United States Court of Appeals

for the

Fifth Circuit

Case No. 22-30489

CHANCE DWAYNE BEROID,

Plaintiff-Appellant,

– v. –

CHRISTOPHER LAFLEUR, Jefferson Davis Parish Deputy Sheriff;
FERROLL LEBLANC, Jefferson Davis Parish Deputy Sheriff;
NAQUAN SENEGAL, Jefferson Davis Parish Deputy Sheriff,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES, CASE NO. 2:21-CV-516
HONORABLE TERRY A. DOUGHTY, U.S. DISTRICT JUDGE

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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Dated: November 4, 2022

/s/ *Peter A. Sullivan*
Peter A. Sullivan

Attorney of Record for Plaintiff-Appellant Chance Dwayne Beroid

STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant Chance Dwayne Beroid respectfully requests oral argument. By crediting its own characterization of video footage over the Amended Complaint's when dismissing Mr. Beroid's claims pursuant to Federal Rule of Civil Procedure 12(b)(6), the District Court ignored the standard of review applicable at the pleading stage, severely misconstrued the Supreme Court's holding in *Scott v. Harris*, 550 U.S. 372 (2007) and its progeny in this Circuit, and created a circuit split with at least the Sixth Circuit. Mr. Beroid respectfully submits that oral argument will assist the Court in addressing those issues, as well as the District Court's additional errors discussed below.

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STATEMENT OF JURISDICTION

The United States District Court for the Western District of Louisiana, Lake Charles Division (the "District Court") entered final judgment on July 19, 2022, adopting the Magistrate Judge's June 2, 2022 Report and Recommendation and granting Defendants' Motion to Dismiss. ROA.326. The District Court dismissed all of Plaintiff-Appellant Chance Beroid's claims under 42 U.S.C. § 1983 with prejudice and dismissed his state law claims without prejudice. ROA.326. Mr. Beroid thereafter timely filed a notice of appeal on August 11, 2022. ROA.328–30. Accordingly, the Fifth Circuit has jurisdiction over Mr. Beroid's appeal of the District Court's final decision pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Did the District Court err when it refused to credit Mr. Beroid's well-pleaded allegations in his Amended Complaint and instead evaluated the viability of Mr. Beroid's claims at the pleading stage based upon the Court's own characterization of video footage?

2. Did the District Court's failure to accept as true Mr. Beroid's well-pleaded allegations and to afford him with all reasonable inferences on a motion to dismiss contaminate its holdings that no Fourth Amendment violation occurred and, in any event, that Defendants were entitled to qualified immunity?

3. Viewed through the proper lens on a motion to dismiss, did Mr. Beroid's Amended Complaint—which alleged that Defendants violated clearly established law when they shot Mr. Beroid with a Taser without any warning even though he was not committing a crime and otherwise posed no safety risk—set forth a *prima facie* Fourth Amendment claim and otherwise overcome Defendants' qualified immunity defense?

4. Did the District Court err when it declined to exercise supplemental jurisdiction over Mr. Beroid's state law claims on the grounds that his Amended Complaint contained no viable federal claim, where his Section 1983 claim should have survived dismissal?

INTRODUCTION

There is no serious question as to whether Plaintiff-Appellant Chance Beroid's Amended Complaint—which alleges that three Deputy Sheriffs of the Jefferson Davis Parish Sherriff's Office violated Mr. Beroid's Fourth Amendment and Louisiana state law rights when they shot him with a Taser without any warning even though Mr. Beroid was not actively committing a crime and posed no risk to Defendants' safety—contains well-pleaded facts that, accepted as true, support a prima facie excessive force claim under 42 U.S.C. § 1983. It does. Indeed, the District Court said so expressly: "The 'well pleaded facts' of [Mr. Beroid's] complaint as outlined might, when considering the nuances of his actions as he describes them, paint a picture that, if accepted as true (as we must when considering a motion to dismiss under Rule 12(b)(6)), might support a claim that the officers acted unreasonably or excessively and might, therefore, allow his claim to survive the motion."[1] ROA.291.

Yet, despite those admittedly well-pleaded allegations, the District Court dismissed Mr. Beroid's complaint for failure to state a claim. The reason? Because in the District Court's view, the fact that Mr. Beroid attached video footage to his

[1] Because the District Court adopted the Magistrate Judge's Report and Recommendations in full, for ease of review, Mr. Beroid uses "District Court" herein to collectively refer to both the District Court and the Magistrate Judge's Report and Recommendation.

complaint relieved the Court of its obligation to treat Mr. Beroid's well-pleaded allegations as true. As the District Court put it, because "we are able to characterize the events ourselves by viewing the video," even Mr. Beroid's well-pleaded allegations could be disregarded. ROA.294.

That holding—upon which the District Court premised the rest of its decision—is wrong. As the Supreme Court's, this Court's, and other appellate courts' precedents make clear, to the extent that attached materials—whether it be a contract, video footage, or otherwise—can *ever* override a complaint's allegations, it is only when that attachment so clearly contradicts those allegations that they are rendered entirely implausible, and it is beyond doubt that plaintiff could never prove her claim.

That is a high bar. As this Court has recognized, even attachments that call into question a plaintiff's allegations do not permit the Court to deprive that litigant of their Seventh Amendment right to have the facts of their case decided by a jury of their peers—a right that "is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of [] should be scrutinized with the utmost care." *Beacon Theatres. Inc. v. Westover*, 359 U.S. 500, 501 (1959). And that principle holds particular force where, as here, a litigant seeks to hold those in positions of power and authority accountable for using unconstitutional levels of force to subdue an unarmed individual.

Applying those precedents here, the District Court erred when it dismissed Mr. Beroid's case based upon the Court's own characterization of the record. The District Court should have instead analyzed the Amended Complaint by viewing all of its well-pleaded allegations in the light most favorable to Mr. Beroid to determine whether it stated a *prima facie* Fourth Amendment claim—a standard which, as the District Court itself recognized, the Amended Complaint easily satisfied.

Accordingly, this Court should reverse the District Court's dismissal order in full, and remand with instructions to reinstate all of Mr. Beroid's claims and to permit Mr. Beroid to test his well-pleaded allegations through discovery.

STATEMENT OF THE CASE

A. Statement of Material Facts

This case arises out of a March 1, 2020 encounter between Plaintiff-Appellant Chance Dwayne Beroid and three Deputy Sheriffs of the Jefferson Davis Parish, Louisiana Sherriff's Office, one of whom, without any warning, shot Mr. Beroid with a Taser from behind within seconds of engaging him. The facts of that encounter, as alleged in the Amended Complaint and the materials attached thereto, are as follows.

On March 1, 2020, after an evening out with his fiancée, Ms. Jasmine Goodwin, Mr. Beroid arrived at his parents' house to pick up their children. ROA.76 ¶¶ 11–12. Before entering the house, Mr. Beroid and Ms. Goodwin engaged in a

non-violent disagreement. ROA.76 ¶ 12. Ms. Goodwin called law enforcement and Defendants Christopher LaFleur, Ferroll Leblanc, and Naquan Senegal (collectively, the "Defendants")—each Deputy Sheriffs in the Jefferson Davis Parish Police Department—arrived at the scene shortly thereafter. ROA.76 ¶ 12.

The Defendants spoke with Mr. Beroid, Ms. Goodwin, and Mr. Beroid's father (who came outside upon seeing officers). ROA.76 ¶¶ 13–14. The disagreement was subsequently resolved, and Ms. Goodwin went home. ROA.77 ¶ 15. Mr. Beroid thereafter entered his parents' house for the evening. ROA.77 ¶ 15.

Defendants, however, did not leave the scene, even though the reason for their arrival at the scene no longer existed. ROA.77 ¶ 16. Instead, they lingered outside the home of Mr. Beroid's parents for approximately thirty to forty-five minutes. ROA.77 ¶ 16.

