No. 24-12787

In the

United States Court of Appeals

for the Eleventh Circuit

Keith Edwards, as Personal Representative of the Estate of Jerry Blasingame,

Plaintiff-Appellee,

v.

Officer J. Grubbs, et al.,

Defendant-Appellants.

On Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division.
No. 1:19-cv-02047 — Steve C. Jones, *Judge*

BRIEF OF *AMICI CURIAE* STATE OF GEORGIA AND 18 OTHER STATES IN SUPPORT OF APPELLANT GRUBBS'S PETITION FOR REHEARING EN BANC

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

I hereby certify that in addition to the persons identified in the Certificate of Interested Persons and Corporate Disclosure Statement filed by Defendant-Appellant Grubbs in his petition for rehearing en banc, CA11 Doc. 44 at C-1–C-2, the persons listed below have an interest in the outcome of this case:

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STATEMENT OF THE ISSUE

The panel denied qualified immunity to a police officer by relying on the "obvious clarity" method of identifying clearly established law. But the panel reached that conclusion only by analogizing to a previous Eleventh Circuit decision involving facts it thought somewhat "similar" to—but not materially indistinguishable from—those of this case. Did that approach to the "obvious clarity" exception invite doctrinal chaos by conflating—and watering down—two distinct approaches to identifying clearly established law?

SUMMARY OF ARGUMENT AND INTERESTS OF *AMICI*

The doctrine of qualified immunity exists in part to ensure "a proper balance between" the availability of money damages for certain constitutional violations and "the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties." *Ziglar v. Abbasi*, 582 U.S. 120, 150 (2017) (quotation omitted). At the heart of that crucial balancing act is the principle that an individual officer cannot be held liable unless his specific conduct was "clearly established" as unlawful when he engaged in it. *Id.* at 151–52. A plaintiff hoping to make that showing must ordinarily identify a binding precedent that the officer "could have read … beforehand and known that it proscribed their specific conduct." *Zorn v. Linton*, 146 S. Ct. 926, 930 (2026) (cleaned up).

However, this Court and others have recognized a "narrow exception" to that general approach, *Lee v. Ferraro*, 284 F.3d 1188, 1199 (11th Cir. 2002)—the "obvious clarity" doctrine. Under that alternative approach, individual liability may attach where the defendant officer engaged in "conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law." *See, e.g.*, *Gilmore v. Ga. Dep't of Corr.*, 144 F.4th 1246, 1258 (11th Cir. 2025) (en banc) (quotation omitted).

The obvious-clarity exception is necessarily a narrow one, and Defendant-Appellant Jon Grubbs ably explains why the panel clearly erred under its terms. *See* CA11 Doc. 44. The *Amici* States write to further explain a deeper error infecting the panel's decision. In short, by conflating two distinct methods for identifying clearly established law—and diluting both in the process—the panel created a new and dangerous doctrinal chimera: Call it "obvious-clarity-by-precedential-analogy."

The panel held that using a taser on a seemingly non-dangerous suspect fleeing on a hill violates "clearly established" constitutional law as a matter of "obvious clarity." *Edwards v. Grubbs*, 169 F.4th 1261, 1279 (11th Cir. 2026). However, it did not root that determination in the objective "egregious[ness]" of officer Grubbs's conduct "even in the total absence of case law." *Gilmore*, 144 F.4th at 1258 (quotation omitted). Instead, the panel reached its "obvious clarity" holding only by analogizing the facts of Grubbs's case to an earlier Eleventh Circuit case—in which an officer tased a suspect atop an eight-foot wall—that the panel thought involved "similar circumstances." *Edwards*, 169 F.4th at 1279 (citing *Bradley v. Benton*, 10 F.4th 1232, 1244 (11th Cir. 2021)). The fact that *Bradley* was decided *after* Grubbs's conduct occurred didn't matter to the panel. *Id.*

A gentle slope is not an eight-foot wall, so the analogy fails. *See id.* at 1290 (Newsom, J., dissenting); CA11 Doc. 44 at 16–23. But the panel's flawed doctrinal methodology is perhaps more concerning than its bottom-line error. For purposes of qualified immunity's clearly-established-law requirement, "obvious clarity" is not determined by analogy to prior cases involving purportedly "similar circumstances." *Edwards*, 169 F.4th at 1279. An officer's conduct is either plainly and undeniably unconstitutional on its face, or it isn't: His actions cannot *become* obviously unconstitutional *because of* an analogy to a merely "similar" case.

