

No. _____

IN THE
Supreme Court of the United States

DERRICK DUANE BARKER,
Petitioner,

v.

CITY OF WEATHERFORD EX REL.
WEATHERFORD POLICE DEPARTMENT; RYAN
HETHERINGTON; SEAN LANIER; NORMANDO
GUYTON; DYLAN OWENS; DEREK BECK; CHASE
MURLEY; JUSTIN BLATNICK; AND HAGAN ARD,
IN THEIR INDIVIDUAL CAPACITIES
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

AIMEE MAJOUÉ*
* *COUNSEL OF RECORD*
Majoue Legal Services,
LLC
12220 N. Macarthur
Blvd, Suite F #765
Oklahoma City, OK
73162
(405)437-4633
Aimee@majouelegal.com

KELLY KINSER
Kinser Marchant, PLLC
6608 North Western,
#1619
Oklahoma City, OK
73116
(405)400-8542
Kelly@kinsermarchant.
com

QUESTIONS PRESENTED

1. Whether a court may grant summary judgment based on qualified immunity by rejecting the plaintiff's account based on the court's own interpretation of video evidence and thereby resolving disputed facts in favor of officers contrary to *Tolan v. Cotton*, 572 U.S. 650 (2014).
2. Whether a constitutional violation is "clearly established" only when existing precedent squarely governs the specific facts at issue, or whether general Fourth Amendment principles can clearly establish that significant force during a minor encounter is unlawful, even absent a case involving materially identical facts.

PARTIES TO THE PROCEEDING

- Petitioner: Derrick Duane Barker;
- Respondent: City of Weatherford ex rel. Weatherford Police Department;
- Respondent: Ryan Hetherington;
- Respondent: Sean Lanier;
- Respondent: Normando Guyton;
- Respondent: Dylan Owens;
- Respondent: Derek Beck;
- Respondent: Chase Murley;
- Respondent: Justin Blatnick; and
- Respondent: Hagan Ard.

RELATED PROCEEDINGS

United States Court of Appeals for the Tenth Circuit:

- *Barker v. City of Weatherford, et al.*, No. 25-6069 (April 2, 2026).

United States District Court for the Western District of Oklahoma:

- *Barker v. City of Weatherford, et al.*, No. 5:24-CV-00235-R (April 18, 2025).

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
RELATED PROCEEDINGS	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	vi
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	1
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE PETITION	3
I. The Tenth Circuit’s Decision Below Conflicts with and Expands the Role of Video Evidence Beyond This Court’s Summary Judgment Precedent.	3
II. The Tenth Circuit’s Decision Below Misapplies the Fourth Amendment by Collapsing the <i>Graham</i> Analysis into a One- Sided Factual Narrative.....	6

III. The Tenth Circuit’s Decision Below Imposes an Impermissibly Rigid “Clearly Established” Standard and Highlights Ambiguity in the Application of This Court’s Conflicting Precedent.	10
CONCLUSION	11
APPENDIX.....	1a

TABLE OF AUTHORITIES

Cases

<i>Aguirre v. City of San Antonio</i> , 995 F.3d 395 (5th Cir. 2021)	5
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	3
<i>Barnes v. Felix</i> , 605 U.S. 73 (2025)	10
<i>Casey v. City of Federal Heights</i> , 509 F.3d 1278 (10th Cir. 2007)	7, 8, 9, 11
<i>Cavanaugh v. Woods Cross City</i> , 625 F.3d 661 (10th Cir. 2010)	8
<i>Eagan v. Dempsey</i> , 987 F.3d 667 (7th Cir. 2021)	5
<i>Est. of Lopez ex rel. Lopez v. Gelhaus</i> , 871 F.3d 998 (9th Cir. 2017)	5
<i>Graham v. Connor</i> , 490 U.S. 386 (1989)	iv, 6, 7, 8, 10, 11
<i>Harris v. Pittman</i> , 927 F.3d 266 (4th Cir. 2019)	5
<i>Hope v. Pelzer</i> , 536 U.S. 730 (2002)	11
<i>Janny v. Gamez</i> , 8 F.4th 883 (10th Cir. 2021)	5
<i>Kailin v. Village of Gurnee</i> , 77 F.4th 476 (7th Cir. 2023)	5
<i>Kisela v. Hughes</i> , 584 U.S. 100 (2018)	10
<i>McCoy v. Meyers</i> , 887 F.3d 1034 (10th Cir. 2018)	9
<i>Morton v. Kirkwood</i> , 707 F.3d 1276 (11th Cir. 2013)	5
<i>Norton v. Rodrigues</i> , 955 F.3d 176 (1st Cir. 2020)	5
<i>Romo v. Largent</i> , 723 F.3d 679 (6th Cir. 2013)	5
<i>Scott v. Harris</i> , 550 U.S. 372 (2007)	4, 5
<i>Tennessee v. Garner</i> , 471 U.S. 1 (1985)	10
<i>Tolan v. Cotton</i> , 572 U.S. 650 (2014)	i, 4, 5, 10, 11