What happened next was captured in part[2] on the body camera of Defendant LaFleur—video footage which Mr. Beroid attached as an exhibit to the Amended Complaint.[3] ROA.75 ¶ 8. Defendants approached Mr. Beroid's parents' home and

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[2] The Amended Complaint alleged that "[s]ome of the camera footage is incomplete because [Defendants] deliberately turned off their cameras at various points during the altercation" with Mr. Beroid. ROA.76 ¶ 9.

[3] Defendant LaFleur's body camera footage was attached as Exhibit C to the Amended Complaint and is available at the following link: https://www.youtube.com/watch?v=oM6jYH6oS8o. For ease of reference, this brief will use the cite "Ex. C" to refer to that video footage.

knocked on the door. ROA.77 ¶ 17. Mr. Beroid's mother, holding a baby, answered. ROA.77 ¶ 17. Defendants asked whether Mr. Beroid was home, and Mr. Beroid's mother responded by calling into the house for him. ROA.77 ¶ 17.

Mr. Beroid immediately came to the door to speak with the Defendants. ROA.77 ¶ 18. Upon seeing Mr. Beroid, Defendant LaFleur commanded: "grab your shoes, man." ROA.77 ¶ 18. Mr. Beroid responded "why, what's going on?" to which Defendant LaFleur replied: "You've got a warrant, you need to come with us." ROA.77 ¶ 18; Ex. C. Defendant LaFleur offered no other details about the purported warrant. ROA.77 ¶ 18; Ex. C. Nor did he at any point tell Mr. Beroid that he was under arrest. ROA.77 ¶ 18.

Visibly confused, Mr. Beroid responded that he did not have a warrant. ROA.77 ¶ 19. Mr. Beroid repeated that point multiple times as Defendants stepped forward and entered the home, causing Mr. Beroid to take a step backwards. ROA.77 ¶ 19. As he did so, Mr. Beroid again stated "I don't have a warrant, sir." ROA.77 ¶ 19; Ex. C.

At this point of the interaction (captured at the 1:27 mark of the video footage), Mr. Beroid is seen standing next to his mother, who is still holding a baby in her left arm. Ex. C. Mr. Beroid's empty hands are folded in front of him at his waist and plainly visible to the Defendants as he insists that there is no active warrant out for his arrest. Ex. C. The video also offers details of Mr. Beroid's parents'

home. Ex. C. The home is modest in size, with a single hallway leading to the back of the home and various bedrooms. Ex. C. The only egress is the front door, where Defendants stood. Ex. C.

Despite having still not told Mr. Beroid that he was under arrest, and despite the absence of any physical resistance or other plausible form of aggression by Mr. Beroid, Defendants escalated the situation quickly. ROA.77 ¶¶ 19–20. Defendant LaFleur first attempted to grab Mr. Beroid by his shirt. ROA.77 ¶ 19. The large shirt slipped off Mr. Beroid who, taken aback, stepped a few feet further into the hallway, now with his back partially turned towards Defendants. ROA.77 ¶ 19.

Defendant LaFleur responded by pulling out his Taser and, without any verbal warning whatsoever, shooting Mr. Beroid with it. ROA.78 ¶ 21. The Taser hit Mr. Beroid in the back, immediately causing Mr. Beroid to scream out in agony. ROA.78 ¶ 21. Stunned by the electrical current, Mr. Beroid careened and slammed into a door, his body falling with a thud to the floor. ROA.78 ¶ 21.

Neither Defendant LaFleur nor any other Defendants attempted to give Mr. Beroid any warning or command before resorting to shooting Mr. Beroid with a Taser. ROA.78 ¶ 22. In fact, Defendants never warned Mr. Beroid that he would face *any* type of force—let alone that he would be shot with a Taser—if he failed to comply with Defendants' order that he "get his shoes" and "come with" Defendants.

ROA.79 ¶ 24; Ex. C. Indeed, Defendants did not tell Mr. Beroid to "get on the ground" until *after* Defendant LaFleur had already shot Mr. Beroid and Mr. Beroid had already fallen to the ground as a result. ROA.79 ¶ 25; Ex. C. Instead, as the length of the encounter—less than thirty seconds from start to finish—evidences, Defendants resorted to using the Taser without warning as their *first* method of seeking compliance.[4] ROA.78 ¶ 22; ROA.79 ¶ 24; Ex. C.

While Mr. Beroid lay on the ground shirtless, in pain, and with the barbs of the Taser embedded in his skin, Defendant LaFleur commanded Mr. Beroid to put his hands behind his back. ROA.79 ¶ 26; ROA.80 ¶ 27. Defendant Senegal simultaneously shouted to Mr. Beroid that Defendant LaFleur would shoot him again if he did not place his hands behind his back. ROA.80 ¶ 27. On cue, Defendant LaFleur threatened that he would "light [him] up again" if Mr. Beroid did not comply. ROA.80 ¶ 27. Mr. Beroid immediately complied, putting his hands behind his back and allowing Defendant Senegal to place him in handcuffs. ROA.80 ¶ 27.

[4] In doing so, Defendants failed to not only comply with the requirements of the Fourth Amendment, but also the safety guidelines promulgated by the manufacturer of the Taser used by Defendants. The safety guidelines published by Axon Enterprise (formerly known as Taser International) state that a Taser should not be used on individuals that are "[p]assively resisting and not an immediate threat or flight risk." ROA.78 ¶ 23. The guidelines further state that de-escalation should be attempted before Taser deployment, which can be achieved by communicating with the individual and giving the individual the opportunity to voluntarily comply. ROA.78–79 ¶ 23. And the guidelines make clear that when a Taser is deployed, it should be used in a manner that minimizes dangerous falls, including falls whereby the individual is unable to catch him or herself before hitting the ground. ROA.79 ¶ 23.

Even after being shot by the Taser, Mr. Beroid insisted that there was no warrant out for his arrest and asked for clarification about the supposed arrest warrant. ROA.80 ¶ 28. As Defendants handcuffed him, Mr. Beroid explained that there could not be a valid warrant out for his arrest because "those charges were dropped." ROA.80 ¶ 28. He also repeatedly asked Defendants what the charges were for and the year they were from. ROA.80 ¶ 28.

Defendants did not meaningfully respond to these questions. ROA.80 ¶ 28. Defendant LaFleur initially responded that he "wasn't sure." ROA.80 ¶ 28. He later claimed that the charges were from the Jennings Police Department, but provided no other details. ROA.80 ¶ 28.

As Mr. Beroid later alleged in his Amended Complaint, the reason for Defendants' evasiveness was that Defendants in fact lacked *any* information about the basis for the outstanding warrant whatsoever, including as to even the alleged crime that gave rise to the warrant. ROA.80 ¶ 29. But that lack of knowledge did not deter Defendants from immediately shooting Mr. Beroid with a Taser mere seconds after entering his parents' home. ROA.78 ¶ 21.

Defendants subsequently arrested Mr. Beroid. ROA.80 ¶ 27. Mr. Beroid left the house in handcuffs with the Taser's prongs still embedded within his skin, having left physical burn marks on his person. ROA.80 ¶ 28; ROA.81 ¶¶ 30–31. Defendants took Mr. Beroid to the Sheriff's Office, where he received treatment for

his injuries and was then booked. ROA.81 ¶¶ 31, 33. During the booking process, one Defendant stated, "I don't want to get fired for this." ROA.81 ¶ 33.

B. Procedural History

Mr. Beroid initiated suit against the Defendants on March 1, 2021, and filed the Amended Complaint that is at issue in this appeal on April 16, 2021. ROA.3–5, 71–90. Therein, Mr. Beroid alleged that Defendants violated his Fourth Amendment right to be free from excessive force when they shot him with a Taser without warning within seconds of encountering him, despite not even knowing the basis for the arrest warrant they sought to execute and despite the lack of any threat posed by Mr. Beroid. ROA.78–80 ¶¶ 21–29; ROA.83 ¶ 42. To account for that constitutional violation, Mr. Beroid asserted a claim under 42 U.S.C. § 1983 for monetary damages, attorneys' fees, and punitive damages against all Defendants. ROA.82–84 ¶¶ 36–53. Mr. Beroid also asserted a number of state law claims under Louisiana law, including claims for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, aggravated assault, and aggravated battery, against various configurations of the Defendants arising out of that same conduct. ROA.84–89 ¶¶ 54–86.

