APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
July 8, 2026
Lyle W. Cayce
Clerk

No. 25-60602
Summary Calendar

KATRINA DANIELLE MATEEN,

Plaintiff—Appellant,

versus

CITY OF GULFPORT, *in their official capacity*; KENNETH NASSAR, *Officer, Gulfport Police Department, in his individual capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:23-CV-306

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Katrina Danielle Mateen, proceeding *pro se*, appeals the district court's grant of summary judgment to Gulfport Police Department Officer Kenneth Nassar on qualified-immunity grounds arising from the fatal shooting of Mateen's fifteen-year-old son, Jaheim McMillan. The district court concluded that Officer Nassar did not violate the Fourth Amendment

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

and, alternatively, that Mateen failed to show any violation of clearly established law. For the reasons that follow, we AFFIRM.

I

On October 6, 2022, Gulfport Police received a 911 call about a silver Kia Soul with a Georgia license plate. The caller reported that the Kia had multiple occupants, that the occupants were brandishing firearms, and that the Kia had followed the caller's vehicle through red lights.

Officers Kenneth Nassar and Benjamin Ford located a vehicle matching that description in the parking lot of a Family Dollar store. As the officers entered the parking lot and activated their lights, the Kia's occupants moved around inside the vehicle. Two males then exited the Kia and ran along the front of the store. One of them was later identified as McMillan.

The encounter unfolded quickly. Officer Nassar announced "Gulfport Police" and ordered McMillan to stop. McMillan continued running. Officer Nassar then saw a dark object in McMillan's right hand, again ordered him to stop, identified the object as a black handgun, and ordered him to drop it. McMillan continued toward the front entrance of the store. Officer Nassar then fired. The parties dispute whether McMillan pointed the gun at Officer Nassar. But the record and video evidence show that McMillan was holding a gun and had turned to face Officer Nassar when he fired. The gun recovered at the scene was a stolen Taurus 9mm handgun. It had seven live rounds in the magazine and one live round in the chamber.

Mateen sued the City of Gulfport and Officer Nassar under 42 U.S.C. § 1983 and state law. The district court dismissed the claims against the City. Officer Nassar then moved for summary judgment on qualified immunity. Mateen did not timely respond. She later moved for an extension, explaining that she had misunderstood Officer Nassar's filing as discovery. The district court denied the extension, struck her late summary-judgment response,

granted summary judgment to Nassar on the federal claim, and remanded the remaining state-law claims. Mateen timely appealed.

II

We review a district court's grant of summary judgment based on qualified immunity de novo. *Crane v. City of Arlington, Tex.*, 50 F.4th 453, 461 (5th Cir. 2022) (citing *Aguirre v. City of San Antonio*, 995 F.3d 395, 405 (5th Cir. 2021)). Whether an officer is entitled to qualified immunity involves two inquiries: (1) "whether the officer's conduct violated a federal right," and (2) "whether that right was clearly established at the time of the violation." *Id.* at 463 (citing *Tolan*, 572 U.S. at 655–56). Courts may address either prong first. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Once qualified immunity is invoked, the plaintiff bears the burden to "rebut the defense by establishing a genuine fact issue as to whether the official's allegedly wrongful conduct violated clearly established law." *Crane*, 50 F.4th at 461 (quoting *Aguirre*, 995 F.3d at 406).

Mateen argues that the district court improperly resolved disputed facts. She emphasizes that McMillan had little time to comply and that the video does not conclusively show that he aimed the gun at Officer Nassar. She also points to Officer Ford's statement that he did not see a firearm. However, we need not decide whether Officer Nassar's use of force violated the Fourth Amendment. *City of Tahlequah v. Bond*, 595 U.S. 9, 12 (2021). 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.

A clearly established right must not be defined "at too high a level of generality." *Id.* (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)). This inquiry "does not require a case directly on point" but "existing precedent must have placed the statutory or constitutional question beyond debate."

Kisela v. Hughes, 584 U.S. 100, 104 (2018) (quoting *White v. Pauly*, 580 U.S. 73, 79 (2017)). In other words, "[a]n officer 'cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it.'" *Id.* at 105 (quoting *Plumhoff v. Rickard,* 572 U.S. 765, 778–79 (2014)).

Mateen offers *Graham v. Connor*, 490 U.S. 386 (1989), and *Tennessee v. Garner*, 471 U.S. 1 (1985), as the basis for a clearly established right "to be free from the use of deadly force by a police officer unless the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." But the Supreme Court has stressed that "*Garner* and *Graham* do not by themselves create clearly established law outside 'an obvious case.'" *White*, 580 U.S. at 80 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004) (per curiam)).

Mateen does not argue or explain how the relevant facts, which are not materially disputed for purposes of the clearly established inquiry, qualify as an "obvious" violation of clearly established law under *Garner* and *Graham*. *See id.* Nor could she. Police responded to a report that the occupants of the Kia were brandishing firearms and following another vehicle through red lights. McMillan fled from the vehicle in front of an occupied store. He continued running after Officer Nassar ordered him to stop. He had a handgun in his right hand. He did not drop it when commanded to do so. He then turned to face Officer Nassar during a rapidly unfolding encounter.

Mateen's only arguably fact-specific supporting authority, *Cole v. Carson*, 935 F.3d 444, 453 (5th Cir. 2019), *as revised* (Aug. 21, 2019) (en banc), fares no better. *Cole* involved officers shooting a suicidal teenager who had not threatened others and was not fleeing through a public area with a gun. 935 F.3d at 449–51. That case did not clearly establish that Officer Nassar

could not use deadly force against an armed suspect who ignored commands and turned to face him outside an open store. Indeed, the weight of our authority runs contrary to Mateen. *See, e.g.*, *Wilson v. City of Bastrop*, 26 F.4th 709, 716 n.3 (5th Cir. 2022) (finding "no basis" for the proposition that a suspect "posed no threat because he never actually aimed his gun at an officer").[1]

Because Mateen failed to meet her burden to identify a violation of clearly established law, we AFFIRM.

