No. _____

In The
Supreme Court of the United States

CASONDRA POLLREIS,

Petitioner,

v.

LAMONT MARZOLF,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

KEITH NEELY
Counsel of Record
ANYA BIDWELL
PATRICK JAICOMO
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
(703) 682-9320
kneely@ij.org

Counsel for Petitioner

QUESTION PRESENTED

In *Scott* v. *Harris*, 550 U.S. 372 (2007), this Court recognized a narrow exception to the longstanding rule that disputed facts must be viewed in the light most favorable to the nonmoving party at summary judgment. Relying on dashcam video that captured the relevant events in their entirety, this Court explained that where a party's "version of events is so utterly discredited by the record that no reasonable jury could have believed him," courts at summary judgment should "view[ ] the facts in the light depicted by the videotape." *Id.* at 380–381.

In this case, the court below applied *Scott* to inconclusive dashcam footage that captured only part of the events in dispute, holding that in light of the footage, "[t]he evidence * * * need not be viewed in the light most favorable to the nonmoving party." App. 10a. The question presented—which Petitioner contends is appropriate for resolution either on the merits or on summary reversal—is:

After *Scott* v. *Harris*, is a court at summary judgment still obligated to view the evidence in the light most favorable to the non-moving party where record video does not conclusively and comprehensively capture the underlying events in dispute?

PARTIES TO THE PROCEEDING

Petitioner Casondra Pollreis was the plaintiff in the United States District Court for the Western District of Arkansas and the plaintiff-appellant in the United States Court of Appeals for the Eighth Circuit.

Respondent Lamont Marzolf was a defendant in the district court and the defendant-appellee in the circuit court. Another officer, Josh Kirmer, was named as a defendant in the district court but was not a party to the appellate proceeding below.

RELATED PROCEEDINGS

United States Supreme Court:

- *Pollreis* v. *Marzolf*, No. 21-901 (Jan. 24, 2022).

United States Court of Appeals for the Eighth Circuit:

- *Pollreis* v. *Marzolf*, No. 21-3267 (Apr. 27, 2023), petition for reh'g denied (July 24, 2023);

- *Pollreis* v. *Marzolf*, No. 20-1745 (Apr. 13, 2021).

United States District Court for the Western District of Arkansas:

- *Pollreis* v. *Marzolf*, No. 5:18-CV-5200 (Sept. 8, 2021).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the court of appeals, App. 1a, is reported at 66 F.4th 726. The opinion of the district court, App. 20a, is reported at 446 F. Supp. 3d 444. The district court's final order giving rise to this appeal, App. 18a, is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 27, 2023. A timely filed petition for both panel and en banc rehearing was denied on July 24, 2023. Justice Kavanaugh granted petitioner's request for a 45-day extension of the deadline for filing a petition for a writ of certiorari on October 10, 2023. This petition is timely filed on December 7, 2023. Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION AND COURT RULE INVOLVED

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV.

Rule 56 of the Federal Rules of Civil Procedure provides that a "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." Fed. R. Civ. P. 56.

STATEMENT

On the night of January 8, 2018, Petitioner Casondra Pollreis was enjoying dinner and a football game with her family at her parents' home in Springdale, Arkansas. At halftime, she drove home with her husband and their two daughters. But because they lived only a few houses away, she allowed her two sons, aged 12 and 14, to walk home by themselves. It was 9:30 p.m.

Unbeknownst to Cassi and her family, Springdale Police were engaged in a search that evening. Earlier that day, Officer Josh Kirmer was trying to find a woman with outstanding arrest warrants. App. 21a. Based on a tip, Officer Kirmer believed she was staying with Tomas Silva, a Hispanic gang member. *Ibid.* Officer Kirmer surveilled Silva and saw him, an unidentified woman, and two other Hispanic men enter a Chevy Cobalt. One of the other men was shorter and skinnier than the other, but both were wearing hooded sweatshirts and dark pants. *Ibid.*