Defendants moved to dismiss the Amended Complaint on May 4, 2021, arguing that they were entitled to qualified immunity on the grounds that (1) their actions did not violate clearly established law and (2) their actions were not

objectively unreasonable in light of the circumstances. ROA.5. In support of those arguments, Defendants took the position that this case was "unique" because unlike "the vast majority [of] plaintiffs [who] choose to simply file a Complaint," Mr. Beroid's Amended Complaint attached the body camera footage of Defendant LaFleur. ECF No. 37, Defendants' Reply Br. at 1 (filed June 7, 2021). In Defendants' view, the video's presence meant that the court could "resolve any factual inconsistencies alleged by [Mr. Beroid]" in his Amended Complaint and opposition briefing at the motion to dismiss stage, and could otherwise "take the facts surmised from the video as true." *Id.* at 3.

On June 2, 2022, the Magistrate Judge issued her Report and Recommendation that Defendants' motion to dismiss be granted in full (the "Recommendation"). ROA.8, 282–96. The Recommendation first concluded—with a citation to *Tucker v. City of Shreveport*, 998 F.3d 165 (5th Cir. 2021)—that the court could credit its own interpretation and characterization of the video footage from Defendant LaFleur's body camera over Mr. Beroid's well-pleaded factual allegations. ROA.287. Indeed, the Magistrate Judge acknowledged that if it were not for the video, the allegations in Mr. Beroid's Amended Complaint "paint a picture that, if accepted as true (as we must when considering a motion to dismiss under Rule 12(b)(6)), might support a claim that the officers acted unreasonably or excessively and might, therefore, allow his claim to survive the motion." ROA.291.

But because Mr. Beroid's Amended Complaint attached the video, the court deemed Mr. Beroid's characterization of what occurred to be irrelevant, with its own interpretation of that video footage controlling instead. ROA.291–94.

Operating from that baseline, the court concluded that Mr. Beroid's Section 1983 claim for excessive force failed in multiple respects. ROA.291–94. The court first held that the Amended Complaint failed to make out a *prima facie* Fourth Amendment claim against Defendant LaFleur because, in the court's view, "the video contradicts plaintiff's allegations in aspects important to the claims of excessive force." ROA.291. Specifically, the court stated that "contrary to [Mr. Beroid's] allegations, the video does not show that the officers 'barged into the house' but rather shows that they were following him into the home after he, by his own admission even in the written pleadings, retreated into the home rather than follow their commands to exit." ROA.291. The court further held that the "video belies plaintiff's allegation that the officers were not provoked" because, in the court's view, "the video shows clearly that plaintiff was refusing to obey the commands of the defendants who were attempting to execute an arrest warrant and he was acting in a manner that could reasonably be construed by a reasonable officer on the scene as 'resisting an officer,' a crime (albeit a misdemeanor) in and of itself." ROA.291. And the court stated that, contrary to the Amended Complaint's allegation that Mr. Beroid did not attempt to flee, "review of the video would support

a conclusion by a reasonable officer on the scene that his disappearance down a dark hall was an attempt to flee." ROA.292. Thus, because, in the court's view, the "video dismantles the allegations of the complaint that might lend credence to a conclusion that the use of the [T]aser was unreasonable," the court held that Mr. Beroid failed to state a *prima facie* Fourth Amendment claim against Defendant LaFleur. ROA.292.

The court also held that Mr. Beroid could not maintain a Fourth Amendment claim against the two other officers (Defendants Leblanc and Senegal) because the court's review of the video footage precluded any claim of "bystander liability." ROA.292–93. The court reasoned that "from video evidence it is obvious that neither could be found to have known that La[F]leur was going to use the taser and neither had any opportunity, much less a reasonable one, to act." ROA.292. In other words—and in tension with its conclusion, just a few lines earlier, that the video showed that Mr. Beroid's behavior potentially posed a safety threat and therefore "justified the officer's use of the taser"—the court concluded that the video footage demonstrated that Defendant LaFleur had acted so quickly in shooting Mr. Beroid with his Taser that "neither fellow officer had adequate time to intervene before the deed was done." ROA.292–93.

The court next held that even if the Defendants acted unreasonably when they shot Mr. Beroid with a Taser without warning, Defendants were entitled to qualified

immunity. ROA.293. This ruling, too, was predicated on the District Court's, rather than Mr. Beroid's, characterization of the video footage. ROA.293–94. As the court observed: "A great portion of [Mr. Beroid's] memorandum in opposition is devoted to his characterization of events as they occurred on the night in question, including his thoughts and impressions at the time, but we are able to characterize the events ourselves by viewing the video and determining what the reasonable officer would have seen before engaging in the moment of force." ROA.294.

Finally, the court recommended that because Mr. Beroid's federal claims should be dismissed with prejudice, supplemental jurisdiction over Mr. Beroid's remaining state law claims should be declined and those claims should be dismissed without prejudice. ROA.295.

Mr. Beroid timely filed his objections to the Recommendation on July 18, 2022. ROA.9. The next day, on July 19, 2022, the District Court summarily affirmed the Recommendation and dismissed Mr. Beroid's Amended Complaint. ROA.326–27.

Mr. Beroid timely filed his notice of appeal on August 11, 2022. ROA. 328–30. This appeal follows.

SUMMARY OF ARGUMENT

I. The District Court erred at the threshold when it disregarded Mr. Beroid's well-pleaded allegations in favor of its own characterization of the video footage attached to the Amended Complaint.

A. It is axiomatic that the court must "accept[] all well-pleaded facts as true and view[] those facts in the light most favorable to the plaintiff" at the motion to dismiss stage—whether in a qualified immunity case or otherwise. *E.g.*, *Stokes v. Gann*, 498 F.3d 483, 484 (5th Cir. 2007) (*per curiam*). Although a court may consider materials attached to the complaint in addition to the factual allegations pleaded therein, a district court "can only rely on [] videos over the complaint to the degree the videos are clear and 'blatantly contradict[]' or 'utterly discredit' the plaintiff's version of events." *Bell v. City of Southfield*, 37 F.4th 362, 364 (6th Cir. 2022) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)); *see Harmon v. City of Arlington*, 16 F.4th 1159, 1163 (5th Cir. 2021) (same). Anything short of that stringent standard—including materials that "call[] into question one or more of" plaintiff's allegations and even make it "seem[] almost a certainty to the court" that plaintiff will not prevail—means that the plaintiff must be afforded the opportunity to prove her claims. *United States ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 376-77 (5th Cir. 2004).

B. No binding precedent—including the summary judgment case cited by the District Court, *Tucker v. City of Shreveport*, 998 F.3d 165 (5th Cir. 2021), or *Scott v. Harris*, 550 U.S. 372 (2007), the Supreme Court case discussed in *Tucker*—alters those well-established rules. To the contrary, this Court has reaffirmed that in qualified immunity cases like this one, under *Scott*, lower courts "should *not* discount the nonmoving party's story unless contrary video evidence provides so much clarity that a reasonable jury could not believe his account." *Estate of Aguirre v. City of San Antonio*, 995 F.3d 395, 410 (5th Cir. 2021). Yet that is precisely what the District Court did when, at the motion to dismiss stage, it disregarded Mr. Beroid's well-pleaded allegations in favor of its *own* interpretation of the video.

II. The District Court's failure to apply the correct legal standard when reviewing Mr. Beroid's Amended Complaint compromised all aspects of its dismissal order.