[1] Mateen's procedural argument does not change the result. She argues that the district court abused its discretion by striking her late summary-judgment response. But the district court did not grant summary judgment by default. It reviewed the merits and explicitly noted that the same result would follow even if it considered Mateen's late response.

United States Court of Appeals for the Fifth Circuit

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for the Southern District of Mississippi
USDC No. 1:23-CV-306

JUDGMENT

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying

a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See FED. R. APP. P. 41(B). The court may shorten or extend the time by order. See 5TH CIR. R. 41 I.O.P.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

KATRINA DANIELLE MATEEN **PLAINTIFF**

v. **CIVIL ACTION NO. 1:23-cv-306-TBM-RPM**

KENNETH NASSAR **DEFENDANT**

MEMORANDUM OPINION AND ORDER

On October 6, 2022, a concerned driver made an emergency 911 call to the Gulfport Police Department. The 911 caller explained that another vehicle was tailing his car through red lights and that the occupants were brandishing guns. The caller described the vehicle as a silver Kia Soul with a Georgia license plate and multiple occupants.

Gulfport Police Officer Kenneth Nassar responded to dispatch's updates and observed a vehicle matching the description pull into the parking lot of a Family Dollar. Officer Nassar then pulled in behind the Kia. But Officer Nassar quickly exited his vehicle as two occupants jumped out of the Kia and started to run away from the Family Dollar. One of the occupants was fifteen-year-old Jaheim McMillan, who was armed with a gun. After seeing another officer giving chase, McMillan turned and began running towards the entrance of the Family Dollar and in Officer Nassar's general direction. Officer Nassar exclaimed, "Gulfport Police! . . . stop . . . stop . . . drop it," but McMillan continued to run towards the Family Dollar entrance while holding the gun. As McMillan approached the front door of the Family Dollar, he turned towards Officer Nassar with his gun, and in that same second, Officer Nassar fired his gun. McMillan was fatally shot. The interaction was captured on a dash camera and body camera.

Katrina Danielle Mateen, McMillan's mother, proceeds *pro se*. She is suing Officer Nassar for $10 billion dollars. Officer Nassar moves for summary judgment, claiming qualified immunity as a defense.

It is a tragedy that McMillan, a teenager, died. But the law stands firmly with the officer. Officer Nassar's actions during the critical split-second crisis did not violate the Constitution. The Motion for Summary Judgment [83] is granted.

I. BACKGROUND

At 2:29 p.m. on October 6, 2022, an emergency 911 call was made to the Gulfport Police Department concerning a silver Kia Soul with a Georgia license plate and multiple occupants. [83-3], p. 2; [84], p. 4. The 911 caller informed dispatch that the Kia followed his vehicle through red lights and that the occupants were brandishing guns. *Id.* Dispatch notified Gulfport Police Units. *Id.*

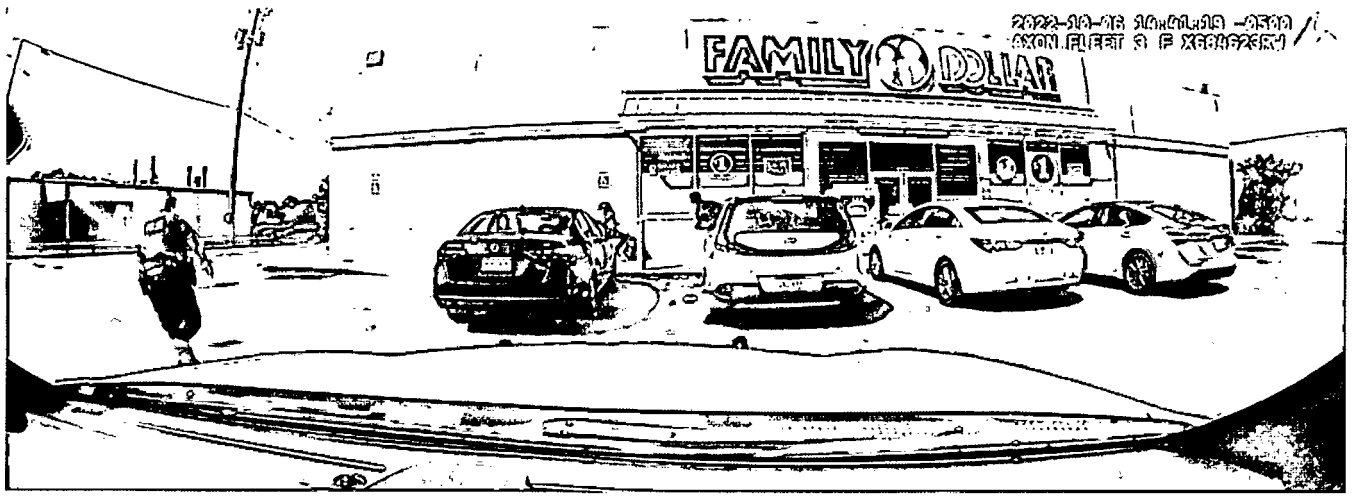
Officers Kenneth Nassar and Benjamin Ford were on duty at the time in separate police vehicles. *Id.* While stopped at a traffic light, Officers Nassar and Ford observed a vehicle matching the description of the suspect vehicle pull into the parking lot of the Family Dollar store at 2:41:01 p.m. *Id.*; [86-1]. At 2:41:10, Officers Nassar and Ford began to pull into the Family Dollar lot. As the officers activated their police lights, the Kia's multiple occupants moved around the vehicle erratically. [84], p. 5; [86-1]. The officers parked their vehicles immediately behind the Kia at 2:41:15. [86-1]. Based on the information from dispatch, Officer Nassar suspected that the vehicle's occupants were armed and dangerous. [84], p. 5. The photo below indicates that McMillan, wearing jeans and a red sweatshirt, and another male occupant jumped out of the Kia and ran at 2:41:17. [84], p. 5; [86-1].



