video rule for federal summary judgment standard. Florida Supreme Court has held summary judgment is a matter of great public importance. *Wilsonart, LLC v. Lopez Id.* ("question of great public importance involving Florida's summary judgment standard"). A review from this court will promote consistency and uniformity in the application of the Court biding precedents that cannot be enforced otherwise in this case. *Stare decisis* doctrine is a "fundamental principle" of Florida law which is also a matter of great public importance, *State v. Dwyer* Id. ("stare decisis is a fundamental principle of Florida law").

CONCLUSION

FOR ALL THE ABOVE Mrs. Graulau pray for the Court grant rehearing on the new issue and REVERSE circuit court's decision [Pet. App. 2a] and final judgment [Pet. App. 6a] to REMAND in consistent with the Court holding.

RESPECTFULLY submitted on November 12th of 2025 by:

Signature: _____
Jessica M. Graulau Maldonado, Appellant

CERTIFICATE OF PARTY

Pursuant to Rule 44.2, I, Jessica M. Graulau Maldonado, appellant non-attorney pro se party, hereby certify that the grounds on this petition for rehearing are limited to the intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented restricted to the grounds specified in Rule 44.2. I further certify that the petition for rehearing is presented in good faith and not for delay.

Certify by: _____ Date: November 12th, 2025
Jessica M. Graulau Maldonado

No. 25-5265

IN THE

SUPREME COURT OF THE UNITED STATES

Jessica M. Graulau Maldonado, Appellant,

v.

Orange County Public Library System, Appellee.

PROOF OF SERVICE

In compliance with Court's Rule 29, petitioner Jessica Graulau hereby certify that on this date I have serve a true copy of PETITION FOR REHEARING WITH CERTIFICATE OF PARTY via mail to the following names and address:

1. Patricia Rego Chapman, Esq., Attorney for Appellee
   Dean, Ringers, Morgan & Lawton, P.A.
   Post Office Box 2928, Orlando, Florida 32802-2928

2. James Uthmeier, Attorney General
   Florida Attorney General's Office
   107 West Gaines Street, Tallahassee, Florida 32301

Pursuant 28 U.S.C. §1746, I declare all true and correct to my best understanding.

FILED, SUBMITTED and FILED on November 12th of 2025 by,

Jessica Graulau, Appellant
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