Officer Kirmer relayed this information to other officers in the area, one of whom attempted to engage them in a traffic stop. App. 21a. Silva and the others instead fled, eventually wrecking the car. *Ibid.* The four occupants abandoned the car and split up, two running north and two running south. Officer Kirmer

radioed other officers requesting that they set up a search perimeter, and Respondent Lamont Marzolf responded to this call. *Ibid.*

Police dispatch directed Officer Marzolf to the intersection of Luvene and Lynn Street, near where Cassi and her family lived. App. 22a (21:39:50).[1] As he turned onto Lynn Street and began his search, he knew three things: (1) Silva could be armed, given his past interactions with police, (2) of the other two Hispanic men, one was shorter and skinnier than the other, but both were wearing hooded sweatshirts and dark pants, and (3) the suspects were last seen running from police.

Officer Marzolf's blue squad car lights flashed prominently as his car crept down Lynn Street. App. 22a (21:39:16). Seconds later, Officer Marzolf spotted Cassi's 12- and 14-year-old boys. *Ibid.* (21:39:44). They were casually walking down the sidewalk in the direction of Officer Marzolf's patrol car wearing hooded sweatshirts and light-colored pants. *Ibid.* (21:39:56). One boy was taller and larger than the other. Aside from their difference in size and the hooded sweatshirts they were wearing, the two strolling boys in no way resembled the fleeing adult Hispanic suspects Officer Marzolf was searching for. But Officer Marzolf nonetheless turned on his high

[1] Officer Marzolf's dashcam recorded the events that evening, and associated timestamps from that video are included parenthetically where applicable. The video is reproduced at the following link for the Court's convenience: https://perma.cc/GV7Y-Z9PK.

beams and angled his car toward them, stopping it in their path. *Ibid.* (21:40:09).

Officer Marzolf jumped out of his vehicle and asked the boys what they were doing. App. 22a (21:40:13). One of the boys responded in the voice of a child, pointing behind Officer Marzolf in the direction of their home. *Ibid.* (21:40:15). Officer Marzolf panicked, yelling to the boys, "Hey, stop, stop, turn away, turn away from me." App. 23a (21:40:16). The boys obeyed Officer Marzolf's commands and turned away, holding their arms out to their sides. *Ibid.*

Officer Marzolf then advanced on them, drawing his firearm and pointing it at their backs. App. 23a. He also pulled out his flashlight. *Ibid.* Officer Marzolf asked the boys, "What are your names?" *Ibid.* (21:40:21). One of the boys responded, but Officer Marzolf could not hear his soft, still immature voice and had him repeat his name several times. *Ibid.* After the boy repeated his name a third time, Officer Marzolf audibly confirmed the boy's name and holstered his flashlight, but he kept his firearm drawn and pointed at the boys' backs.

By this time, Cassi had arrived home and noticed the commotion down the street. Recognizing her boys, she calmly approached Officer Marzolf outside the video frame and asked, "Officer, officer, may I have a word with you?" App. 23a (21:40:33). Officer Marzolf lowered his firearm and acknowledged her presence, but otherwise did not engage with her. *Ibid.* Instead, he confirmed the boys' general description over the radio with Officer Kirmer, who instructed Officer Marzolf to detain them. *Ibid.* (21:40:57). Officer Marzolf

complied, retraining his gun on the boys and ordering them onto the ground. App. 24a (21:41:14). The boys obeyed his commands.

Cassi, frustrated by Officer Marzolf's unwillingness to communicate with her, stepped into frame of the dashcam and toward Officer Marzolf. She asked him, "What happened?" App. 24a (21:41:23). Officer Marzolf responded, "Hey, step back." *Ibid*. (21:41:24). Unable to step back because Officer Marzolf's squad car was immediately behind her, Cassi stepped sideways out of frame, explaining, "They're my boys." *Ibid*. (21:41:25). Unmoved, Officer Marzolf yelled at Cassi to "Get back!" and stepped toward her, his weapon still pointing at her boys lying face down on the ground. *Ibid*. (21:41:26).