The evidence submitted with the Motion for Summary Judgment uses arrows to presumably point out objects in McMillan's hands when he exits the vehicle, including a dark object in his right hand. [86-1].



One second later, and at 2:41:18, Officers Nassar and Ford quickly exited their vehicles to pursue McMillan and the other occupant. [86-1]; [86-2]. Officer Ford ran toward the west of the building to cut off McMillan and the other occupant, while Officer Nassar approached the east side of the building. *Id.* As Officer Ford ran west at 2:41:19, McMillan turned around and began sprinting toward the entrance of the Family Dollar and in Officer Nassar's direction. *Id.*



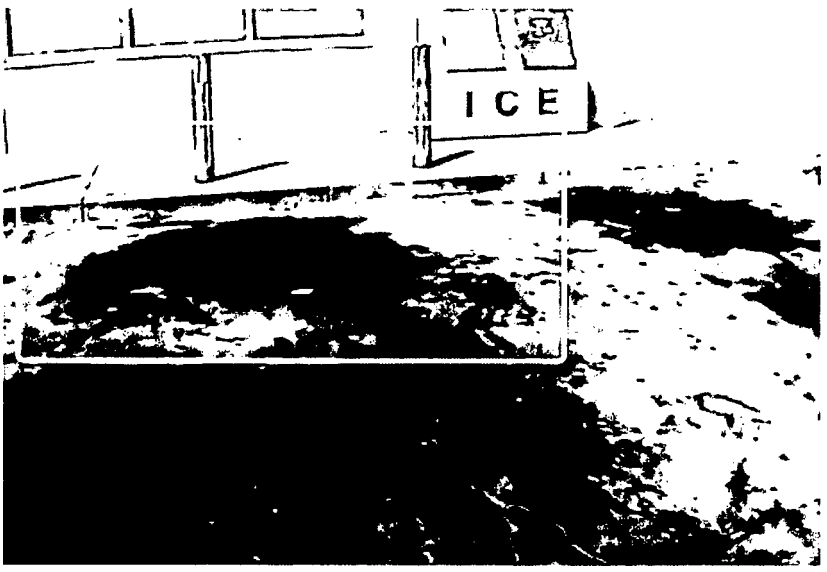
Officer Ford continued to chase the other occupant behind the Family Dollar as McMillan continued his path toward the entrance of the Family Dollar and in the direction of Officer Nassar. [86-1].



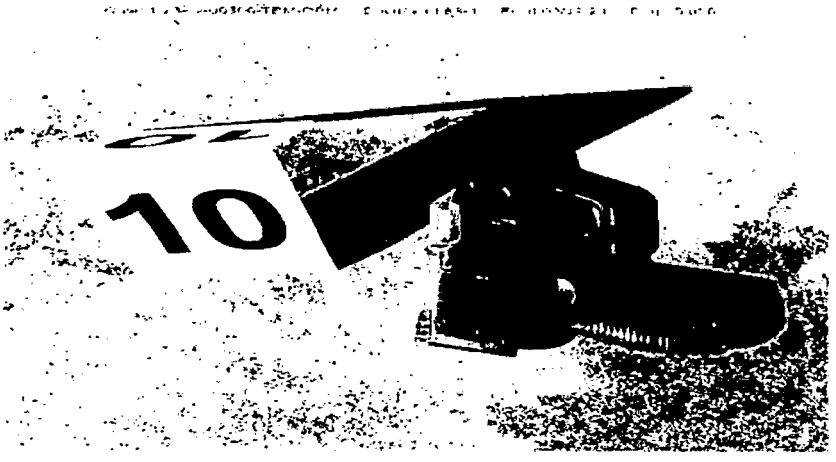


At 2:41:18, Officer Nassar announced himself as "Gulfport Police." [83-3], para. 13; [86-2]. He demanded that McMillan "stop." *Id.* Officer Nassar noticed a dark object in McMillan's right hand as McMillan continued to run in Officer Nassar's direction. *Id.* At 2:41:20, he again commanded McMillan to "stop." *Id.* When Officer Nassar identified the dark object in McMillan's right hand as a black handgun, he demanded that McMillan "drop it." *Id.* McMillan continued to run toward the Family Dollar entrance. [83-3], p. 3; [84], p. 5. Then, at 2:41:21, McMillan turned his body towards Office Nassar with the gun in hand. Within that same second, Officer Nassar fired his gun because, according to Officer Nassar, it was "an effort to . . . prevent . . . an imminent threat of significant bodily harm to the Officer and those in the roadway, in the parking lot, and in the Family Dollar store." [84], p. 6; [86-2].

As Officer Nassar's shots struck McMillan, McMillan's gun skipped across the pavement, coming to rest at 2:41:24 in front of an ice machine. [86-1].



The dash cam and body cam footage show that McMillan had a gun, he was not complying with Officer Nassar's commands, and the events took place at an extremely fast pace. *Id.* In fact, only three seconds elapsed from the moment that Officer Nassar exited his vehicle (2:41:18) to the time that McMillan was shot (2:41:21). *Id.* McMillan's gun was later determined to be a stolen Taurus 9 mm, with seven live rounds in the magazine and one round in the chamber. [83-3], pps. 6-7; [83-5], p. 1.