Statutes

28 U.S.C. § 1254(1)	1
28 U.S.C. § 2101(c)	1
42 U.S.C. § 1983	2

Rules

Fed. R. Civ. P. 56(a)	3
-----------------------------	---

Constitutional Provisions

U.S. Const. amend. IV	1
-----------------------------	---

PETITION FOR A WRIT OF CERTIORARI

Petitioner seeks a writ of certiorari to review the opinion entered by the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The unreported opinion of the United States Court of Appeals for the Tenth Circuit is reproduced in the Appendix at App. 1a.

JURISDICTION

The court of appeals' opinion was entered on April 2, 2026. This Court has jurisdiction under 28 U.S.C. §§ 1254(1) and 2101(c).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides: “The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV.

STATEMENT OF THE CASE

A. The Encounter

This case arises from a traffic stop for a minor equipment violation—an alleged tag light outage—on November 27, 2021. Within seconds of initiating the encounter, officers escalated to significant force.

After being pulled over, Petitioner exited his vehicle to pull out his wallet. When asked to get back into his vehicle, he voiced confusion but then reentered his vehicle. When he was informed of the alleged traffic violation, Petitioner questioned the basis for the stop and exited his vehicle to inspect his tag light. He was again told to get back in his vehicle. When Petitioner stated he wanted to see the tag light out—he had reason to believe it was working properly and that this was a disingenuous stop—he was warned he was under arrest. Petitioner got back in his vehicle but was then ordered to exit the vehicle.

Petitioner requested they go to the police station so that bodycam footage could be watched and so he could speak with the captain. Instead, officers tased and effectively subdued him. Then within just a few seconds, Officers forcibly removed Petitioner from his vehicle, struck his knees with a baton, pulled him to the ground, and used additional force to secure his arms all while Petitioner was sounding in pain and confusion at the escalation.

A reasonable jury could conclude that the underlying offense was minor, Petitioner posed no immediate threat, and any noncompliance was verbal or momentary at most.

B. The Proceedings Below

Petitioner brought suit under 42 U.S.C. § 1983 alleging excessive force in violation of the Fourth

Amendment. The district court granted summary judgment to Respondents on qualified immunity grounds on April 18, 2025. App. at 20a. After Petitioner timely appealed, the Tenth Circuit affirmed summary judgment on April 2, 2026, holding both that (1) no constitutional violation occurred and (2) any violation was not clearly established. App. at 1a. Petitioner now seeks writ of certiorari from this honorable Court.

REASONS FOR GRANTING THE PETITION

This Petition presents compelling reasons for the Court’s review and a need for clarity where ambiguity sits in Fourth Amendment qualified immunity cases. Not only has the Tenth Circuit entered a decision in conflict with decisions of other appellate courts but also more in conflict with this Court’s precedent.

I. The Tenth Circuit’s Decision Below Conflicts with and Expands the Role of Video Evidence Beyond This Court’s Summary Judgment Precedent.

The governing summary judgment baseline is settled: the movant must show the absence of any genuine dispute of material fact, and the court must view the evidence “in the light most favorable to the opposing party” drawing all justifiable inferences in the nonmovant’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); Fed. R. Civ. P. 56(a). This standard remains the same even in Fourth Amendment excessive force cases in which a governmental entity moves for judgment in its favor

on grounds of qualified immunity. *Tolan v. Cotton*, 572 U.S. 650 (2014).

The Tenth Circuit’s decision cannot be reconciled with this standard. Rather than determining whether a reasonable jury could credit Petitioner’s account, the Tenth Circuit expressly rejected it based on its own interpretation of the video evidence stating, “The video evidence . . . shows otherwise; we do not credit his version of events.” App. at 10.

In *Scott v. Harris*, 550 U.S. 372 (2007), this Court recognized a limited exception regarding a court’s review of video evidence. Where a dash-cam video of a high-speed pursuit “quite clearly” contradicted the motorist’s claim that his driving was controlled and non-dangerous, the Court held that “[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.

But the *Scott* exception is narrow and does not displace the ordinary standard whenever a video exists. The threshold is blatant and unambiguous contradiction. If reasonable jurors could differ about what the video shows—because of camera angle, framing, audio gaps, what occurs off-screen, the speed of what is documented, or the interpretive weight of ambiguous movements—summary judgment remains inappropriate and the plaintiff’s account should control. *Tolan*, 572 U.S. at 657-60.