Incredulous, Cassi responded, "Are you serious?" Officer Marzolf drew his taser with his left hand and pointed it off frame at Cassi, keeping his firearm trained on her boys with his other hand. "I am serious, get back," he said. App. 24a (21:41:30). Cassi attempted to deescalate the situation, telling her sons, "It's okay, boys." *Ibid*. (21:41:36).

The tense standoff lasted for several seconds. Eventually, Officer Marzolf holstered his taser, but again commanded Cassi to "Get back!" App. 24a (21:41:38). Cassi asked Officer Marzolf, "Where do you want me to go?" *Ibid.* (21:41:38). Officer Marzolf responded, "I want you to go back to your house." *Ibid.* (21:41:40). Cassi again attempted to reason with Officer Marzolf from out of frame, imploring him, "Are you serious? They're 12 and 14 years old." *Ibid.* (21:41:41). Officer Marzolf falsely responded, "And I'm looking for two kids about this age right now, so get back in your house." *Ibid.* (21:41:43). Understandably upset, Cassi again reassured her boys, "Oh, my God. You're okay guys, I promise," and ran back to her home a few houses down the street. *Ibid.* (21:41:48).

Officer Marzolf continued to detain Cassi's 12- and 14-year-old boys at gunpoint until backup arrived, even as other Pollreis family members appeared to

reassure him that the boys were not the suspects he was looking for. App. 25a. At one point, Officer Marzolf placed both boys in handcuffs, where they remained lying on the ground as other officers questioned them. App. 26a. Eventually, cooler heads prevailed, and another officer ordered the boys be released after Officer Marzolf admitted that the boys were probably not the wanted suspects. App. 27a. As he walked to the car, Officer Marzolf mumbled to himself: "Dumb." (21:47:28).

Cassi filed a lawsuit against Officers Kirmer and Marzolf in the Western District of Arkansas on October 17, 2018. App. 88a–103a. In her complaint, Cassi alleged five claims for relief pursuant to 42 U.S.C. 1983 on behalf of her sons and herself. *Ibid*. Only one claim—Cassi's Fourth Amendment excessive force claim against Officer Marzolf for threatening her with his taser—is relevant to this appeal.[2] As part of that claim, Cassi has consistently maintained that she obeyed Officer Marzolf's commands and did not pose him any threat. App. 72a–75a, 95a, 100a–101a.

The district court awarded summary judgment to Officer Marzolf without deciding whether he had seized Cassi or whether that seizure was unreasonable under the Fourth Amendment. Instead, it held

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[2] Cassi's claims brought on behalf of her sons were the subject of a separate interlocutory appeal. *See Pollreis* v. *Marzolf*, 9 F.4th 737 (8th Cir. 2021). Although the court found that her sons "acted bravely, respectfully, and responsibly" throughout their encounter with Officer Marzolf, it nonetheless reversed the district court's denial of qualified immunity. *Id.* at 749. This Court subsequently denied a petition for a writ of certiorari. *Pollreis* v. *Marzolf*, 142 S. Ct. 904 (2022) (mem.).

that he was entitled to qualified immunity because, although "the Eighth Circuit has developed its case law regarding the threatened use of *firearms*, * * * there have been no such developments surrounding the threatened use of tasers" sufficient to put Officer Marzolf on notice that his conduct was unlawful. App. 56a (emphasis in original).

On appeal, a divided Eighth Circuit panel affirmed without reaching the issue of clearly established law. Although it concluded that Officer Marzolf seized Cassi, App. 6a–8a, it nonetheless held that Cassi's Fourth Amendment rights had not been violated because Officer Marzolf's use of force was reasonable, App. 8a–10a. In the panel majority's view, even though Cassi "was not suspected of committing any crime," "was not actively resisting arrest," and "commendably remained calm and nonthreatening," Officer Marzolf was nonetheless "understandably concerned for his own safety" and justified in threatening to tase her. App. 9a.