Indeed, the whole point of the obvious-clarity exception is that an officer's own conduct—rather than precedent—can sometimes be enough to put him on notice. Qualified immunity "focuses on the actual, on the specific, on the details of concrete cases," *Lassiter v. Ala. A&M Univ., Bd. of Trs.*, 28 F.3d 1146, 1150 (11th Cir. 1994) (en banc), precisely because officers "are not obligated to be creative or imaginative in drawing analogies from previously decided cases," *Coffin v. Brandau*, 642 F.3d 999, 1015 (11th Cir. 2011) (en banc) (cleaned up). But that is what would be required if "obvious clarity" can be shown by analogy to cases involving "similar circumstances," *Edwards*, 169 F.4th at 1279, rather than "indistinguishable" facts, *Gilmore*, 144 F.4th at 1258.

Left uncorrected, the panel's approach would have profoundly negative effects on *Amici* States, our officers, and public safety. States rely on qualified immunity to ensure that officers can make difficult decisions under fast-moving, uncertain circumstances. *See, e.g.*, *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982). As four Justices recently reiterated, "it is one thing to dissect and scrutinize an officer's actions with the 20/20 vision of hindsight, in the peace of a judge's chambers," but it "is quite another to make split-second judgments on the ground, in circumstances that are tense, uncertain, and rapidly evolving." *Barnes v. Felix*, 605 U.S. 73, 89–90 (2025) (Kavanaugh, J., concurring) (cleaned up).

Until now, the narrow "obvious clarity" exception reflected that reality. But under the panel's approach, an officer making a split-second use-of-force decision can no longer rely on (1) the fact that using force would not be blatantly unconstitutional and (2) precedent on materially indistinguishable facts. Instead, before making a high-stakes call in a high-stress environment, he must *also* account for (3) the whole universe of analogies to every conceivable "obvious clarity" fact pattern. After all, liability could attach if a court one day deems his conduct sufficiently "similar" to those of an officer in an "obvious" case—even one *postdating* his conduct. *Edwards*, 169 F.4th at 1279.

Qualified immunity certainly has its critics; some think a "correction of the doctrine can't come fast enough." *Stalley v. Cumbie*, 124 F.4th 1273, 1322 n.7 (11th Cir. 2024) (Jordan, J., dissenting). But this Court must follow binding precedent until the Supreme Court alters it—and just last month, that Court summarily reversed a qualified-immunity denial because the comparator case did not squarely govern the officer's specific conduct. *See Zorn*, 146 S. Ct. at 931. This Court should head off further attempts to execute the same flawed maneuver under the banner of "obvious clarity."

ARGUMENT

The panel denied qualified immunity based on an improper analytical framework that undermines the clearly-established-law requirement.

Under the obvious-clarity exception, a court analyzes whether "a general constitutional rule … appl[ies] with obvious clarity to the [officer's] specific conduct … even though the very action in question has not previously been held unlawful." *Edwards*, 169 F.4th at 1279 (quotation omitted). Here, Officer Grubbs tased Jerry Blasingame while Blasingame was fleeing down a vegetation-covered hill with a 30-to-40-degree incline. *Id.* This

caused Blasingame to fall down the hill and collide with the concrete base of a utility box. *Id.* at 1271.

