

No. 25-985

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IN THE  
**Supreme Court of the United States**

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EVAN NORMAN,

*Petitioner,*

*v.*

DEPUTY LEE INGLE, *et al.*,

*Respondents.*

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

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**BRIEF IN OPPOSITION**

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## QUESTION PRESENTED

In *Scott v. Harris*, 550 U.S. 372 (2007), the Court held “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.* at 380. The question presented is:

In an interlocutory qualified immunity appeal involving video evidence, may an appellate court review a district court’s determination that there is a genuine dispute of material fact when the district court based its decision on the allegations of a Petitioner who admits he has no memory of the events while disregarding video evidence that contradicts those allegations so blatantly that it “provides sufficient clarity that no reasonable jury could find” that the officers violated Petitioner’s constitutional rights? *Pet. App. 6a.*

## **RELATED PROCEEDINGS**

The following are the directly related proceedings:

1. *Norman v. Ingle*, No. 4:23-CV-01042 (S.D. Tex.). United States District Court for the Southern District of Texas, Houston Division. Order Denying Defendants' Motion for Summary Judgment entered September 5, 2024. *See* 2024 WL 4111174.

2. *Norman v. Ingle*, No. 24-20431 (5th Cir. 2025). United States Court of Appeals for the Fifth Circuit. Per curiam opinion reversing the district court, entered August 15, 2025, reported at 151 F.4th 707. Petition for rehearing en banc denied September 18, 2025.

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## INTRODUCTION

Petitioner Evan Norman asks the Court to resolve an alleged circuit split over the scope of appellate jurisdiction in interlocutory qualified immunity appeals involving video evidence. In doing so, he seeks to severely restrain or overturn *Scott v. Harris*, 550 U.S. 372 (2007). *Scott* permits courts to consider video evidence at the summary judgment stage when that evidence definitively disproves a non-movant's allegations.

Prior to *Scott*, courts were strictly bound to accept a plaintiff's allegations, even when they were so blatantly contradicted by video evidence that no reasonable jury could believe them. *Johnson v. Jones*, 515 U.S. 304 (1995). The rule prior to *Scott* was rigid, needlessly consumed judicial resources, and defeated the purpose of qualified immunity by subjecting public officials to trial even when the plaintiff had no hope of winning.

*Scott* is a narrow, sensible legal evolution in a world where technology often produces video that is clear, credible, and answers relevant factual questions beyond doubt. Appellate courts should be permitted to make the legal determination of whether a plaintiff's allegation "blatantly contradicts" video evidence and, if so, apply the law to the indisputable facts.

Petitioner argues there is a "deeply entrenched" circuit split over the scope of *Scott* and suggests that three circuits—including the Fifth—are outliers. *Pet. at 1-3*. However, these circuits have reasonably defined the contours of *Scott* and consistently rejected video evidence that does not meet its high standard. Last year, the Fifth

Circuit declined jurisdiction over an interlocutory appeal from a qualified immunity ruling involving video evidence because the video did not reveal whether an officer's weapon was discharged intentionally or accidentally. The "only exception" to *Johnson's* mandate that courts accept the plaintiffs' version of facts is when the allegation is "blatantly contradicted and utterly discredited by video." *Benavides v. Nunez*, 144 F.4th 751, 755-756 (5th Cir. 2025).

The Fifth Circuit similarly rejected video evidence for not conclusively resolving whether a student was trying to resist police when she was struck. Where video is "inconclusive" or "debatable," the *Scott* exception is unavailable, and the Fifth Circuit must accept the plaintiff's allegations. *Curran v. Aleshire*, 800 F.3d 656, 664 (2015). *See also, Byrd v. Cornelius*, 52 F.4th 265 (2022) (rejecting video for being low quality).

Assuming, *arguendo*, the Court was inclined to grant review, this would be a poor vehicle to resolve any question about *Scott*. The video evidence in the case at bar is clear, provides three different perspectives of the same incident, and tracks precisely with the Fifth Circuit's findings. Petitioner admits he does not recall the incident leading to his lawsuit, and he cannot identify any fault or defect in the video. *Pet. App. 6a*. This is not the case for examining *Scott*, and the Court should deny the Petition.