Why? Wielding the dashcam video, the panel majority sua sponte invoked *Scott* v. *Harris* to relieve itself and Officer Marzolf of the appropriate standard of review. Indeed, the panel explicitly held: "The evidence * * * need not be viewed in the light most favorable to the nonmoving party." App 10a. In the panel's view, the fact that the video showed that "[t]his event took place at night in the rain," and the armed Marzolf "was alone * * * when [Cassi] approached from behind" was dispositive. App. 9a. "Adding to the circumstances," the panel majority continued, "when Officer Marzolf ordered [Cassi] to 'get back,'" she instead

"questioned the order and moved sideways."[3] *Ibid.* These facts led the panel majority to conclude, unlike the district court below and contrary to Cassi's allegations, that Officer Marzolf's threat to tase Cassi was reasonable "[u]nder the totality of the circumstances." App 10a.

Judge Jane Kelly dissented. In her view, "the fact that it was a dark and rainy night" did not "invariably create a threat to officer safety." App. 13a. Although they were "factors a jury could take into consideration," Judge Kelly argued, they "cannot be dispositive of whether Officer Marzolf's show of force was reasonable when the primary inquiry is whether [Cassi] engaged in conduct that would justify the use of force at all." *Ibid*. On this point, Judge Kelly emphasized that the dashcam video left crucial moments from that night in dispute, including whether Cassi disobeyed Marzolf's orders. App. 12a ("The video shows [Cassi], in an attempt to avoid backing up into the police car directly behind her, walking away from Officer Marzolf as soon as he tells her to 'get back.'").

Given the parties' dispute over whether Cassi posed a threat or failed to comply and "[v]iewing the evidence in the light most favorable to [Cassi]," Judge Kelly continued, "a reasonable jury could find that drawing a taser on a nonthreatening bystander who

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[3] The panel majority omits the fact that dashcam video shows Cassi was standing in front of Officer Marzolf's police cruiser at the time, making it impossible for her to step back as ordered. (21:41:24); *see also* App. 12a (Kelly, J., dissenting) (making the same point). Sideways was the only direction Cassi could move to increase her distance from Officer Marzolf and comply with his command, which she did. (21:41:25).

was complying or attempting to comply with an officer's orders was not objectively reasonable." App. 15a.

Cassi subsequently sought both panel and en banc rehearing over the majority's application of *Scott*. Although the request was denied, both Judge Kelly (who dissented on the original panel) and Judge Ralph Erickson (who was not on the original panel) would have granted en banc review. App. 16a–17a.

This petition timely followed.

REASONS FOR GRANTING THE PETITION

The parties do not dispute that dashcam footage shows it was a dark and rainy night when Officer Marzolf threatened to tase Cassi Pollreis for asking why he was holding her 12- and 14-year-old boys facedown at gunpoint on their quiet residential street. They do dispute—vehemently—whether Cassi posed a threat or was noncompliant when Officer Marzolf threatened her with force. Ordinarily, such factual disputes cannot be resolved at summary judgment, where they must instead be viewed in favor of the nonmoving party. But the panel majority used *Scott* to displace that standard of review, reasoning that the dashcam video—which did not even show Cassi in the crucial moment Officer Marzolf threatened her—relieved the court of that obligation and allowed it instead to decide for itself that his threatened use of force was reasonable.

The panel majority's reliance on *Scott* is not just misplaced—it radically expands *Scott*'s scope, inviting courts in the Eighth Circuit to abandon standard

principles of summary judgment by resolving disputed facts whenever the record includes video, even if the footage captures only a fraction of the dispute or is otherwise inconclusive on the dispositive issues. True, *Scott* itself involved dashcam footage. But the comprehensive video there so "utterly discredited" a party's claims "that no reasonable jury could have believed him." *Scott*, 550 U.S. at 380; see also *id.* ("Far from being the cautious and controlled driver [that he claims,] what we see on video more closely resembles a Hollywood-style car chase of the most frightening sort * * * ."). Here, by contrast, what little dashcam video captures Cassi *supports* her claims at best and is ambiguous at worst.[4] And it is clear that a reasonable jury could agree with Cassi, as evidenced by the fact that Judge Kelly did. As this Court expressly cautioned in *Scott*, unless a party's claims are so "blatantly contradicted by the record * * * that no reasonable jury could believe it," 550 U.S. at 380, courts at summary judgment are required to view disputed facts in the light most favorable to the nonmoving party.