After Officer Nassar shot McMillan, the three other vehicle occupants exited the Kia with their hands in the air. *Id.* After exiting the vehicle, they laid on their stomachs with their hands visible. *Id.*

On October 4, 2023, Katrina Mateen sued the City of Gulfport and Officer Nassar in Harrison County Circuit Court, alleging violations of McMillan's Fourth Amendment rights against "unreasonable seizures" and use of "excessive force" under 42 U.S.C. § 1983. Mateen also brought state law claims of assault and battery, intentional infliction of emotional distress, failure to train, and criminal negligent manslaughter. On November 3, 2023, the lawsuit was removed under federal question jurisdiction. This Court previously issued an opinion [71] dismissing all state and federal law claims against the City of Gulfport with prejudice. This Court also issued an Order staying proceedings and setting a deadline for the filing of a dispositive motion on qualified immunity. [79]. Officer Nassar then filed his Motion for Summary Judgment [83].[1]

II. STANDARD OF REVIEW

Summary judgment is appropriate "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." FED. R. CIV. P. 56(a). It is the burden of the nonmovant to "go beyond the pleadings and designate specific facts showing there is a genuine issue of material fact." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). To rebut a properly supported motion for summary judgment, the opposing party must

[1] Mateen subsequently filed a Motion for Extension of Time [89] to respond, after missing her deadline to file a response to Officer Nassar's Motion for Summary Judgment by 145 days. Officer Nassar opposed Mateen's request for an extension to respond. Without leave of Court, Mateen filed her Response [91] on June 2, 2025. At that point, Mateen missed her deadline by 242 days. As a result, Officer Nassar has now filed a Motion to Strike [92] Mateen's Response to his Motion for Summary Judgment. Mateen then filed a Motion for Contempt for Discovery Violations [94]. These motions will be addressed later in the opinion.

show, with "significant probative evidence," that there is a genuine issue of material fact. *Hamilton v. Segue Software, Inc.*, 232 F.3d 473, 477 (5th Cir. 2000).

"A genuine dispute of material fact means that evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Royal v. CCC & Tres Arboles, L.L.C.*, 736 F.3d 396, 400 (5th Cir. 2013) (quotation omitted). "If the evidence is merely colorable, or is not significantly probative, summary judgment is appropriate." *Cutting Underwater Techs. USA, Inc. v. Eni U.S. Operating Co.*, 671 F.3d 512, 516 (5th Cir. 2012) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986)).

It is not permissible to make credibility determinations or weigh the evidence at the summary judgment stage. *Deville v. Marcantel*, 567 F.3d 156, 164 (5th Cir. 2009) (citation omitted). When deciding whether a genuine fact issue exists, "the court must view the facts and the inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Sierra Club, Inc. v. Sandy Creek EnerÆ Assocs., L.P.*, 627 F.3d 134, 138 (5th Cir. 2010). Yet, "conclusional allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentations do not adequately substitute for specific facts showing a genuine issue for trial." *Oliver v. Scott*, 276 F.3d 736, 744 (5th Cir. 2002) (citation omitted).

Further, "[w]here video evidence is available, there is an exception to the materiality/genuineness rule cited above" that requires the Court to view the facts "in the light depicted by the videotape." *Bailey v. Ramos*, 125 F.4th 667, 675 (5th Cir. 2025). When opposing parties tell two different stories, one of which is 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.* (citing *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 167

L.Ed.2d 686 (2007)). Thus, greater weight is assigned, even at the summary judgment stage, to the facts evident from video recordings taken at the scene. *Id.*

But a good-faith qualified immunity defense alters the usual summary judgment burden of proof. *Valderas v. City of Lubbock*, 937 F.3d 384, 389 (5th Cir. 2020). In fact, the burden shifts to the plaintiff to show that the defense is not available. *Orr v. Copeland*, 844 F.3d 484, 490 (5th Cir. 2016). The plaintiff "must rebut the defense by establishing that the officer's allegedly wrongful conduct violated clearly established law." *Wolfe v. Meziere*, 566 F. App'x 353, 354 (5th Cir. 2014). "To negate a defense of qualified immunity and avoid summary judgment, the plaintiff need not present absolute proof, but must offer more than mere allegations." *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 382 (5th Cir. 2009) (internal quotations omitted). But even when evaluating a qualified immunity defense, "all inferences are still drawn in the plaintiff's favor" at the summary judgment stage. *Tucker v. City of Shreveport*, 998 F.3d 165, 173 (5th Cir. 2021) (citing *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010)).

III. ANALYSIS

To recover under Title 42, Section 1983, Mateen "must (1) allege a violation of a right secured by the Constitution or laws of the United States and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law." *James v. Tex Collin Cnty.*, 535 F.3d 365, 373 (5th Cir. 2009) (quotations omitted). The statute does not create any substantive rights; it simply provides a remedy for the applicable rights. *Harrington v. Harris*, 118 F.3d 359, 365 (5th Cir. 1997). "Thus, an underlying constitutional or statutory violation is a predicate to liability under § 1983." *Id.* (quoting *Johnston v. Harris Cnty. Flood Control Dist.*, 869 F.2d 1565, 1573 (5th Cir. 1989)). Mateen alleges that her son's Fourth Amendment rights were violated when Officer

Nassar used deadly force against him. [83-1], p. 10. Officer Nassar responds that he is immune from suit, and therefore entitled to summary judgment, based on qualified immunity. [84], p. 3.[2]

A. Qualified Immunity

Qualified immunity shields government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 172 L.Ed.2d 565 (2009) (quotation omitted). As a result, qualified immunity "balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from . . . liability when they perform their duties reasonably." *Id.*

Once a defendant asserts qualified immunity, "the plaintiff bears the burden of negating it by showing that (1) the [officer] violated a statutory or constitutional right and (2) the right was clearly established at the time of the challenged conduct." *Bailey*, 125 F.4th at 674-675. The Court can analyze the prongs in either order or resolve the case on a single prong. *See Morrow v. Meachum*,