## STATEMENT OF THE CASE

### A. Facts

On March 21, 2021, Evan Norman entered a Bombshells restaurant in Houston, Texas, consumed at least seven drinks within two hours, and fell asleep in the

bar. *Pet. App. 2a, 12a*. Harris County Sheriff Deputies Ingle and Sutton were working as off-duty security officers, and Bombshells management asked Deputy Ingle to remove Norman from the facility. *Pet. App. 2a*.

The bar's surveillance cameras and the deputies' two body cameras captured all events relevant to this case from multiple angles, and the footage is part of the summary judgment record and record on appeal. The footage shows that Deputy Ingle escorted Norman just outside the front door (where Deputy Sutton was standing), but Norman would not leave the property.

Norman told Deputy Ingle that he had "a little short man complex." *Pet. App. 2a*. Deputy Ingle responded that Norman had the choice of going home or being arrested for public intoxication. *Pet App. 2a*. Norman demanded the officers' names and badge numbers. Deputy Ingle wrote the information down for Norman and then tried to walk back inside. *Pet. Ann. 2a*. As Deputy Ingle turned, Norman asked if he was "running away." Deputy Ingle responded, "You are going to go home now." *Pet Ann. 2a*.

Deputy Sutton tried to separate the men by putting his arm between them, but Norman reached over Deputy Sutton's arm and pointed his finger at Deputy Ingle. Deputy Sutton shoved Norman and told him to "Get back." Norman maintained his footing and did not fall.

Both deputies tried to return to their duties inside the restaurant, but as they walked away, Norman followed them. Deputy Sutton warned Norman, "If you walk up on me again, I'm gon' get . . ." and pushed Norman while saying "Get back!" Again, Norman maintained his footing.

Norman continued to follow the deputies, and Deputy Ingle tried to prevent him from entering the building by shoving him away from the entrance and yelling, “Get the f— back!” Norman swung a closed fist at Deputy Ingle and placed him in a headlock. While Norman had Deputy Ingle in a headlock, Deputy Sutton punched Norman in the head. The men fell, and Deputy Ingle and a third officer held Norman while Deputy Ingle punched him in the head at least six times in quick succession. Deputy Ingle asked Norman, “You done?” three times and punched him once more four seconds later. *Pet. Ann. 2a-3a.*

Once Norman was secure and the risk of conflict with bystanders was over, Deputy Sutton immediately requested medical assistance for Norman. *Pet. App. 3a.* Only a few seconds passed between Norman’s attack on Deputy Ingle and the last punch. *Pet. App. 2a-3a, 7a.* As a result of the incident, Norman sustained multiple facial fractures. He was charged with a felony which was ultimately dismissed. *Pet. App. 12a.*

Norman has no memory of the incident, a point uncontested below and recited in the Fifth Circuit’s opinion. *Pet. App. 6a.* Thus, the officers’ testimony and the three videos are the only evidence available to resolve summary judgment.

## **B. Procedural History**

Petitioner filed suit on March 21, 2023, under 42 U.S.C. § 1983, alleging excessive force, denial of medical care, failure to intervene, false arrest, malicious prosecution, and First Amendment violations against Deputies Ingle and Sutton. Petitioner also alleged state law claims for assault.

The district court granted Harris County’s motion to dismiss. As to Deputies Ingle and Sutton, the court denied summary judgment, finding three genuine disputes of material fact: (a) whether Norman posed an immediate threat; (b) whether Norman was resisting while on the ground; and (c) whether Norman was denied medical care. *Pet. App. 15a-16a*. The district court granted summary judgment on petitioner’s state law claims. *Pet. App. 16a*.

The district court identified only two evidentiary items supporting its ruling: (1) video of Deputy Ingle striking Norman while on the ground, and (2) the treating physician’s report. The court concluded qualified immunity did not apply because the deputies’ “conduct if true, was egregious”. *Pet. App. 16a*. That conditional framing, “if true,” indicates the court was ruling on Norman’s unproven allegations, not on evidence. The district court never addressed or analyzed the video showing Norman’s attack on Ingle, the amount of time the use of force lasted, or the amount of time from the use of force to Sutton calling for EMS. *See Graham v. Connor*, 490 U.S. 386 (1989) and *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). The district court ignored the portions of the video that blatantly contradicted petitioner’s allegations. *Pet. App. 11a-17a*.