While other circuits have heeded this admonition and applied *Scott* sparingly, the Eighth Circuit stands alone in expanding *Scott*'s scope to cases like this. This Court's intervention is needed to bring the Eighth Circuit in line with its sister circuits. The question presented is important both because of the vital role summary judgment plays in civil litigation and because rapid developments in technology have

[4] Cassi visibly appears on the video for just eight seconds, and in the crucial moment Officer Marzolf threatens her, she is standing out of the frame. (21:41:19–27)

made video footage far more commonplace than when *Scott* was decided. And this case presents the right vehicle to resolve this question because the panel below explicitly relied on *Scott* to disregard the traditional standard of review. The petition for certiorari should therefore be granted.

I. The Eighth Circuit's expansion of *Scott*'s narrow exception conflicts with other circuits.

When this Court decided *Scott*, it emphasized that it was recognizing a narrow exception to the longstanding rule that disputed facts must be viewed in the light most favorable to the nonmoving party at summary judgment. Most circuits have taken this Court at its word, declining to invoke *Scott* in all but the most extraordinary cases. But the Eighth Circuit stands alone in expanding *Scott*'s scope to cases like this. The petition should be granted to resolve this diverging authority.

A. This Court made clear that *Scott* was a narrow exception to the general rule governing disputed facts at summary judgment.

1. The longstanding rule, enshrined by the Federal Rules of Civil Procedure, is that summary judgment is appropriate only where the movant shows that material facts are not in dispute. *See* Fed. R. Civ. P. 56(a) ("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."). If material facts are genuinely

disputed, "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," the court must deny summary judgment and allow the case to proceed to trial. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

This rule, and the countless cases interpreting it, rests on the principle that a "'judge's function' at summary judgment is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" *Tolan* v. *Cotton*, 572 U.S. 650, 656 (2014) (per curiam) (quoting *Anderson*, 477 U.S. at 249); see also *Sartor* v. *Ark. Nat. Gas Corp.*, 321 U.S. 620, 627 (1944) ("Rule 56 authorizes summary judgment only * * * where it is quite clear what the truth is, that no genuine issue remains for trial, and that the purpose * * * is not to cut litigants off from their right of trial by jury if they really have issues to try.").

Consequently, when a party moves for summary judgment, that party "ha[s] the burden of showing the absence of a genuine issue as to any material fact, and for these purposes [the movant's facts] must be viewed in the light most favorable to the opposing party." *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). If the movant cannot do so—meaning, if "there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party"—then summary judgment must be denied, and the factual disputes must ultimately be determined by a jury. *Anderson*, 477 U.S. at 250.

2. In *Scott*, this Court carved out a narrow category of disputed facts that courts could resolve at summary judgment. In the rare case where the nonmovant's story is so "blatantly contradicted by the record * * * that no reasonable jury could believe it," a court may award summary judgment despite disputed facts because the dispute is not "genuine" within the meaning of Rule 56. 550 U.S. at 380.

The facts of *Scott* make clear how narrow this exception is. In *Scott*, a plaintiff brought a Fourth Amendment claim under 42 U.S.C. 1983 against Georgia deputies after they intentionally crashed his car during a high-speed chase, rendering him a quadriplegic. 550 U.S. at 374–376. The lower court held that disputed facts precluded summary judgment, crediting plaintiff's assertions "that, during the chase, 'there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [plaintiff] remained in control of his vehicle.'" *Id.* at 378 (citation omitted).

This Court reversed, emphasizing the "added wrinkle in this case: existence in the record of a videotape capturing the events in question." *Ibid.* "Far from being the cautious and controlled driver," this Court explained, "what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury." *Id.* at 380. Calling plaintiff's version of events "so utterly discredited by the record that no reasonable jury could have believed him" and "visible fiction," this Court awarded summary judgment to the deputies

based on "the facts [viewed] in the light depicted by the videotape." *Id.* at 380–381.

B. Most circuits recognize *Scott*'s narrow scope, refusing to apply it unless comprehensive record evidence conclusively refutes a party's claims.