This Court reinforced these limits in *Tolan*. There, the Fifth Circuit affirmed summary judgment for an officer who shot an unarmed man on a porch and resolved disputed facts—lighting conditions, whether the plaintiff was verbally threatening, and whether he was moving to intervene—against the nonmovant. *Tolan*, 572 U.S. at 655. This Court vacated that ruling and held that even when deciding whether a right was “clearly established,” a court “must take all facts in the light most favorable to the nonmoving party” and may not credit the movant’s evidence while discounting the nonmovant’s. *Id.* at 657-60. *Tolan* is the principal authority for resisting an overbroad reading of *Scott*, and it remains good law.

The Tenth Circuit’s approach below reflects improper factfinding. Even where video evidence exists, courts may not resolve disputed factual issues or draw inferences in favor of the moving party unless the video “blatantly contradicts” the nonmovant’s account. *See Janny v. Gamez*, 8 F.4th 883, 901-902 (10th Cir. 2021); *Kailin v. Village of Gurnee*, 77 F.4th 476 (7th Cir. 2023); *Eagan v. Dempsey*, 987 F.3d 667, 691 n.56 (7th Cir. 2021); *Aguirre v. City of San Antonio*, 995 F.3d 395 (5th Cir. 2021); *Norton v. Rodrigues*, 955 F.3d 176, 184 n.7 (1st Cir. 2020); *Harris v. Pittman*, 927 F.3d 266, 286 (4th Cir. 2019); *Est. of Lopez ex rel. Lopez v. Gelhaus*, 871 F.3d 998, 1009 (9th Cir. 2017); *Morton v. Kirkwood*, 707 F.3d 1276, 1284 (11th Cir. 2013); *Romo v. Largen*, 723 F.3d 679, 675 (6th Cir. 2013). However, here the Tenth Circuit repeatedly relied on its own interpretation of the videos to conclude that Petitioner was resisting and not incapacitated. App. at 12-13.

These conclusions by the Tenth Circuit are factual determinations that should have been left to a jury. The Tenth Circuit used video evidence to resolve contested questions about whether Petitioner was incapacitated, whether he resisted arrest, and whether the force was justified. Yet those questions require interpretation of rapidly unfolding events and are not conclusively established by the videos. By using video evidence to reject Petitioner's account, the Tenth Circuit deepened confusion regarding the proper role of video evidence in qualified immunity cases and departed from this Court's precedent by effectively removing the case from the jury.

II. The Tenth Circuit's Decision Below Misapplies the Fourth Amendment by Collapsing the *Graham* Analysis into a One-Sided Factual Narrative.

Under *Graham v. Connor*, 490 U.S. 386 (1989), the reasonableness of force depends on the severity of the offense, the threat posed, and the level of resistance. The district court concluded that the first factor favored Petitioner but the remaining two favored the officers. The Tenth Circuit concluded that all three factors favored the officers, reasoning that Petitioner "quickly escalated the situation" and that officers were justified in using "additional force to overcome [his] resistance." App. at 8.

But that conclusion depends entirely on accepting the movant's characterization of disputed facts and interpretation of the video. A reasonable jury could

instead conclude that the stop involved only a minor violation, any resistance was minimal or momentary, and officers deployed multiple forms of force within seconds. By treating its interpretation of the evidence as dispositive, the Tenth Circuit transformed the *Graham* inquiry from a fact-intensive jury determination into a judicial finding.

As to the first *Graham* factor, the Tenth Circuit determined the traffic stop was for a tag light being out but that Petitioner's behavior escalated the situation so that the "crime" in question was no longer the traffic stop. App. at 8. This is a stretch of the *Graham* standard and unsupported by law.

Regarding the second factor, the Tenth Circuit below determined that Petitioner was behaving unusually from the start of the traffic stop and he had a confrontational attitude. App. at 8-9. This led the Tenth Circuit to conclude that a reasonable officer may have believed Petitioner to be impaired, which justified a safety concern to the officers or others. *Id.* at 9-19. But again this is improperly based on the Tenth Circuit making factual determinations based on the movant's account and the court's own interpretation of the videos rather than Petitioner's account of events that a reasonable jury could find were supported by the video evidence rather than contradicted by the video evidence.

And as to the third factor, controlling Tenth Circuit law holds that noncompliance and verbal friction are not the same as active resistance. In *Casey v. City of Federal Heights*, 509 F.3d 1278, 1281-86 (10th Cir.

2007), the court reversed summary judgment for officers who took down and tased a man over a minor matter emphasizing that “force is least justified against nonviolent misdemeanants who do not flee or actively resist” and pose little or no threat and that it is excessive to use a significant level of force “without having any reason to believe that a lesser amount of force—or a verbal command—could not exact compliance.” *Id.* at 1285-86.