Deputies Ingle and Sutton appealed. On August 15, 2025, the Fifth Circuit reversed in a per curiam opinion. Applying the *Graham* framework to the evidence the district court ignored, the court reviewed the full record, including the body-worn camera footage and the surveillance video, and found no genuine questions of material fact and no denial of constitutional rights. The court concluded the deputies are entitled to qualified

immunity on all claims.” *Pet. App. 1a-10a*. The district court dismissed the case on October 28, 2025. This petition followed.

## REASONS FOR DENYING THE WRIT

### A. There is No Circuit Split

Petitioner argues the circuits are divided over *Johnson v. Jones*, 515 U.S. 304 (1995) in light of *Scott*. Every circuit agrees that when video evidence “blatantly contradicts” a plaintiff’s account of an encounter with police, an appellate court may review that evidence. *Scott v. Harris*, 550 U.S. 372, 380-81 (2007). Some circuits label this review a “purely legal” question; others call it a *Scott v. Harris* exception to the *Johnson* case.

The words may differ slightly, but the analysis does not. No circuit has held that a court may assume the role of fact finder and select one version of legitimately contested facts over another, and courts consider video evidence when it clearly establishes all the material facts needed for a qualified immunity determination.

### B. The Fifth Circuit Follows *Scott*

Petitioner identifies three circuits that he contends adopted an overly broad view of *Scott*. First, he claims the Fifth Circuit holds that “appeals courts may, in every case, independently assess what facts are in genuine dispute based on their own view of what video evidence shows.” *Pet. at 13 & 16-17*. That is incorrect.

Petitioner’s primary case, *Argueta v. Jaradi*, 86 F.4th 1084, 1088 (5th Cir. 2023), analyzed the reasonableness of the officer’s conduct based on the uncontradicted portions of the video. *Id.* at 1090-1093. The unclear portions of the video and the resulting factual disputes were not material to the Court’s analysis. *I.e.*, the use of force was justified by a furtive gesture clearly shown on the video. Whether the video clearly established the officer could see Argueta had a gun was immaterial. *Id.* at 1090-1093.

Since *Argueta*, the Fifth Circuit has reiterated that the “only exception” to *Johnson’s* mandate that courts accept the plaintiff’s version of facts is when the allegation is “blatantly contradicted and utterly discredited by video.” *Benavides v. Nunez*, 144 F.4th 751, 755-756 (5th Cir. 2025). The Fifth Circuit does not hesitate to reject video evidence when there is any doubt as to what it shows. In *Curran*, the Fifth Circuit rejected video evidence for not conclusively resolving whether a student was trying to escape or resist police when she was struck. *Curran v. Aleshire*, 800 F.3d 656, 664 (2015). It has also rejected video of low quality. *Byrd v. Cornelius*, 52 F.4th 265 (2022).

Petitioner cites four additional Fifth Circuit cases. *Dilley* involved a Louisiana officer who was denied qualified immunity when she failed to turn on her body camera before shooting a man. The Fifth Circuit found that nearby surveillance video “does nothing to clear up” the fact disputes. *Dilley v. Domingue*, 118 F.4th 671, 676 (5th Cir. 2024). Rather than rely on video evidence, *Dilley* rejected it.

Petitioner’s other cases—*Estevis v. Cantu*, 134 F.4th 793 (5th Cir. 2025); *Rucker v. Marshall*, 119 F.4th 395

(5th Cir. 2024); and *Terrell v. Allgrunn*, 114 F.4th 428 (5th Cir. 2024)—also do not stray from *Scott*. While each involves the existence of video, none contain any real factual dispute.

### C. The Sixth Circuit Limits Video Review

The Petitioner claims the Sixth Circuit permits appellate courts to view video in a light favorable to the video, rather than a light favorable to plaintiff. *Heeter v. Bowers*, 99 F.4th 900 (6th Cir. 2024). In *Heeter*, police shot and killed a man, and the parties asked the Court to focus on certain parts of the video. The Sixth Circuit explained that it was not deciding the case based on evidentiary sufficiency or “dueling affidavits,” and it identified the facts that were undisputed, carefully discussed the boundaries of *Johnson* and *Scott*, and made clear that it would allow “the parties to keep their factual disputes on ice for potential resolution at trial.” *Id.* at 910-911.