Unsurprisingly, most circuit courts—eight—read *Scott* in the narrow way this Court intended, refusing to apply it unless comprehensive record evidence conclusively refutes a party's claims.[5] Two cases, in particular, illustrate the prevailing interpretation and application of *Scott*: the Seventh Circuit's decision in *Kailin* v. *Village of Gurnee*, 77 F.4th 476 (2023), and

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[5] *See, e.g.*, *Eagan* v. *Dempsey*, 987 F.3d 667, 691 n.56 (7th Cir. 2021) (refusing to apply *Scott*, describing it as "'a narrow, pragmatic exception' reserved for cases of 'irrefutable evidence like that in *Scott*'" (citation omitted)); *Janny* v. *Gamez*, 8 F.4th 883, 901–902 (10th Cir. 2021) (calling *Scott* a "narrow * * * exception" and refusing to apply it where "no evidence 'utterly discredit[s]' [plaintiff's] version of events" (citation omitted)); *Norton* v. *Rodrigues*, 955 F.3d 176, 184 n.7 (1st Cir. 2020) (refusing to apply *Scott*, calling it a "narrow exception"); *Harris* v. *Pittman*, 927 F.3d 266, 276 (4th Cir. 2019) (refusing to apply *Scott*, explaining that it "is the exception, not the rule" that does not apply "even [where documentary evidence] makes it 'unlikely' that the plaintiff's account is true" (citation omitted)); *Est. of Lopez ex rel. Lopez* v. *Gelhaus*, 871 F.3d 998, 1009 (9th Cir. 2017) (refusing to apply *Scott* where the record evidence "would not compel a jury" to find for the movant); *Morton* v. *Kirkwood*, 707 F.3d 1276, 1284 (11th Cir. 2013) (refusing to apply *Scott*, explaining that it applies only "where an accurate video recording completely and clearly contradicts a party's testimony" such that the "testimony becomes incredible"); *Romo* v. *Largen*, 723 F.3d 670, 675 (6th Cir. 2013) (construing *Scott* as a limited exception for "blatantly contradicted facts" and refusing to apply it).

the Fifth Circuit's decision in *Aguirre* v. *City of San Antonio*, 995 F.3d 395 (2021).

In *Kailin*, a family sued a police officer after he shot and killed the family dog during a routine visit to the family's home. 77 F.4th at 477. The officer's body worn camera captured part of the interaction, and the district court relied on the footage to award summary judgment to the officer. *Id.* at 480. Judge Ilana Rovner, writing for a unanimous panel, reversed. After surveying the relevant case law, she observed that "[i]t should be considered a rare case where video evidence leaves no room for interpretation by a fact finder." *Id.* at 481. Turning to the video, she emphasized what it did not show: "[t]he video does not show barking or growling * * * nipping or biting * * * the dog jumping on [the officer] * * * [the officer's] alleged attempt to use his taser * * * [or even] the dog chasing [the officer]." *Id.* at 482. Because "[j]urors could interpret many things from what they see or do not see" in the video, she concluded, *Scott*'s narrow exception did not apply. *Ibid.*

The Fifth Circuit's decision in *Aguirre* shows the same restrained approach. In *Aguirre*, an arrestee's estate brought an excessive-force claim after officers violently restrained him, causing fatal asphyxiation. 995 F.3d at 402. Dashcam video captured the arrest, and the district court relied on the footage to award summary judgment to the officers. On appeal, the Fifth Circuit unanimously reversed in a decision by Judge James Dennis. The court explained that "*Scott* was not an invitation for trial courts to abandon the standard principles of summary judgment by making credibility determinations or otherwise weighing the

parties' opposing evidence against each other any time a video is introduced into evidence." *Id.* at 410. Rather, "*Scott* was an exceptional case with an extremely limited holding" that did not apply where "video evidence is ambiguous or in fact supports a nonmovant's version of events." *Ibid.* Because the video was "at best unclear" on the one hand and "very nearly confirm[ing] that Aguirre was *not* resisting" on the other, the court found *Scott* inapplicable. *Id.* at 411 (emphasis in original).