To justify its denial of qualified immunity on these facts, the panel compared Grubbs's conduct to the officer's actions in an earlier case, *Bradley*, that the panel concluded was "similar." *Id.* at 1279. *Bradley* held that an officer used excessive force in obvious violation of the Fourth Amendment when he "tas[ed] a non-dangerous and unarmed fleeing suspect on an elevated surface … atop an eight-foot wall." *Id.* (citing *Bradley*, 10 F.4th at 1244). Here, the panel drew comparisons to the *Bradley* suspect's apparent degree of dangerousness, the seriousness of his suspected offense, whether the officer gave a warning before using force, and (most debatably) the angle of the hill and length of its decline. *See id.* But after offering these analogies, the panel backtracked, musing that the facts of *Bradley* need not be "identical" to those of Grubbs's case. *Id.* Instead, mere factual "similar[ity]" between the cases was enough because the panel concluded, "as did *Bradley*, that the obvious clarity principle carries the day." *Id.*

The panel's analytical approach is antithetical to qualified immunity. Its most dangerous defect is the implication that a plaintiff can lay claim to "obvious clarity" merely by articulating a

close-enough analogy to the facts of an obvious clarity decision, even one postdating the conduct under review. That is all wrong.

1. Because the panel strayed so far from them, some discussion of qualified immunity basics is necessary. The core "focus" of qualified immunity is "whether the officer had fair notice that her conduct was unlawful." *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (quotation omitted). Fair notice comes from "clearly established … constitutional rights." *Mullenix v. Luna*, 577 U.S. 7, 11–12 (2015). Clearly established law must be defined "with a high degree of specificity," *Zorn*, 146 S. Ct. at 930 (quotation omitted), and "specificity is especially important in the Fourth Amendment context," including excessive-force cases, *Mullenix*, 577 U.S. at 12. After all, judges (like this panel) often disagree, and courts "cannot realistically expect that reasonable police officers know more than reasonable judges about the law." *Barts v. Joyner*, 865 F.2d 1187, 1193 (11th Cir. 1989). Fair notice also requires the law to have been clearly established *before* the conduct in question. *See, e.g.*, *Gilmore*, 144 F.4th at 1263.

The principle of fair notice is vindicated through the limited ways in which law can be clearly established. Fair notice can—and most often must—arise from "case law with indistinguishable facts." *Id.* at 1258 (quotation omitted). But, as noted, "there can

be the rare 'obvious case,' where the unlawfulness of the officer's conduct is sufficiently clear even though existing precedent does not address similar circumstances." *District of Columbia v. Wesby*, 583 U.S. 48, 64 (2018).

Those two approaches are analytically distinct. The obvious-clarity exception is for when a "general constitutional rule" clearly applieś to the [officer's] specific conduct," *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (quotation omitted), *by virtue of the conduct itself*, not by precedential analogy. The whole point is that "no factually particularized, preexisting case law [is] necessary." *Vinyard v. Wilson*, 311 F.3d 1340, 1355 (2002). Once a court finds itself relying on cases "under similar circumstances," *Edwards*, 169 F.4th at 1279, it is no longer ascertaining obvious clarity but searching for a materially similar precedent, *see Zorn*, 146 S. Ct. at 930–31.

Those approaches must *remain* analytically distinct because expanding "obvious clarity" to the murky realm of judicial analogy undermines the notice principle discussed above—forcing officers to foresee "creative or imaginative … analogies [to] previously decided cases." *Coffin*, 642 F.3d at 1015 (cleaned up). That approach to obvious clarity cannot be right, and (until now) this Court has not adopted it. *See, e.g.*, *Cantu v. City of Dothan, Ala.*,

974 F.3d 1217, 1232 (11th Cir. 2020); *Perez v. Suszczynski*, 809 F.3d 1213, 1222 (11th Cir. 2016); *Oliver v. Fiorino*, 586 F.3d 898, 907 (11th Cir. 2009); *Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005). If the unconstitutionality of an officer's conduct is not facially obvious, it cannot acquire that status based on a precedent insufficiently analogous to satisfy the *usual* test.

Obvious clarity also cannot be established by a decision that postdates the officer's conduct. Even in the "obvious clarity" context, an officer cannot possibly have fair notice of a precedent that doesn't exist. In *Gilmore*, for example, this Court analyzed the state of case law "at the time of the conduct at issue," 144 F.4th at 1263, excluding from consideration precedents that would have been relevant but that postdated the officer's conduct, *compare id.* at 1254, *with id.* at 1263–64.

