No. 25-985

In the
Supreme Court of the United States

EVAN NORMAN,

Petitioner,

v.

LEE INGLE; CHRISTOPHER SUTTON,

Respondents.

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

REPLY BRIEF

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INTRODUCTION

The BIO does not dispute that the First, Third, Fourth, Seventh, Eighth, Ninth, and Tenth Circuits apply the "blatantly contradicts" rule the petition describes. It argues only that the Fifth and Sixth Circuits apply that same rule, and the Eleventh Circuit's cases do not address *Scott v. Harris*, 550 U.S. 372 (2007). *See* BIO 6-9. The first claim is wrong. The second proves our point.

The Fifth Circuit admits reading "*Scott* more broadly" than the seven-circuit majority, construing *Scott* "as recognizing a general exception to the prohibition on interlocutory review of genuineness in cases involving video evidence." *See Argueta v. Jaradi*, 86 F.4th 1084, 1089 n.3 (5th Cir. 2023). The panel applied that rule. *See* Pet. App. 5a & n.6 ("We may also review genuineness when, as here, video evidence is available." (citing *Argueta*, 86 F.4th at 1088)). Respondents do not deny that the rule in *Argueta* and applied in the published decision here conflicts with the law of other circuits. And their attempts to point to other, older decisions supposedly applying the majority-circuit rule fail. The BIO likewise fails to confront the Sixth Circuit decisions permitting interlocutory review of genuineness disputes even in cases that do not involve video evidence. *See DeVooght v. City of Warren*, 157 F.4th 893, 899-900 (6th Cir. 2025). The BIO then concedes the Eleventh Circuit reviews genuineness determinations in cases that have "nothing to do with video evidence" and "never cite[] *Scott* at all." *See* BIO 9 (citing *Nelson v. Tompkins*, 89 F.4th 1289 (11th Cir. 2024)).

That leaves the BIO defending only the merits of the panel's video review, not the circuit's rule. *See* BIO 10-12. That choice resolves the vehicle question. The

Question Presented was outcome-determinative below. The panel decided the precise question *Johnson v. Jones*, 515 U.S. 304 (1995), forbids appellate courts from considering. Respondents try to argue that the answer to the question *Johnson* puts off limits is "clear." BIO 2. But that is not the test the majority-rule circuits apply. They demand a "blatant contradiction"—an "isthmian" exception to the general rule. *See Brown v. Dickey*, 117 F.4th 1, 6 (1st Cir. 2024). Respondents' belief that they could prevail under the correct rule is no reason for this Court to avoid resolving the circuit conflict over what the right rule is. At any rate, the video evidence does not clearly contradict the district court's finding of a genuine dispute. It shows officers pinning Norman to the ground, repeatedly punching him in the head, thrice asking "you done?", then punching him in the head again after a four second pause. Pet. App. 3a.

This Court should grant the petition.

ARGUMENT

I. The Circuit Split Is Real And Demands This Court's Review.

The BIO denies any split by claiming that the Fifth, Sixth, and Eleventh Circuits apply the same blatant-contradiction limitation on interlocutory review as the majority-rule circuits. BIO 6, 9-10 (arguing that the circuits' divergent articulations are "a distinction without a difference"). The BIO's cases prove otherwise.

A. The Panel Applied The Fifth Circuit's Broad Jurisdictional Rule.

The Fifth Circuit admits that it "interpret[s] *Scott* more broadly" than the "blatantly contradicts" rule of most other circuits, "reading it as recognizing a

general exception to the prohibition on interlocutory review of genuineness in cases involving video evidence." *Argueta v. Jaradi*, 86 F.4th 1084, 1089 n.3 (5th Cir. 2023); *see* Pet. 3, 10, 16-17 & n.5. Unable to deny *Argueta*'s holding, the BIO simply ignores it. *Compare* BIO 7.

The panel applied that broader rule here, citing *Argueta* four times. Pet. App. 4a-5a & nn.2-3, 5-6 (citing *Argueta* for the Fifth Circuit's rule that "video evidence of the encounter permits us to review the materiality and genuineness of [factual] disputes"). The phrases "blatantly contradicted" and "utterly discredited," *see Scott*, 550 U.S. at 380, appear nowhere in the opinion. The panel asked only whether the videos provided "sufficient clarity" to resolve the dispute for itself. Pet. App. 6a.