A. First, the District Court's failure to view Mr. Beroid's well-pleaded allegations in the light most favorable to him resulted in its erroneous conclusion that Mr. Beroid had not made out a *prima facie* Fourth Amendment violation. Officers violate the Fourth Amendment when they "immediately resort[] to [using a] taser … without attempting to use physical skill, negotiation, or even commands." *Newman v. Guedry*, 703 F.3d 757, 764 (5th Cir. 2012). Mr. Beroid alleged, and the video footage confirmed, that within seconds of entering the home, Defendant

LaFleur shot Mr. Beroid with a Taser. ROA.78 ¶ 21. Defendant LaFleur did so without giving Mr. Beroid any warning whatsoever and without attempting to use any de-escalation skills, negotiations, or commands. ROA.78 ¶ 22. All the while, Defendants Leblanc and Senegal stood idly by and even threatened to shoot for a second time an already incapacitated Mr. Beroid. ROA.85 ¶ 56. That violates the Fourth Amendment, as even the District Court recognized when it observed that "[t]he 'well pleaded facts' of plaintiff's complaint as outlined might, when considering the nuances of his actions as he describes them, paint a picture that, if accepted as true (as we must when considering a motion to dismiss under Rule 12(b)(6)), might support a claim that the officers acted unreasonably or excessively and might, therefore, allow his claim to survive the motion." ROA.291.

B. The District Court's decision to credit its own characterization of the video footage over Mr. Beroid's allegations was also central to its erroneous ruling that Defendants are entitled to qualified immunity. Qualified immunity is a two-pronged test: (i) the facts alleged or shown and viewed in the light most favorable to the plaintiff must be sufficient to make out a violation of a constitutional or federal statutory right, and (ii) the constitutional violation must have been clearly established at the time of the government official's alleged conduct. *E.g.*, *Saucier v. Katz*, 533 U.S. 194, 201 (2001). That test is satisfied here. As already noted, even the District Court acknowledged that Mr. Beroid's "well-pleaded allegations"

established a Fourth Amendment violation. And, this Court has held repeatedly that qualified immunity does not apply as a matter of law when the officer resorts to use of a Taser or other force in the first instance to enforce compliance and there is no indication of flight or danger. Indeed, a plethora of case law—case law that existed at the time of Defendants' violation of Mr. Beroid's Fourth Amendment rights—more than sufficiently establishes that Defendants' conduct here clearly violated the Constitution. *See, e.g.*, *Trammell v. Fruge*, 868 F.3d 332, 342 (5th Cir. 2017); *Ramirez v. Martinez*, 716 F.3d 369, 372 (5th Cir. 2013); *Hanks v. Rogers*, 853 F.3d 738, 749 (5th Cir. 2017). Thus, but for the District Court's application of an erroneous standard, Mr. Beroid's Amended Complaint overcomes Defendants' qualified immunity defense, at least at the motion to dismiss stage.

III. Finally, the District Court erred when it declined to exercise supplemental jurisdiction over Mr. Beroid's Louisiana law claims. Because that decision was predicated entirely on the District Court's holding that Mr. Beroid lacked a valid federal claim, and because that foundational premise is incorrect, Mr. Beroid's state law claims should also be reinstated.

STANDARD OF REVIEW

This Court "review[s] a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) *de novo*, accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff." *E.g.*, *Alexander v. City of*

Round Rock, 854 F.3d 298, 303 (5th Cir. 2017) (citations and internal quotation marks omitted). This Court likewise "review[s] a grant of qualified immunity *de novo*." *Id.* (internal quotation marks omitted).

ARGUMENT

I. The District Court Applied the Wrong Legal Standard When, on a Motion to Dismiss, It Credited Its Own Interpretation and Characterization of the Video Footage over Mr. Beroid's.

As a threshold matter, the District Court's decision flows from the erroneous foundational premise that it could "characterize the events [itself] by viewing the video" instead of accepting Mr. Beroid's characterization of that video in his Amended Complaint as true. ROA.294. That premise is not only at odds with this Court's and other courts' longstanding requirements for evaluating motions to dismiss, it is also belied by the very authorities cited by the District Court.

A. At The Pleading Stage, A Plaintiff's Characterization of Video Footage Can Be Ignored Only Where The Footage "Blatantly Contradicts" That Characterization.

It is black letter law that, when confronted with a Rule 12(b)(6) motion to dismiss—whether in a qualified immunity case or otherwise—the court must "accept[] all well-pleaded facts as true and view[] those facts in the light most favorable to the plaintiff." *E.g.*, *Stokes*, 498 F.3d at 484. That standard—rooted in the Seventh Amendment guarantee of the right to have a jury decide disputes of fact—is a stringent one. As this Court has explained: "The issue is not whether the

plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support his claim. Thus, the court should not dismiss the claim unless the plaintiff would not be entitled to relief under any set of facts or any possible theory that he could prove consistent with the allegations in the complaint." *Jones v. Greniger*, 188 F.3d 322, 324 (5th Cir. 1999).

Consistent with that precedent, it is axiomatic that on a motion to dismiss, a district court cannot consider matters outside the four corners of the complaint save for attached materials that "are referred to in the plaintiff's complaint and are central to her claim." *E.g.*, *Jones v. Adm'rs of the Tulane Educ. Fund*, No. 21-30681, 2022 U.S. App. LEXIS 28251, at *14 (5th Cir. Oct. 11, 2022) (quoting *Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004)). And even when those attached materials "call[] into question one or more of" plaintiff's allegations in the underlying pleading, dismissal is inappropriate if doing so would "preclude[] the opportunity for Plaintiff by subsequent proof to establish a claim supporting the allegations not refuted by exhibits." *See United States ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 377 (5th Cir. 2004). Rather, "the district court should dismiss only if it appears beyond doubt that Plaintiff can prove 'no set of facts' in support of her claim." *Id.* (district court "acted prematurely in dismissing the complaint" on the grounds that exhibits attached to complaint contradicted plaintiff's claim).

Videos attached to a complaint are no different.[5] Just as courts can discredit a complaint's allegations only when materials attached thereto establish "beyond doubt that Plaintiff can prove 'no set of facts' in support of her claim," *Riley*, 355 F.3d at 377, a district court "can only rely on [] videos over the complaint to the degree the videos are clear and 'blatantly contradict[]' or 'utterly discredit' the plaintiff's version of events," *Bell v. City of Southfield*, 37 F.4th 362, 364 (6th Cir. 2022) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)); *see also Harmon v. City of Arlington*, 16 F.4th 1159, 1163 (5th Cir. 2021) ("where video recordings are included in the pleadings," those "video depictions … should be adopted over the factual allegations in the complaint" only when "the video 'blatantly contradict[s]' those allegations" (quoting *Scott*, 550 U.S. at 380)). Absent such a "blatant contradiction," the court must accept the "plaintiff's version as true." *Bell*, 37 F.4th at 364; *see also Gray v. City of Denham Springs*, No. 19-00889-BAJ-EWD, 2021 U.S. Dist. LEXIS 63591, at *8 (M.D. La. Mar. 29, 2021) (declining to consider video

[5] It is at least an open question as to whether video footage attached to a complaint qualifies as a "written instrument" under Rule 10(c) of the Federal Rules of Civil Procedure, and is therefore deemed "part of the pleading for all purposes." *See, e.g.*, *Garcia v. Doe*, 779 F.3d 84, 87 n.2 (2d Cir. 2015) (noting that court had yet to address "whether Fed. R. Civ. P. 10(c), which provides that a 'written instrument' included as an exhibit to a pleading 'is a part of the pleading for all purposes,' extends to videos of the sort presented in this case," but declining to answer question given lack of attention by parties). This Court need not decide this issue at this stage in order to reverse the District Court's opinion because, as detailed above, the attached video footage here does not "blatantly contradict" and thereby render implausible any relevant aspect of Mr. Beroid's Amended Complaint.

footage at motion to dismiss stage when video would "inject contested interpretations of the events portrayed in the video—which would require allowing Plaintiffs to develop additional summary judgment evidence").