2. The panel violated all these principles. Despite purporting to conduct an "obvious clarity" analysis, it relied exclusively on analogies to *Bradley*'s (supposedly) "similar circumstances." *Edwards*, 169 F.4th at 1279. The panel never attempted to establish that Grubbs's conduct was obviously unconstitutional on its face—instead, it cited *Bradley* in nearly every sentence of its discussion. The logical implication is that the panel thought it *needed* the *Bradley* analogy to deem Grubbs's conduct obviously

unconstitutional—meaning its analysis is self-defeating for the reasons explained. Alternatively, the panel's extensive reliance on *Bradley* was utterly superfluous—meaning it denied qualified immunity without conducting *any* on-point analysis of clearly established law. Neither result is remotely tenable.

The panel was also wrong to shrug off the fact that *Bradley* was decided *after* Grubbs's challenged conduct. It reasoned that because *Bradley* held that conduct in 2015 was obviously unconstitutional, certain "similar" conduct in 2018 must be obviously unconstitutional, too. *See id.* That reasoning might matter to the merits, but it cannot matter to the clearly-established-law requirement—at least, not without gutting the fair-notice principle. Regardless, the panel's approach contradicts *Gilmore*. *See supra* at 10.

3. To be clear, precedent is not always irrelevant to analysis under the obvious-clarity exception. Precedent could inform the scope and clarity of the applicable "general constitutional rule." *Hope*, 536 U.S. at 741 (quotation omitted). *Gilmore* noted a body of precedent holding strip searches of prison visitors must be supported by reasonable suspicion. 144 F.4th at 1262–63. Applying that legal rule left the binary question whether the defendants *lacked* reasonable suspicion—an issue on which

factual analogies to "similar" cases would be needless at best and erroneous at worst.

Here, though, the panel relied on factual analogy alone. At most, *Bradley* suggests a general rule that officers cannot tase a suspect "on an elevated surface," *Edwards*, 169 F.4th at 1279—an inherently fact-bound proposition. And any constitutional rule that turns on the presence of an "elevated surface" operates at far too high a level of generality to provide notice without resort to "creative or imaginative … analogies." *See Coffin*, 642 F.3d at 1015. How elevated must the surface be? Would a five-foot wall suffice? And does the type of surface matter? Does a ramp or hill qualify, and if so, at what angle? None of this qualifies as *obvious*.

In short, the panel's reasoning could become a blueprint for circumventing qualified immunity through a watered-down version of obvious clarity. Such cases, although "rare," *Wesby*, 583 U.S. at 64; *Coffin*, 642 F.3d at 1015, are not nonexistent, including in the excessive-force context, *Cantu*, 974 F.3d at 1233–34 (collecting cases). All those decisions, and any future ones, may now be fair game for denying qualified immunity based on loose factual analogies—the opposite of a rare *exception* to the baseline rule of clearly established law. Thus, even if Grubbs's conduct *were* obviously unconstitutional, the methodology the panel used

to reach that conclusion would remain fatally flawed.* This Court should correct its errors before they take hold and undermine the fair-notice principle and public safety.

CONCLUSION

For the reasons set out above, this Court should grant the petition for rehearing en banc.

Respectfully submitted.

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* But Grubbs's conduct was *not* obviously unconstitutional—and the panel's herculean efforts to show otherwise only prove the point. To illustrate: The opinion includes a photograph with a superimposed diagram that does not appear at the record citation. *See Edwards*, 169 F.4th at 1272 (citing Doc. 211-31 at 9). The panel also relied on photographs that do not reflect Grubbs's perspective. And it converted those photographs—apparently on its own and using "generative artificial intelligence"—into an "illustrative diagram" of the hill's "decline" with the X axis at the top. *Id.* at 1273 & n.2. In short, the panel started with a picture of something Grubbs did not see, replaced reality with a stylized model, and oriented its diagram to create the visual effect of falling. All to render "obvious" everything that *wasn't* obvious from the officer's perspective.

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 29(b)(4) of the Federal Rules of Appellate Procedure because it contains 2,571 words as counted by the word-processing system used to prepare the document.

/s/ *John Henry Thompson*
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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2026, I served this brief by electronically filing it with this Court's ECF system, which constitutes service on all attorneys who have appeared in this case and are registered to use the ECF system.

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