The panel never claimed the video "blatantly contradicted" the district court because it could not. The footage, the panel recounted, depicts Deputy Ingle "punch[ing] [Norman] in the head at least six times in quick succession" while Norman was pinned to the ground, "ask[ing] 'you done?' three times," and then, "[f]our seconds after his last punch . . . punch[ing] him in the head again." Pet. App. 3a. That does not utterly discredit the district court's determination. "A jury could conclude that Norman was not resisting an arrest at the time because he was fully restrained," so there is "a genuine factual dispute regarding whether Norman posed an immediate threat to the safety of the officers" while they repeatedly struck him. *Id.* 15a-16a. The panel reversed anyway, substituting its own view of the threat Norman posed for the district court's—a genuineness override on the precise dispute *Johnson* forecloses. *See* 515 U.S. at 313-14, 319-20.

The BIO attempts to distract by invoking Norman's hazy memory of the incident. *See* BIO 2, 4, 10. That is a red herring. The Question Presented is whether the panel was free to disregard *the district court's* determination of what the videos depict—including that they show a genuine dispute about whether Norman posed an ongoing threat to the officers who continued to beat him. Pet. App. 15a-16a.

Respondents point to a handful of cases that predate the panel's decision and circuit's denial of rehearing en banc. BIO 6-8. Any uncertainty those earlier decisions might have reflected has since been resolved by the published opinion here and Fifth Circuit's denial of Norman's rehearing petition directly challenging the circuit's departure from the majority rule. *See* Pet. 16-17. Since the petition was filed, the circuit has continued to articulate the broader rule "when there is video evidence available in the record." *See Carter v. Dupuy*, 173 F.4th 561, 565 (5th Cir. 2026) (in such cases, panel "is not bound to adopt the non-moving party's version of the facts if it is contradicted by the record" (quoting *Scott v. City of Mandeville*, 69 F.4th 249, 254 (5th Cir. 2023))).

In any event, with one exception, the cases the BIO cites either articulate the broader rule the petition challenges or have nothing to do with video evidence. *See* BIO 6-8. In addition to *Argueta*, *Curran v. Aleshire*, 800 F.3d 656 (5th Cir. 2015), authorizes panels to "view the video . . . and draw [their] own conclusions." *Id.* at 663. *Curran* is the case *Argueta* cites for the circuit's broader reading of *Scott*. *See* 86 F.4th at 1089 n.3. *Byrd v. Cornelius*, 52 F.4th 265 (5th Cir. 2022), illustrates the distinction. The panel exercised the broader jurisdictional power by watching the video "numerous times" and reaching its own conclusions; only after determining that the

recording missed the relevant portion of the encounter did the panel defer to the district court. *Id.* at 271-72. If the panel had disagreed with the district court, it would have reversed.

Dilley v. Domingue, 118 F.4th 671 (5th Cir. 2024), holds that the limitation on genuineness review "does not prevent us from reviewing available video evidence." *Id.* at 674. *Terrell v. Allgrunn*, 114 F.4th 428 (5th Cir. 2024), *Rucker v. Marshall*, 119 F.4th 395 (5th Cir. 2024), and *Estevis v. Cantu*, 134 F.4th 793 (5th Cir. 2025), each restate the same rule: Panels are "permitted to review genuineness where, as here, video evidence is available." *Terrell*, 114 F.4th at 434 (quoting *Argueta*, 86 F.4th at 1088); *Rucker*, 119 F.4th at 400 (similar); *Estevis*, 134 F.4th at 797 (similar).[1]

The one exception is *Benavides v. Nunez*, 144 F.4th 751 (5th Cir. 2025), where a panel quoted the "blatantly contradicted" formulation and dismissed the appeal for lack of jurisdiction. *Id.* at 755-56. But it did so because it determined that "[r]eview of the body camera footage and other relevant evidence in this case supports at least two reasonable interpretations —an accidental discharge or an intentional shooting." *Id.* at 755. And even if *Benavides* reflected an earlier intra-circuit tension acknowledged in the petition, Pet. 17 n.5, subsequent decisions have resolved any uncertainty about what the law in the Fifth Circuit is today.

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[1] The BIO (at 10) also cites *Cunningham v. Castloo*, 983 F.3d 185 (5th Cir. 2020), but that case does not cite *Scott* or related cases, nor does it involve video evidence or a challenge to the district court's genuineness finding.

