No. 26-6165

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
NOV 09 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

KATRINA DANIELLE MATEEN,

Petitioner,

v.

CITY OF GULFPORT, MISSISSIPPI, et al.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a court deciding qualified immunity at summary judgment may define the clearly established-law inquiry using an officer-favorable factual inference drawn from ambiguous video evidence when the nonmovant's contrary interpretation is not blatantly contradicted by the recording.

LIST OF PARTIES AND RELATED PROCEEDINGS

Parties

Petitioner Katrina Danielle Mateen was the plaintiff in the United States District Court for the Southern District of Mississippi and the appellant in the United States Court of Appeals for the Fifth Circuit.

Respondent Kenneth Nassar was a defendant in the district court and an appellee in the Fifth Circuit. Respondent City of Gulfport, Mississippi, was a defendant in the district court and was listed as an appellee in the Fifth Circuit.

No party is a publicly traded corporation, and no stock ticker symbol is applicable.

Related Proceedings

Mateen v. City of Gulfport, Mississippi, et al., No. 1:23-cv-00306-TBM-RPM, United States District Court for the Southern District of Mississippi. Final judgment entered September 30, 2025.

Mateen v. City of Gulfport, Mississippi, et al., No. 25-60602, United States Court of Appeals for the Fifth Circuit. Judgment entered July 8, 2026; panel rehearing denied August 10, 2026.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unpublished and is reproduced at Pet. App. 1a-5a. The Fifth Circuit's judgment is reproduced at Pet. App. 6a-7a. The memorandum opinion and order of the United States District Court for the Southern District of Mississippi granting summary judgment is reproduced at Pet. App. 8a-30a, and the district court's final judgment is reproduced at Pet. App. 31a. The Fifth Circuit's order denying panel rehearing is reproduced at Pet. App. 32a.

JURISDICTION

The Fifth Circuit entered judgment on July 8, 2026. Pet. App. 6a-7a. Petitioner timely sought panel rehearing, which the Fifth Circuit denied on August 10, 2026. Pet. App. 32a. This petition is timely under Supreme Court Rules 13.1 and 13.3 because it is filed within 90 days after denial of the timely petition for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in relevant part: "The right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated."

42 U.S.C. § 1983 provides a civil remedy against a person who, under color of state law, subjects another person to the deprivation of rights secured by the Constitution and laws of the United States.

Federal Rule of Civil Procedure 56(a) provides: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

STATEMENT OF THE CASE

1. The shooting.

On October 6, 2022, Gulfport police officers responded to a report concerning occupants of a silver Kia Soul and firearms. Officers Kenneth Nassar and Benjamin Ford located a vehicle matching the description in the parking lot of a Family Dollar store in Gulfport, Mississippi. Fifteen-year-old Jaheim McMillan exited the vehicle and ran. The entire encounter between Nassar's exit from his patrol vehicle and the shooting lasted only a few seconds.

Nassar ordered McMillan to stop and later to drop an object that Nassar identified as a firearm. McMillan continued moving toward the storefront. The parties disputed what happened at the critical instant immediately before Nassar fired. Petitioner maintained that McMillan was fleeing and did not point or aim the firearm at Nassar, and that the rapidly moving and partially obstructed body-camera and dash-camera recordings did not conclusively establish that McMillan deliberately turned to confront the officer.

Officer Ford, who pursued another individual, later told investigators that he did not observe firearms on the individuals who exited the Kia. Nassar fired his service weapon. McMillan was struck and died.

2. Proceedings in the district court.

Petitioner, McMillan's mother, filed this civil-rights action under 42 U.S.C. § 1983 without counsel. The district court granted Petitioner leave to proceed in forma pauperis.

After the City of Gulfport was dismissed, the magistrate judge granted Nassar permission to assert qualified immunity and stayed discovery while the qualified-immunity motion was pending. Nassar thereafter moved for summary judgment.

Petitioner did not timely respond. She later explained that she had received a large package of paperwork and a disc that she understood to be discovery materials and did not realize that the

package included a new summary-judgment motion requiring a response. She requested additional time. The district court ultimately denied that request and struck her later-filed response. It nevertheless stated that it would reach the same result even if it considered the response. Pet. App. 18a-19a.

The district court granted summary judgment to Nassar. In describing the video, the court concluded that McMillan turned his body toward Nassar with a gun in hand during the same second in which Nassar fired. The court dismissed the federal claims and remanded the remaining state-law claims. Pet. App. 31a.

3. The Fifth Circuit proceedings.

Petitioner appealed pro se. Her opening brief argued that the district court improperly resolved disputed facts and drew officer-favorable inferences from ambiguous video evidence at summary judgment. Her reply further emphasized the short duration of the encounter, the ambiguity of the video, Officer Ford's statement, and the requirement that the immediate threat be evaluated at the moment deadly force was used.

The Fifth Circuit affirmed. The panel expressly recognized Petitioner's contention that the video did not conclusively show that McMillan aimed a gun at Nassar and acknowledged Officer Ford's statement that he did not see a firearm. Pet. App. 3a.

The panel then stated: "Even assuming that McMillan was trying to evade arrest rather than attack officers, and even assuming that he did not point the gun at Officer Nassar, Mateen has not shown that Officer Nassar violated clearly established law." Pet. App. 3a.

Yet the court simultaneously treated a separate disputed inference as established. It stated that "the record and video evidence show" that McMillan "had turned to face Officer Nassar when he fired." Pet. App. 2a. The panel repeated that premise in its clearly established-law

analysis, reasoning that McMillan "turned to face Officer Nassar during a rapidly unfolding encounter" and characterizing the case as involving "an armed suspect who ignored commands and turned to face him outside an open store." Pet. App. 4a-5a.