C. The Eighth Circuit takes an unusually expansive approach.

The Eighth Circuit's expansive application of *Scott* in this case stands in sharp contrast to its sister circuits and to this Court's jurisprudence. Indeed, aside from the fact that both this case and *Scott* involved dashcam footage, the two cases could not be more unalike.

In *Scott*, the dashcam footage unequivocally and diametrically opposed plaintiff's version of events. Compare 550 U.S. at 379 ("During the chase, 'there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [plaintiff] remained in control of his vehicle'"), with *id.* at 380 ("[W]hat we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury."). This Court went to great lengths to stress how violent and erratic the dashcam footage compares to plaintiff's telling of the case, even going so far as to post the video on the

Court's website "to allow the video to speak for itself." *Id.* at 378 n.5.

Here, by contrast, the dashcam footage largely *supports* Cassi's version of events. Cassi has consistently maintained that she calmly approached Officer Marzolf to ask what he was doing, attempted to comply with his demands, and retreated to her home once he threatened her with his taser. App. 72a–75a. The video shows much the same. It shows that, when Cassi realized Officer Marzolf was holding her boys at gunpoint, she calmly approached him and audibly announced her presence. App. 23a (21:40:33). It shows that, when Officer Marzolf ordered her to step back, she was standing in front of his squad car and instead stepped sideways. App. 24a (21:41:25). And it shows that, when Officer Marzolf advanced on Cassi with his taser drawn and ordered her back to her house, she complied. *Ibid.* (21:41:38). In sum, it largely corroborates Cassi's story.

The only issues that the video calls into question are (1) whether and the extent to which Cassi posed a threat to Officer Marzolf, and (2) whether and the extent to which Cassi complied with his demands. Both sides of the divided panel below appear to agree that these are questions of fact.[6] But the panel majority decided that it "need not * * * view[ ] [the evidence] in

[6] Compare App. 10a ("The *evidence* we rely upon to reach our legal conclusion that the momentary seizure was not unreasonable is not disputed and therefore need not be viewed in the light most favorable to the nonmoving party." (emphasis added)), with App. 14a ("[W]e have repeatedly held that whether and to what degree an individual is noncompliant or poses a threat are issues of fact properly resolved by a jury.").

the light most favorable to" Cassi because those facts are not "genuinely" disputed, since the dashcam footage shows that (1) Officer Marzolf was alone, (2) Officer Marzolf was engaged with two potentially armed suspects, (3) Cassi approached him from behind, (4) the event took place on a rainy night, and (5) Cassi stepped sideways when Officer Marzolf ordered her to step back. App. 10a. In the panel majority's view, this meant that the Court could decide for itself—and in the first instance—that Cassi was threatening and noncompliant notwithstanding her assertions to the contrary.

But as Judge Kelly's dissent points out, these facts do not "invariably create a threat to officer safety" and therefore "cannot be dispositive of whether Officer Marzolf's show of force was reasonable when the primary inquiry is whether [Cassi] engaged in conduct that would justify the use of force at all." App. 13a. Worse, Judge Kelly explains, at least one of the allegedly undisputed facts that the majority pulls from the video *was* disputable. App. 12a–13a (arguing that the majority ignores the fact that Cassi was standing in front of Officer Marzolf's squad car at the time he ordered her backwards, making it difficult (if not impossible) for her to comply as commanded).

In other words, the video shows that Cassi may have been nonthreatening and attempting to comply with Officer Marzolf's commands, or it shows that she may have posed a threat and intentionally ignored him. What it does not show, however, is that Cassi's "version of events is so utterly discredited by the record that no reasonable jury could have believed h[er]." *Scott*, 550 U.S. at 380. In the absence of "such visible

fiction," the panel majority below was required to view the facts at summary judgment in the light most favorable to Cassi. *Id.* at 380–381. By instead weighing the videotape against Cassi's story and drawing its own conclusions, the panel majority expanded *Scott* well beyond the limits drawn by this Court and by the other circuits below. Indeed, as the decisions of the Seventh Circuit in *Kailin* and the Fifth Circuit in *Aguirre* illustrate, had Cassi's case arisen in Illinois or Texas, this factual dispute would have been left to a jury. But because Cassi's case arose in Arkansas, it was decided by two members of an appeals court. The petition should therefore be granted to resolve this diverging authority.