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[2] On February 25, 2025, Mateen filed a Motion for Extension of Time [89] to respond to Officer Nassar's Motion for Summary Judgment [83], even though her response was due in October of 2024. Mateen said that she "was sent a large stack of paperwork and a disc 09/19/2024 indicating it was discovery. As such, [she] was unaware this was actually a new Summary Judgment Motion that required [her] response." [89], p. 1. However, the motion was clearly labeled as a "Motion for Summary Judgment," and it contained a brief with legal citations. Further, the motion plainly asked for the relief requested, and Mateen had previously responded to a motion to dismiss. Without leave of Court, she filed her Response [91] to the Motion for Summary Judgment on June 2, 2025. Under FED. R. CIV. P. 6(b), a court may extend the period in which an act is required or allowed to be done. If an enlargement of time is requested before the expiration of the original period, the court may grant the enlargement "for cause shown." FED. R. CIV. P. 6(b)(1). However, if a motion for extension is filed after the expiration of the specified period, the court may grant the extension only if the failure to act resulted from "excusable neglect." FED. R. CIV. P. 6(b)(2); *Moore v. City of San Antonio*, 189 F.3d 468 (5th Cir. 1999). Because Mateen filed her Motion for Extension of Time well after the period for a response, her Motion can only be granted through a showing of excusable neglect. While excusable neglect is a flexible concept, "inadvertence, ignorance of rules, or mistakes" construing the rules do not constitute excusable neglect. *Midwest Employers Cas. Co. v. Williams*, 161 F.3d 877, 885 (5th Cir. 1998). Mateen's mistake as to the classification of the documents she received on September 19, 2024 does not rise to excusable neglect. Accordingly, Mateen's Motion for Extension of Time [89] is denied. And because Mateen filed her response without leave of Court and without a showing of excusable neglect, Officer Nassar's Motion to Strike [92] is granted. As a result, the Court will not consider Mateen's Response to the Motion for Summary Judgment. Alternatively, even if this Motion [92] were denied and this Court were to consider Mateen's response, the same conclusion would be reached for the reasons stated in this opinion.

917 F.3d 870, 874 (5th Cir. 2019). But if the answer to either prong is "no," qualified immunity applies. *McVae v. Perez*, 120 F.4th 487, 492 (5th Cir. 2024).

Accordingly, the inquiry here is (1) whether Officer Nassar's use of deadly force violated McMillan's Fourth Amendment rights against unreasonable seizures and the use of excessive force, and, if so, (2) whether the law was sufficiently clear that a reasonable officer would have known that his conduct violated McMillan's constitutional rights.

i. Constitutional Violation

The first question is whether Officer Nassar's use of deadly force violated McMillan's Fourth Amendment rights. The Fourth Amendment guarantees the "right of the people to be secure . . . against unreasonable . . . seizures." U.S. CONST. amend. IV. A Fourth Amendment seizure occurs "when there is a governmental termination of freedom of movement through means intentionally applied." *Est. of Parker v. Mississippi Dep't of Pub. Safety*, 140 F.4th 226, 238 (5th Cir. 2025) (emphasis deleted).

In analyzing Officer Nassar's use of deadly force, the Court will rely on the videos taken from Officer Ford's dash cam and Officer Nassar's body cam in its characterization of the facts. *Bailey*, 125 F.4th at 675 (explaining that where video evidence is available, the court is required to view the facts in the light depicted by the videotape).[3] It is undisputed that Officer Nassar used

[3] Because the Motion to Strike [92] is granted, the Court will not consider Mateen's response. But even in the alternative, the outcome would be the same. Mateen argues that McMillan did not have a gun and therefore did not point a gun at Officer Nassar. [8-1], p. 2; [94], p. 2. However, Mateen does not present any evidence that supports her view. And out of an abundance of caution, even if Mateen had attached her Response in Opposition [8] to the City of Gulfport's Motion to Dismiss [3] to her response to this Motion [83], that would still be insufficient to establish a constitutional violation. In that response to the Motion to Dismiss, Mateen offered testimony from Kimberly WestMoreLand, who was the Manager of the Family Dollar on the date of the incident. [8-1]. WestMoreLand provided "several pictures" to show that "at the time the victim was shot, like moments after . . . McMillan did not have a gun." *Id.* at para. 2. But it is undisputed that McMillan did not have a gun moments after being shot. In fact, the dash cam and body cam footage show the gun skipping across the pavement moments after McMillan was shot. [86-1]; [86-2]. Further, while Mateen argues that the dash cam and body cam footage were doctored or edited [94], she must provide

deadly force to apprehend McMillan and that a seizure occurred. But the Constitution does not protect against all seizures—just unreasonable ones. *See Morgan v. Chapman*, 969 F.3d 238, 246 (5th Cir. 2020).

To overcome a claim of qualified immunity in an excessive force case, the plaintiff "must show (1) an injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." *Poole v. City of Shreveport*, 691 F.3d 624, 628 (5th Cir. 2012) (quotation omitted). Because Officer Nassar used deadly force, injury and causation are established, leaving only the "excessive" and "reasonableness" elements. *McVae*, 120 F.4th at 492. But these two factors "collapse into a single objective-reasonableness inquiry." *Est. of Parker*, 140 F.4th at 239.

Excessive force claims are evaluated for objective reasonableness based on the information the officers had when the conduct occurred. *Valderas v. City of Lubbock*, 937 F.3d 384, 389 (5th Cir. 2019). The reasonableness of an officer's use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Id.* To assess whether the force used was reasonable, courts apply the factors outlined by the Supreme Court in *Graham v. Connor*: "(1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight." *Est. of Parker*, 140 F.4th at 239 (citing *Graham v. Connor*,

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more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986) (footnote omitted). The Court does not find any defects in the videos that would suggest alteration. *See Arman v. Davis*, No. 4:17-cv-2360 CAS, 2019 WL 3322974 (E.D. Mo. July 24, 2019) ("Although plaintiff suggests without any evidentiary support that the video is edited, the running time stamps within the footage and the continuity of the images establish reliability."). And rattling off unsupported conspiracy theories is certainly not sufficient. *See* [8], p. 2; [94], p. 2. As a result, Mateen's Motion for Contempt [94] is also denied.