B. The Sixth Circuit Also Interprets *Scott* As Authorizing Broad Interlocutory Review In Cases Like This.

The BIO does not engage the recent Sixth Circuit precedent the petition featured most heavily. *Feagin v. Mansfield Police Department*, 155 F.4th 595 (6th Cir. 2025), holds that "where video allows [the court] in effect to witness the critical events at issue," panels may "assess for [themselves] both the factual and legal questions underlying an officer encounter without reflexively deferring to the district court." *Id.* at 600. The BIO responds that *Feagin* "adopted the standard used in *Scott*." BIO 9. But *Feagin*'s own words refute the claim. It authorizes "independent" appellate review whenever video exists, deferring to the district court only "[i]n the increasingly rare" case "with no video or audio record." *Id.* at 601. That is the opposite of the majority circuits' understanding of *Scott* as a "narrow" exception, in which "the presence of [a] video in the record does not permit us to embark upon our own factfinding exercise." *See, e.g.*, *El v. City of Pittsburgh*, 975 F.3d 327, 338 (3d Cir. 2020); *Hicks v. Ferreyra*, 965 F.3d 302, 308 (4th Cir. 2020) (whether appellate courts "agree or disagree with the district court's assessment of the record evidence . . . is of no moment in the context of [an] interlocutory appeal" (citation omitted)); *Vette v. Sanders*, 989 F.3d 1154, 1163 (10th Cir. 2021) (appellate court must accept the district court's description of the facts "even if our own de novo review of the record might suggest otherwise" (citation omitted)).

The BIO (at 8) invokes *Heeter v. Bowers*, 99 F.4th 900 (6th Cir. 2024), but does not dispute that *Heeter* allows panels to "view the facts 'in the light depicted by the videotape' and use it to ensure the district court

properly constructed the factual record." *Id.* at 910. And strikingly, the BIO never acknowledges *DeVooght v. City of Warren*, 157 F.4th 893 (6th Cir. 2025) (Thapar, J.). *DeVooght* is the Sixth Circuit's most recent expansion of its rule. *See* Pet. 19. It held that the inquiry is "not limited to video evidence," reading *Scott* as authorizing interlocutory genuineness review of "audio recordings," "medical records," and even "*depositions* and *documentary evidence*." *Id.* at 900. (emphasis added).

C. The Eleventh Circuit Has Rendered *Johnson* And *Scott* Obsolete.

The BIO concedes that *Nelson v. Tompkins*, 89 F.4th 1289 (11th Cir. 2024), "never cites *Scott* at all, and . . . has nothing to do with video evidence." BIO 9. That is the petition's point. *See* Pet. 3-4, 20. The Eleventh Circuit has read *Johnson* to bar review only when "the *only* question before an appellate court is one of pure fact." *Hall v. Flournoy*, 975 F.3d 1269, 1276, 1278 n.4 (11th Cir. 2020); *Nelson*, 89 F.4th at 1296 (similar). Whenever an appeal involves any legal question, the Eleventh Circuit authorizes panels to "conduct [their] own analysis of the facts" rather than "accept the district court's findings." *Nelson*, 89 F.4th at 1296; *accord Aguirre v. Seminole County*, 158 F.4th 1276, 1291 (11th Cir. 2025); *Prospero v. Sullivan*, 153 F.4th 1171, 1181 (11th Cir. 2025). *Scott*'s "blatant contradiction" standard is superfluous under that rule. That is why *Nelson* does not cite it.[2]

[2] Left unchecked, the Sixth Circuit has drifted towards this unmoored standard. *See DeVooght*, 157 F.4th at 900 (extending *Scott* to cases without video evidence); *Williams v. City of Canton*, 168 F.4th 933, 938 (6th Cir. 2026) (applying *DeVooght* to "consider [an] evidence-sufficiency question in the process of answering one of the . . . excessive-force questions").

Post-petition, the Eleventh Circuit continues to take jurisdiction over factual disputes whenever a legal question is also raised. *See Castro-Reyes v. City of Opa-Locka*, 166 F.4th 886, 890, 896, 900 (11th Cir. 2026) (taking interlocutory jurisdiction under *Hall*, 975 F.3d at 1276, to resolve a "dispute [over] what the available body camera footage shows" despite acknowledging "ambiguities" in the recording because officers also raised legal questions). In the majority-rule circuits, the existence of a legal question on appeal does not authorize independent review of disputed facts; the appellate court takes the district court's identified disputes as given unless the video "blatantly contradicts" them. *See* Pet. 14-15.

II. The Circuit Split Is Consequential And Intolerable.

The BIO "agree[s] . . . that the rise of body-worn cameras has resulted in more video evidence in qualified immunity cases." BIO 13. This question has come up in a relentless stream of cases across nearly every circuit. *See* Pet. 22-25.

The BIO does not contend that divergent outcomes on identical records would be tolerable; it argues only that the difference between the circuits is a split "over how to label an appellate review that ends in the same result, based on comparable facts." BIO 10. But the BIO cannot back that claim up and does not try. The petition is replete with examples of majority courts dismissing interlocutory appeals just like this one and otherwise repudiating arguments that challenge a district court's genuineness determination, as well as minority circuits regularly taking interlocutory jurisdiction over fact disputes the majority circuits would dismiss or refuse to consider. *Compare* Pet. 14-16 *with id.* 16-20.