In evaluating this third factor, “resisting” is a higher bar than the Tenth Circuit applied. *See Casey*, 509 F.3d at 1278. In *Casey*, the officers grabbed the plaintiff’s arm, he wrenched it away, they wrestled, the officers tased him, the plaintiff removed the taser barbs, and the confrontation continued. *Id.* at 1280. These are facts that tend to demonstrate actions to resist detention. But the court was required to analyze the totality of the circumstances, which included the plaintiff’s going to his vehicle to get cash to pay a fine and his resisting detention so that he could walk to the courthouse to pay the fine. *Id.* at 1284. The court stated he would have been easier to arrest inside the courthouse than in the parking lot, and the fact that he was wanting to walk to the courthouse should not be considered resisting arrest under the *Graham* analysis. *Casey*, 509 F.3d at 1282.

The principle that disobeying or questioning, without move, does not justify a potent use of force has been repeatedly applied. *See Cavanaugh v. Woods Cross City*, 625 F.3d 661, 665-67 (10th Cir. 2010) (tasing a non-violent, non-fleeing person who was not actively resisting, without warning, was a

clearly established violation); *McCoy v. Meyers*, 887 F.3d 1034, 1051-52 (10th Cir. 2018) (“disobey[ing] some order” does not by itself justify potent force, particularly where there is a real dispute whether the person had a reasonable opportunity to comply; force on a subdued person is unconstitutional). These authorities establish that a low-severity offense, the absence of any genuine threat, and conduct amounting to questioning rather than violence make the use of force constitutionally suspect and, critically, places those questions before a jury rather than resolving them on summary judgment.

Respondents’ framing that stepping out of the vehicle to try to look at the plate light was itself resistance and “escalation” justifying force collides with this body of law. Whether exiting the vehicle was objectively threatening or merely the act of a citizen trying to verify a minor equipment claim is precisely the kind of fact-bound dispute reserved for the jury. Mere noncompliance with an instruction to stay in the car or get out of the car is not active resistance and does not license force under *Casey* and its progeny.

Moreover, Petitioner’s request to go to the police station to view bodycam footage and speak with the captain is akin to the plaintiff in *Casey* trying to go to the courthouse. 509 F.3d at 1282. As in *Casey*, it would have been easier to arrest Petitioner inside the police station than in the street, and the fact that he was wanting to go to the police station should not be considered resisting arrest. *See id.* Yet the appellate court found otherwise and gave weight only to the movant’s framing of the facts.

Additionally ignored by the Tenth Circuit below, the *Graham* reasonableness of force inquiry extends to questions of pretext and provocation. In *Barnes v. Felix*, 605 U.S. 73 (2025), in a unanimous opinion in a case arising from a traffic stop, this Court rejected the “moment-of-threat” rule and held that the reasonableness of force must be judged on the totality of the circumstances, including the events leading up to the use of force, not just the final split-second officer decision. *See also Tennessee v. Garner*, 471 U.S. 1 (1985). *Barnes* enlarges the relevant timeframe and lets a plaintiff put the officer’s own conduct in creating or escalating the encounter before the factfinder. Where, viewing the record in the Petitioner’s favor under *Tolan*, a jury could find the officer needlessly provoked a confrontation over a trivial infraction, that context informs whether the responsive force was objectively reasonable and can defeat summary judgment.

III. The Tenth Circuit’s Decision Below Imposes an Impermissibly Rigid “Clearly Established” Standard and Highlights Ambiguity in the Application of This Court’s Conflicting Precedent.

The Tenth Circuit held that officers are entitled to qualified immunity unless existing precedent “squarely governs the specific facts at issue,” emphasizing that specificity is “especially important” in Fourth Amendment cases. App. at 14-15 (citing *Kisela v. Hughes*, 584 U.S. 100, 104 (2018)). Applying that standard, the Tenth Circuit concluded that none

of Petitioner’s cited cases “squarely govern these facts” and that it was “not beyond debate” whether the officers’ conduct was unlawful. App. at 16. That reasoning cannot be reconciled with *Hope v. Pelzer*, 536 U.S. 730 (2002), which makes clear that officials may be on notice that their conduct is unconstitutional even in novel factual circumstances. Moreover, the Court’s ruling in *Graham* is clearly established law, so a violation of *Graham* itself defeats qualified immunity. *Casey*, 509 F.3d at 1284.

In practice, the Tenth Circuit’s decision reduces the clearly established inquiry to a requirement of factual identity, and this Court’s precedent requires clarification of the grounds for granting or denying qualified immunity in novel factual situations.

CONCLUSION

The petition for writ of certiorari should be granted. Alternatively, this Court should grant summary reversal of the decision below and remand. *See Tolan*, 572 U.S. at 660.

AIMEE MAJOUÉ*

* *COUNSEL OF RECORD*

MAJOUÉ LEGAL SERVICES,
LLC

12220 N. MACARTHUR
BLVD, SUITE F #765
OKLAHOMA CITY, OK 73162
(405) 437-4633

AIMEE@MAJOUÉLEGAL.COM