490 U.S 386, 396, 109 S. Ct. 1865, 104 L.Ed.2d 443 (1989)). This analysis considers factors such as "the time officers had to make decisions, whether the force used is measured and ascending in accordance with the suspect's aggression, whether the suspect signaled that he was armed, and whether he moved toward or away from law enforcement." *Id.* (internal quotations omitted). That calculus "must embody allowance for the fact that police officers are often forced to make split-second judgments . . . about the amount of force that is necessary" in rapidly evolving circumstances. *Graham*, 490 U.S. at 396. Here, the *Graham* factors demonstrate that Officer Nassar's use of force was reasonable.

a. Severity of the crime

Beginning with the first *Graham* factor, courts examine the severity of the crime prompting the stop from the perspective of a reasonable officer on the scene. When assessing the severity of the crime, courts "must consider actions that a reasonable officer could perceive to be a crime regardless of whether those actions were later the basis for a prosecution." *Mazoch v. Carrizales*, 733 F. App'x 179, 182 (5th Cir. 2018). The stopped person's conduct "is always relevant because it indicates the nature and level of the threat he poses, either to the officer or to others." *Barnes v. Felix*, 605 U.S. 73, 80, 145 S. Ct. 1353, 221 L.Ed.2d 751 (2025).

The 911 caller conveyed serious criminal behavior to the Gulfport Police Department. These actions were not garden-variety misdemeanors. Indeed, the 911 caller explained that the Kia was tailing the caller through redlights[4] and that an occupant of the car was behaving in a

[4] *See* Miss. Code Ann. § 97-3-7(1)(a) ("A person is guilty of simple assault if he or she . . . attempts by physical menace to put another in fear of imminent serious bodily harm; and, upon conviction, he or she shall be [imprisoned] in the county jail for not more than six (6) months.").

threatening manner by brandishing his gun at the caller.[5] With this careless behavior, the occupant of the car placed other travelers in a dangerous situation and likely caused the 911 caller to fear for their life. The severity only increased when Officers Nassar and Ford pulled into the Family Dollar behind the Kia. Rather than de-escalate the situation, McMillan proceeded to evade arrest and ignore commands of the officers, all while holding a gun. A reasonable officer would find, as Officer Nassar did, that the behavior was severe and dangerous.

b. Immediate threat to safety

Second—and most critically in a deadly force case—the question is whether Officer Nassar could reasonably believe that McMillan posed a serious and immediate threat to the safety of officers and others. *Harmon v. City of Arlington, Texas*, 16 F.4th 1159, 1163 (5th Cir. 2021); *Graham*, 490 U.S. at 396. The Court finds he could.

Officer Nassar was aware that the Kia's occupants may be armed and engaging in serious criminal behavior based on the 911 call. [84]. When Officers Nassar and Ford parked behind the Kia, McMillan and another occupant fled the vehicle, and McMillan was in fact armed. [86-1]. In an attempt to de-escalate the situation and refrain from the use of deadly force, Officer Nassar announced himself as "Gulfport Police." *Id.* He then commanded McMillan to "stop . . . stop" and "drop" his gun. *Id.* Rather than drop the gun, McMillan turned in Officer Nassar's direction, gun in hand, in the same second that Officer Nassar fired his gun. *Id.* Because the *Graham* analysis considers whether the suspect was moving "toward or away from law enforcement," it is important

[5] *See* Miss. Code Ann. § 97-13-19 ("If any person, having or carrying . . . any deadly weapon . . . shall, in the presence of another person, brandish or wield the same in a threatening manner, not in necessary self-defense . . . the person offending, upon conviction thereof, shall be . . . imprisoned in the county jail not exceeding three (3) months."). However, if McMillan injured the caller or another driver, his actions would be classified as aggravated assault. *See* Miss. Ann. Code § 97-3-7(2)(a) ("A person is guilty of aggravated assault if he or she (i) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life.").

to note that the evidence suggests that Officer Nassar shot McMillan as they faced one another because Officer Nassar suspected that McMillan "would be firing his gun toward [Officer Nassar] and that [he] . . . [was] in imminent danger of serious bodily injury or death." *See Est. of Parker*, 140 F.4th at 239; [83-3], p. 3.

And the fact that this occurred at a customer-occupied Family Dollar abutting a busy road only inflamed the situation. McMillan could have, in seconds, fired his weapon into the Family Dollar, the parking lot, or at passing vehicles. As a result, the tense and rapidly evolving circumstances justified Officer Nassar's belief that McMillan posed a continuing threat to patrons of the Family Dollar and vehicles on the roadway. Officer Nassar behaved reasonably in the everchanging circumstances of this brief interaction. In fact, the body cam footage indicates that the entire interaction, from when the first officer pulled in behind the Kia (2:41:10) until the shots were fired at McMillan (2:41:21), lasted a mere eleven seconds.