This rule—which differentiates between blatantly contradictory video and footage subject to competing interpretations—makes sense. As the Sixth Circuit explained in *Bell*, if there is "indisputable video evidence" attached to plaintiff's complaint that "contradicts [plaintiff's] pleadings, his allegations are implausible" in violation of Rule 8, and ignoring those video's contents serves only to "waste time and effort." 37 F.4th at 364; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (Rule 8's plausibility requirement protects against needless "expenditure of time and money by the parties and the court" on "groundless claim[s]"). But when there is a factual dispute between the parties, and the attached video footage does not establish "beyond doubt that Plaintiff can prove 'no set of facts' in support of her claim," then Plaintiff must be afforded the opportunity to prove the claim through evidence, even if it "seems almost a certainty to the court" that Plaintiff will be unable to do so. *See Riley*, 355 F.3d at 376-77 (internal quotations omitted).

B. Contrary To The District Court's Holding, Nothing In This Court's Decision in *Tucker* Altered The "Blatant Contradiction" Standard.

The District Court ignored this precedent when it concluded that, under *Tucker v. City of Shreveport*, 998 F.3d 165 (5th Cir. 2021), it could "view the facts in the light depicted by the videotape" and otherwise "characterize the events [itself]

by viewing the video" instead of deferring to allegations in the Amended Complaint. *See* ROA.287, 294. But nothing in *Tucker* or its progeny supports that conclusion. To the contrary, those cases (each decided at summary judgment) confirm that to the extent that a court can ever credit video footage over a plaintiff's version of events, it is only when the plaintiff's version is "blatantly contradicted by the record, so that no reasonable jury could believe it," *Scott*, 550 U.S. at 380—*i.e.*, the same standard that applies anytime that a plaintiff attaches materials making clear "beyond doubt that Plaintiff can prove 'no set of facts' in support of her claim." *Riley*, 355 F.3d at 377.

In *Tucker*, this Court considered whether the district court erred when it concluded that there were genuine issues of material fact as to whether law enforcement officers were entitled to qualified immunity when they forced to the ground and physically beat the defendant while trying to handcuff him. 998 F.3d at 170. In doing so, this Court noted that when considering whether there were genuine issues of material fact that would preclude summary judgment, the police officers needed to show that, "taking all the plaintiff's factual allegations as true, no violation of a clearly established right was shown." *Id.* (quoting *Arizmendi v. Gabbert*, 919 F.3d 891, 896 (5th Cir. 2019)). The court further noted, however, that "because there is video and audio recording of the event, we are not required to accept factual allegations that are 'blatantly contradicted by the record.'" *Id.*

(quoting *Scott*, 550 U.S. at 380). Rather, under the Supreme Court's decision in *Scott v. Harris*—itself a summary judgment case—this Court "should 'view the facts in the light depicted by the videotape." *Id.*

Applying that standard, this Court ruled that, based upon the record before it at summary judgment, the video footage defeated plaintiff's claims because it revealed a "sufficiently 'tense, uncertain, and rapidly evolving' [scenario] to place the officers' takedown of Tucker, even if mistaken, within the protected hazy border between excessive and acceptable force, established by then-existing Fourth Amendment excessive force jurisprudence."[6] *Id.* at 180.

[6] Critically, the "record" before the court in *Tucker* included materials produced during discovery (including video footage) and witness testimony—testimony that this Court repeatedly referenced in its decision. *See, e.g., Tucker*, 998 F.3d 165, 178 (5th Cir. 2021) ("And both Cisco and McIntire testified, without contradiction, that they had felt tension in Tucker's arms."); 179 ("And, he testified"); 179 ("McIntire also testified that, at that point, he felt like he was losing his grip on Tucker."); 182 ("Tucker testified that he did not recall any force being used after he was handcuffed."); 184 ("Most important to this conclusion is Tucker's failure to dispute the Defendant Officer's testimony that Tucker was pulling his arms from their grasp and failing to put them behind his back."). Given that Mr. Beroid's case has yet to proceed past the pleading stage, no such record evidence yet exists here—a difference in procedural posture that should have been taken into account. *See, e.g.*, *Craig v. Martin*, No. 19-10013, 2022 WL 4103353, at *7 (5th Cir. Sept. 8, 2022) ("The procedural posture of this case must be borne in mind. We are not reviewing a motion to dismiss, in which we would look only at the plaintiff's allegations. Martin filed a motion for summary judgment, and he supported that motion with video evidence and with his own declaration and that of his commanding officer. . . . In the face of this summary judgment evidence, it was then incumbent upon Hymond to produce *evidence*, not mere *allegations*, that raised a genuine dispute of *material* fact.") (emphasis included). This is all the more reason why the District Court should not have construed *Tucker* as altering the standard for construing pleadings at the motion to dismiss stage.

In reaching that conclusion, however, this Court did *not* announce a new rule for how a plaintiff's allegations should be treated at the motion to dismiss stage when accompanied by video footage of the incident. This Court confirmed as much in *Estate of Aguirre v. City of San Antonio*, 995 F.3d 395 (5th Cir. 2021), another excessive force case involving video footage at summary judgment. As the Court explained there, *Scott v. Harris*—the Supreme Court decision considered in *Tucker*—"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." *Aguirre*, 995 F.3d at 410. "Rather, *Scott* was an exceptional case with an extremely limited holding"—*i.e.*, that a court "should not discount the nonmoving party's story unless contrary video evidence provides so much clarity that a reasonable jury could not believe his account." *Id.* Put another way, "[o]nly when the record eliminates any feasible claim that the nonmovant's account of events is true may a court disregard" plaintiff's allegations to the contrary. *Id.* Anything short of that, such as "[w]hen video evidence is ambiguous or in fact supports a nonmovant's version of events, or when there is any evidence challenging the video's accuracy or completeness, the modified rule from *Scott* has no application." *Id.* (citations omitted).

Aguirre makes clear that nothing in *Scott* or its progeny (including *Tucker*) permits a court to disregard a plaintiff's allegations simply because it takes a different view of video footage than plaintiff, as the District Court did here.[7] Instead, those precedents reinforce the longstanding rule in this Circuit and elsewhere that a plaintiff's allegations can only be disregarded in the "exceptional case" where the material attached to the complaint so blatantly contradicts the plaintiff's allegations that the entire complaint is rendered implausible. And as the next section explains, contrary to the District Court's ruling, the video footage attached to Mr. Beroid's Amended Complaint came nowhere close to satisfying that stringent standard.

II. The District Court's Failure to Apply the Correct Legal Standard Infected All Aspects of Its Decision.

The District Court dismissed Mr. Beroid's federal claims because (A) Defendants did not violate Mr. Beroid's Fourth Amendment right to be free from excessive force and (B) even if Defendants did so, they are shielded from liability for that constitutional violation by qualified immunity. ROA.291–94. Each of those holdings, however, was predicated on the District Court's own characterization of

[7] *Tucker* can be reconciled with *Aguirre* and other precedent only if read in this manner. To the extent this Court disagrees and reads *Tucker* otherwise—and again, for the reasons stated above, this Court should do so no such thing—Mr. Beroid submits that, at a minimum, *Aguirre* and *Tucker* are incompatible with another and that this Court should take this case *en banc* to correct that inconsistency. *See Manuel v. Turner Indus. Grp. L.C.C.*, 905 F.3d 859, 867 n.4 (5th Cir. 2018) (when two "binding precedent[s]" conflict, "correcting this inconsistency of approach would require *en banc* review"). Mr. Beroid reserves his right to make any additional arguments for why this Court should take this case *en banc* if necessary.

the video footage. As detailed above, that approach is not permissible on a motion to dismiss. *See supra* Section I. Instead, the District Court should have considered whether the allegations in Mr. Beroid's Amended Complaint plausibly alleged a *prima facie* excessive force claim and whether any of those allegations were "blatantly contradicted" by the video footage. And because, under that standard, Mr. Beroid's Amended Complaint plainly suffices, the lower court erred when it dismissed Mr. Beroid's federal claims.

A. The District Court Erred When It Concluded That the Complaint Did Not Plausibly Allege That the Defendants Violated the Fourth Amendment.

The District Court erred at the threshold when it held that Mr. Beroid's excessive force claims could not survive a motion to dismiss. Mr. Beroid's Amended Complaint contained ample well-pleaded allegations establishing such claims—indeed, the District Court itself recognized as much—and none of those allegations were "blatantly contradicted" by the attached video footage.