Petitioner sought panel rehearing on the precise ground that the panel had treated the disputed "turned to face" premise as established while purporting to view the evidence under plaintiff-favorable summary-judgment assumptions. The Fifth Circuit denied rehearing on August 10, 2026. Pet. App. 32a.

REASONS FOR GRANTING THE PETITION

This Court's Rule 10 recognizes review as appropriate when a court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court. That is the problem here. The Fifth Circuit's qualified-immunity analysis uses a disputed, officer-favorable inference from ambiguous video to define the very factual circumstances against which clearly established law is measured. That approach conflicts with Tolan v. Cotton and exceeds the narrow video-evidence rule of Scott v. Harris.

I. THE DECISION BELOW CONFLICTS WITH TOLAN AND SCOTT.

At summary judgment, a court may not resolve genuine factual disputes or choose among competing reasonable inferences. In Tolan v. Cotton, 572 U.S. 650, 657-60 (2014) (per curiam), this Court vacated a Fifth Circuit qualified-immunity judgment because the lower court failed to credit evidence and draw reasonable inferences for the nonmovant. Tolan emphasized that the ordinary summary-judgment standard remains controlling even when qualified immunity is asserted.

Scott v. Harris, 550 U.S. 372, 380 (2007), recognizes a narrow exception when a recording "blatantly contradict[s]" one party's account so that no reasonable jury could believe that

account. Scott does not authorize a judge to select the interpretation of an ambiguous recording that the judge finds more persuasive.

Here, the Fifth Circuit recognized Petitioner's factual dispute and expressly assumed that McMillan was fleeing rather than attacking and did not point the gun. Pet. App. 3a. But the court nevertheless treated as established that McMillan "turned to face" Nassar. Pet. App. 2a, 4a-5a.

That was not an immaterial descriptive detail. It changed the qualified-immunity question from one involving a fleeing armed suspect who did not point the weapon into one involving an armed suspect who turned toward the officer. The videos capture an encounter lasting only seconds. The body-camera perspective is moving, partly obstructed by parked vehicles and the storefront area, and does not unambiguously establish a deliberate pivot to confront Nassar. Petitioner's contrary inference therefore could not be rejected under Scott unless the recording blatantly contradicted it.

The Fifth Circuit did not say that Petitioner's interpretation was impossible or that no reasonable jury could accept it. Instead, it treated its own reading of the recording as an established fact and then used that fact in the legal analysis. Tolan forbids precisely that mode of summary-judgment reasoning.

II. THE DISPUTED FACTUAL INFERENCE ALTERED THE CLEARLY ESTABLISHED-LAW INQUIRY.

Qualified immunity requires courts to identify clearly established law at an appropriate level of factual specificity. See Kisela v. Hughes, 584 U.S. 100, 104-05 (2018); Ashcroft v. al-Kidd, 563 U.S. 731, 742 (2011). But factual specificity does not permit a court to resolve a genuinely disputed fact in the officer's favor before defining the right.

The Fifth Circuit held that Petitioner failed to identify clearly established law governing an "armed suspect who ignored commands and turned to face" an officer. Pet. App. 5a. But whether

McMillan deliberately turned to confront Nassar was itself disputed. The court thus used an officer-favorable inference to make the qualified-immunity scenario more threatening, and then required Petitioner to identify precedent matching that judicially selected version of events.

Under the plaintiff-favorable version the Fifth Circuit otherwise said it would assume, the question was materially different: McMillan was fleeing, did not attack the officers, did not point the firearm at Nassar, and—on Petitioner's reasonable interpretation of the ambiguous recording—did not deliberately turn to confront him before deadly force was used. The clearly established-law inquiry had to be performed on that assumed factual basis.

Tolan is especially instructive because there, too, the Fifth Circuit bypassed the constitutional prong and affirmed qualified immunity on clearly established law after failing to credit plaintiff-favorable facts. 572 U.S. at 655-60. This Court summarily vacated. The same error recurs here in a video-recording setting.

III. THE QUESTION IS IMPORTANT AND RECURRING.

Body cameras, dash cameras, surveillance recordings, and cellphone videos now routinely appear in excessive-force cases. Such recordings can be powerful evidence, but they may also be incomplete, obstructed, distant, rapidly moving, or susceptible to more than one reasonable interpretation.

The line between a recording that truly "blatantly contradicts" a litigant's account and one from which a judge merely draws a competing inference matters nationally. If a court may select officer-favorable inferences from ambiguous video before defining the clearly established right, disputed factual questions that ordinarily belong to a jury can be resolved indirectly through the qualified-immunity formulation itself.

This case presents that problem cleanly. The Fifth Circuit expressly assumed McMillan was fleeing rather than attacking and did not point the weapon, yet still treated the alleged turn toward Nassar as established and relied on it repeatedly in determining what law governed the encounter. Pet. App. 3a-5a.

IV. THIS CASE IS AN APPROPRIATE VEHICLE.

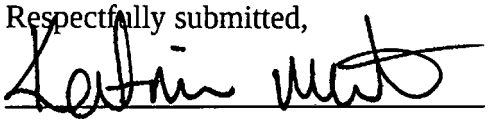
The question was preserved. Petitioner's opening brief challenged the district court's resolution of disputed facts from ambiguous video. Her reply relied on Tolan and Scott and argued that the recording did not conclusively establish a threatening turn. The Fifth Circuit directly addressed the video and the factual dispute. Petitioner then sought panel rehearing on the precise inconsistency presented here. Rehearing was denied.

The procedural issue concerning the untimely summary-judgment response does not prevent review. The Fifth Circuit expressly held that the district court decided the motion on the merits and that the same outcome would have followed even if the late response were considered. Pet. App. 5a. The question presented therefore concerns the merits methodology the Fifth Circuit itself used, not the procedural default.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: November 11, 2026