Through the lens of hindsight, Mateen argues that Officer Nassar made a "reckless decision." [97], p. 2. Though the Motion to Strike [92] is granted and the Court will not consider Mateen's response, the same result would be reached even if her response was considered. Mateen has not identified a basis for second-guessing Officer Nassar's split-second judgment that an armed suspect, who was attempting to evade arrest, could fire the gun at the officer or people in the surrounding area. Moreover, "even if the gun was never pointed towards the [officer], [he] could have reasonably thought [McMillan] posed a serious threat to onlookers." *Wilson v. City of Bastrop*, 26 F.4th 709, 716 n.3 (5th Cir. 2022). Though the interaction between McMillan and Officer Nassar was short, the Court must account "for the difficult and often split-second decisions that police

officers must make in carrying out their duties." *Lytle v. Bexar Cnty., Tex.*, 560 F.3d 404, 411 (5th Cir. 2009).

c. Evading arrest

The final *Graham* factor assesses whether the suspect was attempting to evade arrest by flight. The body cam footage makes clear that McMillan was actively evading arrest. Two seconds after the officers parked their patrol cars behind the Kia, McMillan was fleeing. When he noticed Officer Ford approaching, he quickly changed directions to run toward the entrance of the Family Dollar. McMillan continued to run despite Officer Nassar's multiple directives to "stop." [86-1]; [86-2]. He further ignored Officer Nassar's command to "drop" his gun. *Id.* But what is most salient as to this factor is the fact that McMillan continually fled, and in doing so, remained armed as he turned his body to face Officer Nassar as Officer Nassar fired his gun.

When a suspect is fleeing and an officer has "probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force." *Stroik v. Ponseti*, 35 F.3d 155, 158 (5th Cir. 1994) (quoting *Garner*, 471 U.S. at 11) (internal quotations omitted)).

The grievous circumstances of this case make the conclusion difficult, but the law requires the Court to assess reasonableness from the perspective of a reasonable officer at the scene, not with hindsight. As a result, it was not unreasonable for Officer Nassar to fire his weapon at McMillan, who brandished his gun at other vehicles, threatened the safety of Officer Nassar and others, evaded arrest while holding a gun, and turned to face Officer Nassar with the gun in hand. Officer Nassar was forced to make that fraught moral judgment "in haste, under pressure, and . . . without the luxury of a second chance." *Est. of Parker*, 140 F.4th at 242.

For the reasons stated above, Officer Nassar's use of force, while tragic in consequence, was not excessive. Officer Nassar did not violate McMillan's Fourth Amendment rights, as his use of deadly force was objectively reasonable.

ii. Clearly Established Law

Even if Mateen could demonstrate a constitutional violation, she cannot show that Officer Nassar violated any "clearly established" constitutional right. A clearly established right is one that is "sufficiently clear that every reasonable officer would have understood that what he is doing violates that right." *Mullenix v. Luna,* 577 U.S. 7, 11, 136 S. Ct. 305, 193 L.Ed.2d 255 (2015). We cannot "define clearly established law at a high level of generality." *Garcia v. Blevins*, 957 F.3d 596, 600 (5th Cir. 2020) (quoting *Ashcroft v. al-Kidd*, 563 U.S 731, 742, 131 S. Ct. 2074, 179 L.Ed.2d 1149 (2011)). Rather, the constitutional question must be defined with specificity. *Harmon*, 16 F.4th at 1166 (internal citations omitted). And while plaintiffs need not identify "a case directly on point" to show that a law was clearly established, they must provide "authority at a sufficiently high level of specificity" to put law enforcement officers on notice that such conduct is "definitively unlawful." *Est. of Parker*, 140 F.4th at 242 (quoting *Vincent v. City of Sulphur*, 805 F.3d 543, 547 (5th Cir. 2015)).

"The specificity requirement assumes special significance in excessive force cases, where officers must make split-second decisions to use force." *Harmon*, 16 F.4th at 1166. The results are heavily fact-dependent, and thus police officers are entitled to qualified immunity "unless existing precedent squarely governs the specific facts at issue." *Id.* (quoting *Kisela v. Hughes*, 584 U.S. 100, 104, 138 S. Ct. 1148, 200 L.Ed.2d 449 (2018)). To overcome qualified immunity, the law "must be

so clearly established that *every* reasonable officer in this factual context . . . would have known he could not use deadly force." *Id.* (emphasis in original).

The Court is not considering Mateen's response, but the fact remains that Mateen cannot show that Officer Nassar violated any clearly established law. In fact, Mateen failed to cite any case law in her response, let alone any to indicate that Officer Nassar violated a clearly established right. In rebutting the applicability of qualified immunity, it is not enough to only include photos and videos that do not cast doubt on Officer Nassar's testimony or video evidence. And Mateen's response involves "[t]hat high level of generality [that] cannot clearly establish the relevant law." *Garcia*, 957 F.3d at 601. Mateen has not met her burden of showing that the right was clearly established. *See Cass v. City of Abilene*, 814 F.3d 721, 728 (5th Cir. 2016).

Even if Mateen had cited any case law in her response, there is no precedent in the Fifth Circuit that would have "provided fair warning to the [officers] that their alleged conduct was unconstitutional." *Est. of Parker*, 140 F.4th at 243 (citing *Tolan v. Cotton*, 572 U.S. 650, 656, 134 S. Ct. 1861, 188 L.Ed.2d 895 (2014) (internal quotations omitted)). Indeed, relevant and factually similar Fifth Circuit cases have found that officers did not violate clearly established law when they used deadly force against armed suspects who posed an immediate danger of harm. *See Garcia*, 957 F.3d 596 (holding officer did not violate clearly established law and thus was entitled to qualified immunity when he shot an armed suspect who fought other patrons at a restaurant, threatened people in the parking lot with a gun, ignored the officer's command to drop the weapon, and could have quickly turned on the officer and those in the parking lot); *Wilson*, 26 F.4th 709 (holding that the officer did not use excessive force when he shot an armed suspect who brandished a gun at an

apartment complex, ran towards a school during school hours with the gun, and ignored the officer's commands to stop and drop the gun).

The video evidence shows that Officer Nassar shot McMillan in the same second that McMillan turned, with a gun in hand, to face Officer Nassar. But even if that were not true and Officer Nassar fired his gun before McMillan turned, he would still be entitled to qualified immunity. *See Salazar-Limon v. City of Houston*, 826 F.3d 272, 279 n.6 (5th Cir. 2016), *as revised* (June 16, 2016) (finding that the Fifth Circuit does not "[require] officers to wait until a defendant turns towards them, with weapon in hand, before applying deadly force to ensure their safety."). Additionally, no evidence suggests that Officer Nassar first shot McMillan in the back. *See Poole*, 13 F.4th at 424 (finding that officer violated clearly established law when they shot suspect in the back without warning and knowing his hands were empty). Here, the facts are clear: Officer Nassar concluded, as any reasonable officer on the scene would, that McMillan posed an immediate danger of harm. Officer Nassar did not violate any clearly established law.