1. Mr. Beroid Alleged Prima Facie Fourth Amendment Claims Against The Defendants.

"The Fourth Amendment provides protections against an officer's use of excessive force to effect an arrest or other seizure." *E.g.*, *Aguirre*, 995 F.3d at 406. "To prevail on an excessive-force claim, the plaintiff must show (1) an injury, (2) that resulted directly from an officer's use of force, and (3) that the force used

was 'objectively unreasonable.'" *Id.* (quoting *Flores v. City of Palacios*, 381 F.3d 391, 396 (5th Cir. 2004)). Only the third element is in dispute here.

Whether an officer's use of force was "objectively unreasonable" is "necessarily fact-intensive," and "depends on the facts and circumstances of each particular case." *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009) (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Courts have looked to three factors (the so-called *Graham* factors) in making this assessment: (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 the suspect is actively resisting or attempting to evade arrest by flight. *Deville*, 567 F.3d at 167 (citing *Graham*, 490 U.S. at 396). Additionally, courts will consider "not only the need for force, but also the relationship between the need and the amount of force used." *Cloud v. Stone*, 993 F.3d 379, 384 (5th Cir. 2021).

Consistent with that framework, this Court and others have recognized that shooting an individual with a Taser is "excessive to the need and objectively unreasonable in cases involving minor, non-violent crimes, in which the suspect posed no objective threat, and was not resisting or attempting to evade arrest." *E.g.*, *Pena v. City of Rio Grande City*, 816 F. App'x 966, 976-77 (5th Cir. 2020). That is particularly true when officers, without any warning, "immediately resort[] to [using a] taser … without attempting to use physical skill, negotiation, or even commands."

Newman v. Guedry, 703 F.3d 757, 763 (5th Cir. 2012) (denying qualified immunity to officers who shot a suspect with a Taser without warning when, according to that suspect, "he committed no crime, posed no threat to anyone's safety, and did not resist the officers or fail to comply with a command"); *cf. Pratt v. Harris Cnty., Texas*, 822 F.3d 174, 182 (5th Cir. 2016) (no excessive force claim when "neither officer used their taser as the *first method* to gain [plaintiff's] compliance"); *Williams v. Cleveland*, 736 F.3d 684, 686 (5th Cir. 2013) (per curiam) (no Fourth Amendment violation when officers offered *repeated* warnings to the suspect that "he would be tased if he continued resisting arrest" before resorting to force). When officers "put force first" by shooting individuals who are "committing no crime, posing no threat, and giving no active resistance" with a Taser without giving even so much as a warning, they violate the Fourth Amendment. *Joseph v. Bartlett*, 981 F.3d 319, 341 (5th Cir. 2020).

The Amended Complaint alleges that Mr. Beroid was not committing a crime, was unarmed, and was not actively resisting arrest. Specifically, Mr. Beroid alleged, and the video footage confirmed, that within seconds of entering the home, Defendant LaFleur shot Mr. Beroid with a Taser. ROA.78 ¶ 21. Defendant LaFleur did so without giving Mr. Beroid any warning whatsoever and without attempting to use any de-escalation skills, negotiations, or commands. ROA.78 ¶ 22. All the

while, Defendants Leblanc and Senegal stood idly by and otherwise made no attempt to use other, less forceful tactics to arrest Mr. Beroid.[8] ROA.85 ¶ 56.

Worse still, the Amended Complaint alleges that Defendants immediately resorted to that physical force despite the absence of any threat or resistance from Mr. Beroid. ROA.78 ¶¶ 20–21. It is undisputed that Mr. Beroid was not committing any crime when Defendants confronted him. ROA.76–77 ¶¶ 12–18. Additionally, the Defendants had no knowledge of the underlying crime for which they were arresting Mr. Beroid, let alone knowledge that the crime was violent or otherwise serious. ROA.80 ¶ 29. The Amended Complaint likewise alleged that Mr. Beroid posed no threat to the Defendants' safety at any point during the encounter. ROA.79 ¶ 24. This, too, is confirmed by the video. Ex. C. Not only were the Defendants

[8] The failure to intervene to stop a violation of a clearly established law at the time of the incident is itself a violation. In *Hale v. Townley*, 45 F.3d 914 (5th Cir. 1995), the Fifth Circuit, in the context of a quickly escalating search pursuant to a raid of a nightclub, also denied qualified immunity to the bystander officers, stating "[t]he district court correctly held that an officer who is present at the scene and does not take reasonable measures to protect a suspect from another officer's use of excessive force may be liable under section 1983." 45 F.3d 914, 919 (5th Cir. 1995) (affirming denial of motion to dismiss on qualified immunity grounds because there is a "fact issue as to whether [defendant] had a reasonable opportunity to realize the excessive nature of the force and to intervene to stop it" when "[v]iewing the allegations and summary judgment evidence most favorably to" plaintiff). Thus all Defendants, including Defendants Leblanc and Senegal, are appropriately on the hook for their excessive force against Mr. Beroid. Indeed, Defendants Leblanc and Senegal not only failed to intervene, Defendant Senegal encouraged the use of even further force against an incapacitated Mr. Beroid, shouting to him that Defendant LaFleur would shoot him again if he did not put his hands behind his back. ROA.80 ¶ 27.

In the event this Court disagrees, then this further supports Mr. Beroid's claims against Defendant LaFleur. Put another way, it cannot both be true that LaFleur acted reasonably because Mr. Beroid's behavior posed a safety threat and justified the use of the Taser and that "from video evidence it is obvious that neither could be found to have known that LaFleur was going to use the Taser and neither had any opportunity, much less a reasonable one, to act." ROA.292.

aware that Mr. Beroid was not holding a weapon or the like—the video shows that seconds before being shot with a Taser, Mr. Beroid faced the Defendants with his empty hands folded at his waist—Mr. Beroid took a step *backward* as the Defendants entered the house. ROA.77 ¶ 19; Ex. C. "Common sense, and the law, tells us that a suspect is less of a threat when he is . . . moving away from the officer." *Poole v. City of Shreveport*, 13 F.4th 420, 425 (5th Cir. 2021). And Mr. Beroid alleged that he made no attempt to resist arrest or otherwise flee before the Defendants shot him with a Taser. ROA.79 ¶ 24. While Mr. Beroid did take a few steps further into the hallway of his parents' home after Defendant LaFleur grabbed at his shirt, *see* ROA.77 ¶ 19, that is precisely the sort of stunned response that this Court has recognized does *not* constitute resistance or an attempt to flee. *See, e.g.*, *Hanks v. Rogers*, 853 F.3d 738 (5th Cir. 2017) (individual who asked whether he was under arrest and took a step when confronted by police was not resisting or evading arrest justifying use of force); *Trammell v. Fruge*, 868 F.3d 332, 336 (5th Cir. 2017) (individual who pulled away from officer's grasp twice not deemed to be resisting arrest or trying to flee).

Accordingly, under this Court's precedents, Mr. Beroid's Amended Complaint plausibly alleged Fourth Amendment excessive force claims against each Defendant.

2. The Video Footage Did Not "Blatantly Contradict" Mr. Beroid's Well-Pleaded Allegations.

The court below did not question whether the Amended Complaint, standing alone, alleged *prima facie* Fourth Amendment claims against the Defendants. To the contrary, the court expressly acknowledged that Mr. Beroid's pleadings did so. *See* ROA.291. ("The 'well pleaded facts' of plaintiff's complaint as outlined might, when considering the nuances of his actions as he describes them, paint a picture that, if accepted as true (as we must when considering a motion to dismiss under Rule 12(b)(6)), might support a claim that the officers acted unreasonably or excessively and might, therefore, allow his claim to survive the motion."). The District Court nonetheless dismissed Mr. Beroid's Fourth Amendment claims because, in its view, "the video contradicts [Mr. Beroid's] allegations in aspects important to the claims of excessive force." ROA.291. The District Court's characterization of the video is wrong.