II. The question presented is important.

The question presented is important because summary judgment procedure is "an integral part of the Federal Rules." *Celotex Corp* v. *Catrett*, 477 U.S. 317, 327 (1986). Nearly one in five cases filed in federal court generate at least one motion for summary judgment.[7] And since *Scott* was decided, rapid advances in technology have made digital cameras widespread, meaning that courts at summary judgment are increasingly dealing with video as a part of the record.

But although summary judgment plays an important role in securing the "just, speedy, and inexpensive determination of every action," Fed. R. Civ. P. 1, it is not a substitute for trial. *See Anderson*, 477 U.S. at 255 ("Credibility determinations, the

[7] Federal Judicial Center, *Report on Summary Judgment Practice Across Districts with Variations in Local Rules* 2 (2008), https://perma.cc/MTL6-LUNU (last viewed Dec. 6, 2023).

weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge * * * ruling on a motion for summary judgment."). That is why this Court cabined *Scott* the way it did, reserving it for cases in which the record "so utterly discredit[s]" a party's testimony "that no reasonable jury could have believed him." 550 U.S. at 380–381. Unless corrected, the Eighth Circuit's radical expansion of *Scott* threatens to transform summary judgment into a pseudo-trial-by-appellate-judge whenever video forms a part of the record, forcing judges[8] to weigh and evaluate the veracity of parties' claims against video footage without the benefit of in-person testimony and all the other evidentiary rules that attach at trial.

These concerns are amplified by the rapid advances in technology since *Scott* was decided in 2007. From smartphones[9] to video doorbells,[10] digital cameras have become a ubiquitous part of modern life. Today, most police are recorded on body or dashcam cameras, and nearly every American is walking around with a high-quality video camera in his

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[8] The Federal Rules require courts to grant summary judgment where the appropriate conditions are met. See Fed. R. Civ. P. 56(a) ("The court *shall* grant summary judgment in 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." (emphasis added)).

[9] As of 2021, 85% of Americans say that they own a smartphone. Pew Research Center, *Mobile Fact Sheet*, https://perma.cc/5JHR-RFA5 (last viewed Dec. 6, 2023).

[10] As of 2021, nearly 20% of Americans say that they have installed a video doorbell. Consumer Reports, *American Experiences Survey: A Nationally Representative Multi-Mode Survey*, https://perma.cc/K3TN-T998 (last viewed Dec. 6, 2023).

pocket. This means that the number of cases that will involve substantial video evidence will continue to grow. Unless the limits of *Scott* are vigorously enforced, the widespread availability of video footage risks overwhelming the judiciary in the digital age, and the narrow exception from *Scott* risks swallowing the general rule that was carefully crafted to ensure factual disputes are efficiently and properly decided. The petition should therefore be granted.

III. This case is a good vehicle.

This case is a good vehicle to resolve the question presented. The panel majority below relied on *Scott* to hold that it could grant summary judgment to Officer Marzolf without drawing factual inferences in Cassi's favor, as the Federal Rules require. Indeed, the Eighth Circuit panel explicitly discarded the traditional standard of review. The court below did not reach Officer Marzolf's defense of qualified immunity, and this Court need not address it to reverse the decision below. In sum, there is no barrier that would prevent this Court from addressing only the question presented. The petition should therefore be granted.

CONCLUSION

The petition for a 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 (vacating a grant of summary judgment and remanding for further proceedings because the Fifth Circuit "neglected to adhere to the fundamental principle that at the summary judgment

stage, reasonable inferences should be drawn in favor of the nonmoving party").

Respectfully submitted,

KEITH NEELY
Counsel of Record
ANYA BIDWELL
PATRICK JAICOMO
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
(703) 682-9320
kneely@ij.org

Counsel for Petitioner