The circuit disagreement is about how to reconcile *Scott* with *Johnson*. Only this Court can resolve this quarrel about its own precedents. The minority circuits will not retreat on their own. The Fifth Circuit denied a petition for rehearing en banc in this case that expressly pointed out the circuit conflict, *see* Pet. 11, after denying a similar petition in *Argueta* over the dissent of five judges, *see* 94 F.4th 475 (5th Cir. 2024). The Sixth Circuit denied rehearing en banc in *Feagin* over Judge Clay's dissent. *See* 2025 WL 3440157 (6th Cir. 2025). Absent intervention from this Court, the conflict will endure unabated.

III. The Fifth Circuit's Rule Is Wrong.

The panel did not apply the majority circuits' rule. It applied *Argueta*'s broader rule. And it used that rule to override the district court's genuineness finding—what *Johnson* forbids. The BIO's defense rests on the premise that *Scott* created a freestanding exception to *Johnson*. The petition explained why the assumption is wrong, Pet. 26-31; the BIO never engages.

Scott "did not address appellate jurisdiction or even cite *Johnson*." *See* Pet. 29. And a "*sub silentio*" jurisdictional ruling does not bind this Court "when a subsequent case finally brings the jurisdictional issue before [it]." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 119 (1984). The only post-*Scott* decision of this Court to address the question confirmed as much: It reaffirmed *Johnson* and explained that *Scott* was not an exception to *Johnson*'s jurisdictional rule, because the issues in *Scott* were "legal" and thus "quite different from any purely factual issues that the trial court might confront if the case were tried." *Plumhoff v. Rickard*, 572 U.S. 765, 773 (2014). On the other hand, this Court has repeatedly reaffirmed *Johnson*'s prohibition on

interlocutory review of factual disputes in multiple contexts. *See Ortiz v. Jordan*, 562 U.S. 180, 188 (2011) (interlocutory appeal is barred "when the district court determines that factual issues genuinely in dispute preclude summary adjudication"); *Ashcroft v. Iqbal*, 556 U.S. 662, 674 (2009) (interlocutory jurisdiction reaches only "abstract," not "fact-based," issues of law). The BIO rests its whole defense on an exception this Court has never recognized. BIO 9-10.

Even if respondents were right that *Scott* introduced an exception to *Johnson*, the Fifth Circuit's interpretation would swallow the general rule. Pet. 26-31. The Fifth Circuit treats *Scott* as authority for interlocutory review whenever video is available. Pet. App. 5a. But at most, *Scott*'s "isthmian" exception by its terms applies only when video evidence "'blatantly contradict[s]'" the district court's account. *Brown v. Dickey*, 117 F.4th 1, 6 (1st Cir. 2024) (quoting *Scott*, 550 U.S. at 380); *Ferguson v. McDonough*, 13 F.4th 574, 580 (7th Cir. 2021) (same); *see* Pet. 31.

IV. This Case Is An Ideal Vehicle.

The BIO raises no genuine vehicle objection. It argues the panel "correctly applied the 'blatantly contradicted' rule" because "the video is clear." BIO 10, 11. But "clear" is not the test in the majority circuits. They demand a truly blatant contradiction, not just confidence that the district court was wrong. And here, the panel acknowledged the "[v]ideo evidence does not show that Norman resisted arrest while on the ground." Pet. App. 3a. The district court's determination of a genuine dispute over the threat Norman posed and whether the officers' gratuitous punches to his head violated the Fourth Amendment is therefore not "blatantly contradicted" by the video,

as the majority-rule circuits require. In a majority circuit, the appeal would have been dismissed.

Respondents invoke *Barnes v. Felix*, 605 U.S. 73 (2025), to defend the panel's merits review. *See* BIO 11-12. But *Barnes* held that reasonableness of a use of force turns on "the totality of the circumstances," not the "moment of threat" when force is used. 605 U.S. at 76, 81-83. The reasonableness of each use of force must therefore turn on the full sequence of events leading to it. *Id.* at 83. *Barnes* thus forbids the "chronological blinders" the BIO's framing depends on. *See id.* at 81-82. The full context—pinning Norman to the ground where he did not resist, the three "you done?" demands, the four-second pause, and the seventh punch for good measure—is what the district court concluded could support a jury finding of constitutional excess. Pet. App. 16a. The panel reached the contrary result only by exercising jurisdiction it did not have.

CONCLUSION

For the reasons above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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