However, certain allegations made by the police were blatantly contradicted by the video, and in reviewing the video, the court construed them *in favor* of the plaintiff. For example, police claim that the man they shot “lunged” toward them, while the video showed that was not true. The Court applied the law to the undisputed (or indisputable) facts and denied qualified immunity. *Id.* at 921.

In *Feagin*, a motorist was driving an SUV with a shot-out back windshield through a neighborhood with windows rolled down, drinking liquor, and smoking marijuana. *Feagin v. Mansfield Police Dep’t*, 155 F.4th 595, 601 (6th Cir. 2025). The motorist barreled down the middle of the road and forced a police officer to swerve into a ditch to

avoid a head-on collision. The motorist was pulled over, and officers used force when he resisted arrest. *Id.*

The Sixth Circuit recognized that “it is for the jury, not us, to settle any underlying material factual disputes” and that “[w]hen defense counsel includes fact-based arguments in a qualified immunity appeal, our obligation is to ‘separate’ the legal wheat from the factual chaff and proceed.” *Id.* at 601, 608. However, the Court noted the importance of video evidence in that case, which accurately depicted the relevant events in great detail and was indisputable. While the Sixth Circuit did not use the word “blatantly” in the opinion, it adopted the standard used in *Scott*.

#### **D. The Eleventh Circuit Cases Do Not Address *Scott***

Petitioner cites the Eleventh Circuit case of *Nelson* as a reason to grant certiorari. *Nelson v. Tompkins*, 89 F.4th 1289, 1296 (11th Cir. 2024). In *Nelson*, a jailer failed to warn his colleagues not to house a detainee with a cellmate from a different race, and the detainee killed his cellmate. That case never cites *Scott* at all, and it has nothing to do with video evidence.

#### **E. The Circuits Follow a Common Test**

In every circuit, video evidence is used when it is either conceded by the parties to be accurate or when the video blatantly contradicts a party’s version of events. In either case, the court will apply the law to video evidence only when the facts are clear.

Thus, the conflict that Petitioner asserts is a distinction without a difference. Lower courts apply the *Scott* framework, which permits crediting clear, objective video evidence over contradictory evidence. *See, e.g., Cunningham v. Castloo*, 983 F.3d 185, 191 (5th Cir. 2020) (applying materiality analysis on interlocutory review and reviewing scope of clearly established law de novo). The circuits simply differ slightly in the terminology they use. A split over how to label an appellate review that ends in the same result, based on comparable facts, does not warrant the Court’s intervention.

#### **F. The Fifth Circuit Correctly Applied *Scott***

In the case at bar, the central issues that Norman disputes are whether he assaulted Deputy Ingle and whether there was a delay in providing medical care. *Pet. App. 13a*. Norman admits that he does not remember anything from that night. *Pet. App. 6a*. But, the video is clear and indisputable. It shows Norman swinging his fist at Deputy Ingle’s head, Norman putting Ingle in a headlock, and the deputies responding in the seconds that followed. *Pet. App. 2a-3a*. There is no dispute about what happened in this case, and a court “should not adopt that version of the facts” that the video “blatantly contradicts.” *Scott*, 550 U.S. at 380. The Fifth Circuit correctly applied the law to the undisputed facts from the video.

The trial court ignored the video and accepted Norman’s version of events to find questions of fact. *Pet. App. 15a-17a*. The trial court ruled on Norman’s allegations, not on the undisputed and clear video evidence. Rather than relying on the video or other competent summary judgment evidence, the trial court parroted Norman’s

unsupported allegations as if they were evidence. “Norman disputes . . . that he assaulted Deputy Ingle . . .” *Pet. App. 13a*. And, that the Deputies allegedly failed to provide adequate medical care promptly. *Id.*

The only portion of the video the district court deemed important was a brief moment when Deputy Ingle struck Norman while Norman was on the ground. *Pet. App. 16a*. The Fifth Circuit accepted that Norman was not actively resisting at some point after he was on the ground and that Ingle punched him. However, the Fifth Circuit correctly held this to be immaterial because the use of force occurred over a matter of seconds and was an immediate response to Norman’s assault on Deputy Ingle. *Pet. App. 7a-8a*.