B. State law claims

Along with the federal claims raised, Mateen also asserts other state law claims of assault and battery and intentional infliction of emotional distress.[6] With respect to supplemental jurisdiction, "a federal court has subject-matter jurisdiction over specified state-law claims, which it may (or may not) choose to exercise." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639, 129 S. Ct. 1862, 173 L.Ed.2d 843 (2009) (citing 28 U.S.C. § 1367). "A district court's decision to

[6] Officer Nassar only moved to dismiss the Fourth Amendment claim and says that is "[w]hat is remaining for this Court to address." [83], p. 2. But the Court acknowledges that Mateen also brought these state law claims in Count 2 against Officer Nassar.

exercise that jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary." *Id.* (citing 28 U.S.C. § 1367(c)).

District courts may decline to exercise supplemental jurisdiction if: (1) the claim raises a novel or complex issue of state law; (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction; (3) the district court has dismissed all claims over which it had original jurisdiction; or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c). Along with the Section 1367(c) factors, the "common law factors of judicial economy, convenience, fairness, and comity" should also be considered. *Mendoza v. Murphy*, 532 F.3d 342, 346 (5th Cir. 2009) (citations omitted).

First, the common law factors favor declining supplemental jurisdiction here. When the federal claim has been settled before trial, "considerations of judicial efficiency and economy can no longer justify the continued exercise of federal jurisdiction over ancillary state-law claims." *Waste Sys., Inc. v. Clean Land Air Water Corp.*, 683 F.2d 927, 931 (5th Cir. 1982). Nor is it unfair or inconvenient for the state law claim to be heard in state court. *See Parker v. Parsley Petroleum v. Dresser Indus.*, 972 F.2d 580, 587-88 (5th Cir. 1992) (dismissal of state law claims "a few weeks" before trial would not be inconvenient or unfair because, among other things, discovery had not been completed, little additional "legal research would be necessary, as the surviving claims were governed by state law in either forum," and the case would not require repeating the "effort and expense of the discovery process."). Because no trial date has been set here, declining to exercise supplemental jurisdiction over Mateen's state law claims would be neither inconvenient nor unfair. Lastly, "comity demands that the important interests of federalism and comity be respected by

federal courts, which are courts of limited jurisdiction and not as well equipped for determinations of state law as are state courts." *Enochs v. Lampasas Cnty.*, 641 F.3d 155, 160 (5th Cir. 2011).

Second, regarding Section 1367(c), the second and third factors weigh in favor of declining jurisdiction. *See* 28 U.S.C. § 1367(c)(3); *Parker*, 972 F.2d at 585 ("Our general rule is to dismiss state claims when the federal claims to which they are pendent are dismissed."). The general rule in the Fifth Circuit "is that a court should decline to exercise jurisdiction over remaining state law claims when all federal-law claims are eliminated before trial[.]" *Brookshire Bros. Holding, Inc. v. Dayco Prod. Inc.*, 554 F.3d 595, 602 (5th Cir. 2009). In fact, "[c]ertainly, if the federal claims are dismissed before trial . . . the state claims should be dismissed as well." *Parker*, 972 F.2d at 585 (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S. Ct. 1130, 16 L.Ed.2d 218 (1966)). This Court declines to exercise jurisdiction over the remaining state law claims.

Accordingly, in consideration of the interests of judicial economy, fairness to the litigants, and comity, the Court declines to exercise supplemental jurisdiction over Mateen's remaining state law claims, and such claims are remanded back to Harrison County Circuit Court.

IV. CONCLUSION

IT IS ORDERED AND ADJUDGED that Defendant Kenneth Nassar's Motion for Summary Judgment [83] is GRANTED.

IT IS ORDERED AND ADJUDGED that Plaintiff Katrina Mateen's remaining state law claims are remanded back to Harrison County Circuit Court.

IT IS ORDERED AND ADJUDGED that Plaintiff Katrina Mateen's Motion for Extension of Time to File Response [89] is DENIED.

IT IS ORDERED AND ADJUDGED that Defendant Kenneth Nassar's Motion to Strike [92] is GRANTED.

IT IS ORDERED AND ADJUDGED that Plaintiff Katrina Mateen's Motion for Contempt [94] is DENIED.

SO ORDERED THIS, the 30th day of September, 2025.

TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

KATRINA DANIELLE MATEEN — **PLAINTIFF**

v. — **CIVIL ACTION NO. 1:23-cv-306-TBM-RPM**

KENNETH NASSAR — **DEFENDANT**

FINAL JUDGMENT

For the reasons stated in the Memorandum Opinion and Order entered this same day, the Plaintiff's federal law claims are DISMISSED. The Plaintiff's remaining state law claims are REMANDED to the Circuit Court of Harrison County, Mississippi, First Judicial District. A certified copy of this Final Judgment shall be mailed immediately by the Clerk's Office to the Circuit Clerk of Harrison County, Mississippi, First Judicial District pursuant to 28 U.S.C. Section 1447(c). This CASE is CLOSED.

This, the 30th day of September, 2025.

TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 10, 2026
Lyle W. Cayce
Clerk

No. 25-60602

KATRINA DANIELLE MATEEN,

Plaintiff—Appellant,

versus

CITY OF GULFPORT, *in their official capacity*; KENNETH NASSAR, *Officer, Gulfport Police Department, in his individual capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:23-CV-306

ON PETITION FOR REHEARING

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.