For one thing, the video footage belies the District Court's conclusion that there are so-called blatant contradictions between that footage and Mr. Beroid's Amended Complaint, particularly when that footage is construed in the light most favorably to Mr. Beroid (as is required at this stage of the case). The District Court first noted that while Mr. Beroid alleged that the Defendants "barged into the house," the video footage showed that the Defendants instead "follow[ed] him into the home after he … retreated into the home rather than follow their commands to exit."

ROA.291. But the video footage showed no such thing. Rather, the footage reflects that after Mr. Beroid heeded his mother's call and willingly came to the door, the Defendants entered the home and Defendant LaFleur attempted to physically grab Mr. Beroid, all the while declining to respond to Mr. Beroid's insistence that there was no warrant out for his arrest. ROA.77 ¶¶ 18–19; Ex. C.

The District Court next claimed that contrary to the allegations in the Amended Complaint, "the officers were not provoked," and the video instead "shows clearly that plaintiff was refusing to obey the commands of the defendants who were attempting to execute an arrest warrant and he was acting in a manner that could reasonably be construed by a reasonable officer on the scene as 'resisting an officer.'" ROA.291. This, too, is incorrect. As already detailed above, the video footage shows that Mr. Beroid responded to the Defendants by calmly insisting that he did not have a warrant and by taking a few steps backwards, ROA.77 ¶ 19—the precise conduct that this Court held in *Hanks* and *Trammell* does *not* constitute resisting arrest. *See supra* Part II.A.1.

And the District Court erroneously concluded that the video footage belied Mr. Beroid's allegations that he did not attempt to evade arrest, because, in the court's view, "review of the video would support a conclusion by a reasonable officer on the scene that his disappearance down a dark hall was an attempt to flee." ROA.292. Not only is it clear in the video footage that Mr. Beroid did not

"disappear" from the officer's view (let alone down a "dark hallway"), the video shows that Defendant LaFleur shot Mr. Beroid with a Taser before anyone could reasonably think that Mr. Beroid was attempting to escape. ROA.78 ¶¶ 20–21; Ex. C. The court below confirmed as much elsewhere in its decision, writing that neither Defendant Leblanc nor Defendant Senegal "could be found to have known that Lafleur was going to use the taser and neither had an opportunity, much less a reasonable one, to act." ROA.292. As the court observed, "[f]rom the video we see that Lafleur tased plaintiff as soon as he entered the hallway"—a point in time in which no one could reasonably think that Mr. Beroid, standing just feet away from his parents and an infant child, was attempting to flee. ROA.292.

Regardless, even if the above examples reflect "blatant contradictions" between the pleadings and the video footage—and Mr. Beroid vigorously disputes that they are—none of those so-called contradictions go to the core components of Mr. Beroid's Fourth Amendment claim. The key point here is that Mr. Beroid alleged, and the video footage does not blatantly contradict, that the Defendants shot him with a Taser without any warning whatsoever even though Mr. Beroid was not actively committing a crime, Defendants had no knowledge of the crime underlying the warrant they sought to execute, and Mr. Beroid posed zero risk to Defendants' safety. Thus, even if there were some contradictions between the Amended Complaint and the video footage as to peripheral aspects of the Defendants'

encounter with Mr. Beroid, the critical aspects of Mr. Beroid's Fourth Amendment allegations remain plausible. Accordingly, the District Court erred when it held that the video footage "dismantles the allegations of the complaint that might lend credence to a conclusion that the use of the taser was unreasonable." *See* ROA.292.

B. The District Court Further Erred When It Concluded Defendants Are Entitled to Qualified Immunity.

The Supreme Court has established a two-prong test for resolving qualified immunity defenses raised by government officials. *Saucier v. Katz*, 533 U.S. 194, 201 (2001) (as altered by *Pearson v. Callahan*, 555 U.S. 223 (2009)). First, the facts alleged or shown and viewed in the light most favorable to the plaintiff must be sufficient to make out a violation of a constitutional or federal statutory right. *Saucier*, 533 U.S. at 201; *see also Hale v. Townley*, 45 F.3d 914, 918 (5th Cir. 1995). Second, the right must be clearly established at the time of the government official's alleged misconduct. *Id*.

While it is Mr. Beroid's burden to rebut an assertion of qualified immunity, he is still afforded all the same favorable inferences as any non-moving party on a Rule 12(b)(6) motion. *Anderson v. Valdez*, 845 F.3d 580, 600 (5th Cir. 2016) ("even in the context of qualified immunity, 'the facts alleged' must be '[t]aken in the light most favorable to the party asserting the injury.'") (internal citations omitted). Put another way, at this stage of the case, Mr. Beroid must only plead, rather than prove, that a defendant violated his constitutional rights and that the violation was

objectively unreasonable in light of the law that was clearly established at the time of the actions complained of. *See id.*

The District Court's improper decision to credit its own characterization of the video footage over Mr. Beroid's well-pleaded allegations pervaded that analysis. Taking Mr. Beroid's well-pleaded facts (as supplemented by the video footage) as true, Mr. Beroid has done more than enough to satisfy both prongs of the *Saucier* analysis and therefore rebut Defendant's assertion of qualified immunity at the pleading stage.

1. Mr. Beroid Adequately Alleged a Constitutional Violation.

Even the District Court acknowledged that under the first prong of qualified immunity, plaintiff must only allege a constitutional violation. *Club Retro*, 568 F.3d 181, 194 (5th Cir. 2009); *see* ROA.293 ("[w]hen considering the qualified immunity defense [it] must consider whether the alleged facts, supplemented in this case by the video evidence, make out a violation of a constitutional right."). But because the District Court had already (incorrectly) concluded that there was no violation of a constitutional right, it did not separately engage with this analysis under its assessment of qualified immunity. Instead, it considered qualified immunity as though it had not made such a finding and moved on to the second prong.

For the same reasons that the District Court should have found that the Defendants violated Mr. Beroid's Fourth Amendment right, it likewise should have

found that this first prong is satisfied. *See supra* Section II.A. In short, and for the reasons explained above, Mr. Beroid adequately pleaded that Defendants' conduct was unreasonable and constituted excessive force. Indeed, the District Court said as much:

> The 'well pleaded facts' of plaintiff's complaint as outlined might, when considering the nuances of his actions as he describes them, paint a picture that, if accepted as true (as we must when considering a motion to dismiss under Rule 12(b)(6)), might support a claim that the officers acted unreasonably or excessively and might, therefore, allow his claim to survive the motion.

ROA.291.

2. It Is Clearly Established Law That Shooting an Individual With a Taser Who Poses No Threat to Officer Safety Without Warning Violates the Fourth Amendment.

Evaluated under the proper standard, Mr. Beroid's Amended Complaint also satisfied the second prong of the qualified immunity analysis—*i.e.*, that his Fourth Amendment right to be free from being shot by a Taser without any warning in the absence of any extenuating circumstances was clearly established at the time of his encounter with Defendants. *Saucier*, 533 U.S. at 201. The Fifth Circuit has explained that "[t]he central concept" of *Saucier*'s second prong "is that of 'fair warning': The law can be clearly established 'despite notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights.'" *Anderson v. Valdez*, 845 F.3d 580, 600 (5th Cir. 2016) (citing

Kinney v. Weaver, 367 F.3d 337, 350 (5th Cir. 2004)). To demonstrate the requisite fair warning, a plaintiff typically must identify a case or relevant body of case law in which, under similar circumstances, defendants were held to have violated the Constitution. *Bartlett*, 981 F.3d at 330.

Such a body of case law exists here. Indeed, this Court has repeatedly held that qualified immunity does not apply as a matter of law when the officer resorts to use of a Taser or other force in the first instance to enforce compliance and there is no indication of flight or danger. And that case law existed at the time of Defendants' violation of Mr. Beroid's Fourth Amendment rights, thereby confirming that Defendants' conduct, as alleged by Mr. Beroid, clearly violated the Constitution.