The trial court minimized the importance of three videos—from three perspectives—that conclusively establish the officers’ account of what happened. The Fifth Circuit correctly applied the “blatantly contradicted” rule from *Scott* because the video provided sufficient clarity to foreclose a reasonable jury from believing Petitioner. *Pet. App. 4a-5a*.

The Fifth Circuit’s application of law to these facts was also correct. An officer may respond to an assault by using force. A punch responding to an assault does not become unconstitutional merely because the subject stops resisting right before impact.

The district court’s findings ignore the totality of circumstances. *Barnes v. Felix*, 605 U.S. 73 (2025). I.e. the court did not consider the assault that immediately preceded the use of force. While *Barnes* is a deadly force

case, the same reasoning applies here. “To assess whether an officer acted reasonably in using force, a court must consider all the relevant circumstances, including facts and events leading up to the climactic moment.” *Barnes v. Felix*, 605 U.S. 73, 76 (2025). The district court cannot look at Petitioner’s conduct at the moment Ingle’s punches fell and ignore the assault that necessitated the use of force to begin with.

The Fifth Circuit accepted the district court’s only factual finding based on evidence and applied the law correctly. This is in keeping with *Joseph ex rel. Estate of Joseph v. Bartlett*, 981 F.3d 319, 331 (5th Cir. 2020) (on interlocutory qualified immunity review, appellate court evaluates whether disputed facts are material, but does not re-examine whether they are genuine). In other words, Norman’s assault on Ingle and the speed at which the events transpired made Norman’s lack of resistance when a particular punch fell immaterial. The altercation was over in a matter of seconds. *Pet. App. 2a-3a, 7a-8a*. No reasonable jury could find that Norman did not attack Ingle or that Ingle’s use of force was unwarranted. *Pet. App. 7a-8a*. The Fifth Circuit determined the use of force was justified based on the undisputed video evidence. *Id.*

While Petitioner did not brief the claim for denial of medical care below, or in his Petition, the Fifth Circuit determined there was no genuine dispute of material fact on that issue either. The video clearly shows Deputy Sutton immediately radio for medical assistance. *Pet. App. 8a*. That fact negates any deliberate indifference claim. An officer who immediately summons medical help cannot be found to have deliberately disregarded a

serious medical need. *See Wagner v. Bay City*, 227 F.3d 316, 324 (5th Cir. 2000) (deliberate indifference requires subjective knowledge of and disregard for a substantial risk of serious medical harm).

The Fifth Circuit also found the bystander liability claim against Deputy Sutton lacking because Norman did not brief it, the trial court did not analyze it, and there was no analogous case law cited. *Id.*

The Fifth Circuit reversed the trial court because there were “. . . no questions of material fact or denial of constitutional rights, and that the Deputies are entitled to qualified immunity”. *Pet. App. 1a*. And, just as this Court did in *Scott*, the Fifth Circuit evaluated the genuineness of the factual dispute based on the video in the record. *Pet. App. 5a* and *Scott v. Harris*, 550 U.S. 372, 380-381 (2007).

#### **G. This Case is Not the Appropriate Vehicle**

If the Court were inclined to provide more guidance on this issue, this is not the correct case in which to do so. Supreme Court Rule 10(a) provides: “A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” Sup. Ct. R. 10(a). The Fifth Circuit properly stated (and applied) the rule of law in *Scott*.

Respondents agree with the Petitioner’s statement that the rise of body-worn cameras has resulted in more video evidence in qualified immunity cases. *Pet. at 25*. However, Respondents disagree with Petitioner’s

assessment of this trend's impact. Video provides an opportunity to resolve classic swearing matches by parties whose different renditions of a tense moment are tainted by either the fragility of human memory or deliberate dishonesty.

Further, *Scott* permits courts to use this video evidence to weed out clearly frivolous lawsuits at the qualified immunity stage, based on blatant contradictions between allegations and video. This encourages police (and the public) to use cameras, which protects everyone and makes it easier for factfinders to resolve cases later. If an exonerating video does nothing to protect an officer from facing trial, then officers have less incentive to record video.

While Petitioner complains about the cost of appellate judges reviewing videos since *Scott*, that is much less than the cost of empaneling a jury, subpoenaing witnesses, and hiring experts to litigate a claim that no jury would ever believe. *Scott* holds parties accountable for their claims, and the circuits are correctly developing the contours of this caselaw.

**CONCLUSION**

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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