For example, in *Trammell v. Fruge*, this Court concluded that the defendant officers violated the Fourth Amendment when they struck and tackled plaintiff Trammel within seconds of requesting that he place his hands behind his back. 868 F.3d 332, 342 (5th Cir. 2017). The Court reached that conclusion even though defendant had not immediately complied with the officers' commands and had "pull[ed] his arm away" when the officers grabbed at him. *Id.* As the Court explained, given that "only three seconds elapsed between [the officer's] initial request that Trammel place his hands behind his back and when [the officers] tackled Trammel," *id.* at 342, "the quickness with which the officers resorted to tackling

Trammel to the ground militate[d] against a finding of reasonableness." *Id*. In fact, the defendants' conduct was so obviously unconstitutional that the officers there could be held to have violated clearly established law and were therefore not entitled to qualified immunity. *Id.*

So too here. As in *Trammell*, mere seconds passed between Defendants' demand to Mr. Beroid (an individual who did not pose any flight or safety risk) and shooting him with a Taser. ROA.77–79 ¶¶ 18–24. And, as in *Trammell*, to the extent Mr. Beroid could be viewed as resisting at all—and Mr. Beroid vehemently disputes that characterization—that "resistance" was limited to his initial refusal to comply with officers' commands and then pulling away when Defendant LaFleur grabbed at his shirt. ROA.77 ¶ 19, *Trammell*, 868 F.3d at 341-42. Just as the officers' disproportionate reaction in *Trammel* violated clearly established law, so too did the Defendants' conduct here.

This Court's decision in *Ramirez v. Martinez*, 716 F.3d 369 (5th Cir. 2013) is equally relevant. There, this Court considered whether a defendant was entitled to qualified immunity when he shot plaintiff Ramirez with a Taser while defendant and other officers executed an arrest warrant for another individual at Ramirez's place of business. After the officers arrived on the scene, Ramirez asked them why they were there. The interaction quickly turned contentious, with Ramirez and the defendant officer exchanging profanities and the Defendant officer ultimately

yelling at Ramirez to turn around and put his hands behind his back. *Id.* at 372. When Ramirez did not comply, defendant officer grabbed Ramirez's arm. *Id*. Ramirez pulled his arm away, and defendant officer then "immediately tased Ramirez in the chest." *Id.* Several other officers subsequently pulled Ramirez to the ground and handcuffed him, whereupon defendant officer shot Ramirez with a Taser again. *Id*. at 373.

The district court denied the defendant officer qualified immunity, and this Court affirmed. This Court first observed that defendant had made out a *prima facie* Fourth Amendment excessive force claim, as "a reasonable officer could not have concluded Ramirez posed an immediate threat to the safety of the officers by questioning their presence at his place of business," and that Ramirez "[p]ulling his arm out of Martinez's grasp, without more, is insufficient to find an immediate threat to the safety of the officers." *Id*. at 378. It also ruled that such conduct (as alleged by plaintiff) violated clearly established law: "Ramirez alleged he posed no threat to the officers and yet was tased twice, including once after he was handcuffed and subdued while lying face down on the ground, in violation of clearly established law." *Id.* at 379 (relying upon *Newman v. Guedry*, 703 F.3d 757 (5th Cir. 2012)).

Ramirez is on all fours with this case. As in *Ramirez*, the well-pleaded allegations in Mr. Beroid's Amended Complaint establish that he posed no threat to the officers. Not only did Mr. Beroid willingly come to the door when called by his

mother (who was holding a small child), it was apparent to Defendants that he did not possess a weapon and, just minutes before, he had interacted with Defendants in a non-violent way when Defendants responded to the domestic dispute. ROA.76–77 ¶¶ 14–18. And just as in *Ramirez*, the fact that Mr. Beroid disputed that a warrant was out for his arrest and took a step backward as Defendants entered his parents' home did not justify the Defendants' decision to, without any warning, shoot him with a Taser.

This Court's decision in *Hanks v. Rogers*, 853 F.3d 738 (5th Cir. 2017), further confirms that Defendants' use of excessive force here violated clearly established Fourth Amendment law. *Hanks* considered whether an officer was entitled to qualified immunity when he physically struck a plaintiff who did not immediately exit his vehicle during a traffic stop. After being pulled over by the police, the plaintiff repeatedly insisted he had done nothing wrong, continuing to do so even after the officer "adopted a more assertive tone." *Id.* at 742. When the plaintiff took a "small lateral step with his left foot," the officer "administered a blow to Hanks's upper back or neck" and forced his body onto the trunk of the vehicle. *Id*. at 743.

This Court concluded that the officers' actions constituted an "'obvious' instance of excessive force in light of the factors set forth in *Graham*." *Id.* at 749. As the Court explained, no reasonable officer confronting an individual who

"(1) was stopped for a minor traffic violation; (2) exited his car and has his hands displayed behind his back, thus presenting no immediate threat or flight risk; and (3) has displayed, at most, passive resistance, including asking whether he was under arrest—would escalate the situation via a physical takedown only seconds after ordering that individual to kneel." *Id.*

The same is true here. Just like the plaintiff in *Hanks*, to Defendants' knowledge, Mr. Beroid had not committed any serious crime (indeed, Defendants had no knowledge of the crime underlying the purported arrest warrant), Mr. Beroid was empty-handed and presented no immediate threat or flight risk, and Mr. Beroid "had displayed, at most, passive resistance," including insisting that no warrant was outstanding. ROA.77–78 ¶¶ 19–20. Yet the Defendants escalated the situation by immediately shooting Mr. Beroid with a Taser without any warning and within seconds of entering the home, ROA.78 ¶¶ 21–22—the exact sort of disproportionate response that *Hanks* held no reasonable officer would use.

Simply put, cases like *Trammell*, *Ramirez*, and *Hanks*,[9] put Defendants on notice that their conduct, as alleged in Mr. Beroid's Amended Complaint, was

[9] Mr. Beroid provides only a sampling of the clearly established case law on this point. *See also, e.g.*, *Goodson v. City of Corpus Christi*, 202 F.3d 730, 740 (5th Cir. 2000) (holding that defendant officers were not entitled to qualified immunity where defendants failed to inform plaintiff he was a suspect, failed to tell him he was under arrest, and grabbed him by the arm before he could comply with officer's demands causing him to pull his arm away in surprise, because plaintiff had "produced sufficient summary judgment evidence to suggest that he suffered a broken shoulder as

clearly proscribed by the Fourth Amendment's prohibition on excessive force. Accordingly, taking Mr. Beroid's well-pleaded allegations as true, Defendants were not entitled to qualified immunity at the pleading stage.

III. Because The District Court Erred in Dismissing Mr. Beroid's Federal Claims, Its Refusal to Exercise Supplemental Jurisdiction Over Mr. Beroid's State Law Claims Must Be Reversed.

The District Court declined to exercise supplemental jurisdiction over Mr. Beroid's remaining state law claims on the grounds that no federal claims remained in the case. ROA.295. But as detailed above, that threshold ruling is incorrect. *See supra* Section II. Accordingly, because the District Court's dismissal of Mr. Beroid's Section 1983 claim should be reversed, so too should the dismissal of his Louisiana state law claims.

CONCLUSION

For the foregoing reasons, this Court should reverse the District Court's decision, reinstate all of Mr. Beroid's claims, and remand for further proceedings consistent with this Court's Order.

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a result of being tackled by [defendant officers], who lacked reasonable suspicion to detain or frisk him and from whom he was not fleeing").

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of November 2022, I caused a copy of the foregoing Appellant's Opening Brief to be served by electronic means, through the Court's CM/ECF system, upon all counsel of record.

/s/ *Peter A. Sullivan*
Peter A. Sullivan

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this memorandum of law and fact contains 11,130 words, excluding the parts exempted by Fed. R. App. P. 27(a)(2)(B), and therefore complies with the length limitations set forth in Fed. R. App. P. 27(d)(2)(A).

I further certify that this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman style font, and therefore complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and (a)(6).

/s/ Peter A. Sullivan
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