

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 11 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANNETTE MATTIA, in her individual capacity and on behalf of the estate of Raymond Mattia; FLOYD MATTIA, in his individual capacity and on behalf of the estate of Raymond Mattia; DELORES HEREDRIA, in her individual capacity and on behalf of the estate of Raymond Mattia; ARIEL MATTIA, in her individual capacity and on behalf of the estate of Raymond Mattia; RAYMOND MATTIA, Jr., in his individual capacity and on behalf of the estate of Raymond Mattia; ESTATE OF RAYMOND MATTIA; MITCHELL MATTIA, in his individual capacity and on behalf of the estate of Raymond Mattia; FRED MATTIA, in his individual capacity and on behalf of the estate of Raymond Mattia,

Plaintiffs - Appellees,

v.

SCOTT WHITEHOUSE; DAN SIFUENTES; IVAN TORRALVA,

Defendants - Appellants,

UNITED STATES OF AMERICA,

No. 25-6118

D.C. No.

4:24-cv-00252-RM

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

UNKNOWN PARTIES, Doe Border Patrol
Agents 1- 30, Individually and in their
official capacities, inclusive,

Defendants.

Appeal from the United States District Court
for the District of Arizona
Rosemary Márquez, District Judge, Presiding

Argued and Submitted August 12, 2026
San Francisco, California

Before: LEE, MENDOZA, JR., and DE ALBA, Circuit Judges;
Dissent by Judge LEE.

Customs and Border Patrol Agents Scott Whitehouse, Dan Sifuentes, and Ivan Torralva (collectively “CBP Agents”) appeal the district court’s denial of their motion to dismiss. They assert qualified immunity and contend that the district court erroneously extended a remedy under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). We dismiss the appeal for lack of jurisdiction.

We have jurisdiction to hear interlocutory appeals of pre-trial denials of qualified immunity under 8 U.S.C. § 1291 and the collateral orders doctrine. *Plumhoff v. Rickard*, 572 U.S. 765, 772 (2014); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545–46 (1949); *Pettibone v. Russell*, 59 F.4th 449, 452 (9th Cir. 2023). But our jurisdiction is “circumscribed” and we may only consider a defendant’s “purely legal contentions.” *Est. of Anderson v. Marsh*, 985 F.3d 726,

730–31 (9th Cir. 2021) (citation modified); *see also Johnson v. Jones*, 515 U.S. 304, 319–20 (1995) (“[W]e hold that a defendant, entitled to invoke a qualified immunity defense, may not appeal a district court’s summary judgment order insofar as that order determines whether or not the pretrial record sets forth a ‘genuine’ issue of fact for trial.”). Accordingly, we cannot consider interlocutory appeals that turn solely on factual disputes. *Marsh*, 985 F.3d at 731–32. On interlocutory appeal, we may consider appeals relating to the availability of a *Bivens* claim only when presented with a jurisdictionally valid challenge to a denial of qualified immunity. *Garraway v. Ciufo*, 113 F.4th 1210, 1214 (9th Cir. 2024); *Pettibone*, 59 F.4th at 453; *see also Wilkie v. Robbins*, 551 U.S. 537, 549 n.4 (2007).

The CBP Agents’ challenge to the district court’s denial of qualified immunity rests on their argument that body camera footage of the incident—which they assert is incorporated by reference into Plaintiffs’ complaint—shows that they acted reasonably in using deadly force. They argue that the body camera footage disproves Plaintiffs’ allegations and dispute the district court’s conclusion that the footage, even if considered, did not blatantly contradict the allegations in the complaint. *See Scott v. Harris*, 550 U.S. 372, 380 (2007) (“When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the

facts for purposes of ruling on a motion for summary judgment.”). In other words, their appeal disputes the factual veracity of Plaintiffs’ allegations rather than whether the allegations establish the CBP Agents’ entitlement to qualified immunity as a matter of law. *Marsh*, 985 F.3d at 731 (“Our interlocutory review jurisdiction is limited to resolving a defendant’s purely legal contention that his or her conduct did not violate the Constitution and, in any event, did not violate clearly established law.” (citation modified)). Their appeal thus turns on a dispute of fact rather than a dispute of law.

We lack jurisdiction to consider such factual challenges on interlocutory appeal. *See id.* at 730–34; *George v. Morris*, 736 F.3d 829, 836 (9th Cir. 2013) (“[W]e are confined to the question of whether the defendants would be entitled to qualified immunity as a matter of law, assuming all factual disputes are resolved, and all reasonable inferences are drawn, in plaintiff’s favor.” (citation modified)); *cf. Ashcroft v. Iqbal*, 556 U.S. 662, 674–75 (2009); *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985). And because we lack jurisdiction over the CBP Agents’ qualified immunity arguments, we do not have jurisdiction to consider their *Bivens* arguments. *Garraway*, 113 F.4th at 1222.

APPEAL DISMISSED FOR LACK OF JURISDICTION.

SEP 11 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS*Mattia v. Whitehouse*, Case No. 25-6118

LEE, Circuit Judge, dissenting:

I believe we have jurisdiction over this appeal because the parties are ultimately disputing the legal significance of facts, not the facts themselves, in this tragic case. *Williams v. City of Sparks*, 112 F.4th 635, 642 (9th Cir. 2024) (allowing interlocutory appeal because such a dispute is an “issue of law”). And because we have jurisdiction, I would address and dismiss the plaintiffs’ *Bivens* claim.

The crux of the qualified immunity question here is whether the agents’ belief that Raymond Mattia posed an immediate threat was reasonable. The complaint alleges that Mattia removed a cellphone from his pocket, which prompted agents to fire the deadly shots. The agents contend that their use of force was reasonable because they perceived the cellphone to be a firearm. In turn, the plaintiffs respond that the use of deadly force was unreasonable because the object that Mattia removed from his pocket was merely a cellphone. Such disputes over the reasonableness are issues of law that can be appealed immediately. *See Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 707 (9th Cir. 2010) (“the reasonableness of defendants’ actions[] is not a question of fact—it’s a question of law.”).

Admittedly, the qualified immunity question is a close call. But we need not wade into the murky waters of qualified immunity because the *Bivens* claim fails. *See Garraway v. Ciufu*, 113 F.4th 1210, 1216 (9th Cir. 2024) (permitting courts the

“analytical choice” to consider a *Bivens* claim without reaching the question of qualified immunity when both are on appeal).

The Supreme Court has recognized such remedies in only three contexts and has warned that expanding *Bivens* is a “disfavored judicial activity.” Courts thus must ask whether a plaintiff’s claim arises in a “new context”—that is, whether it differs “in a meaningful way” from those three recognized contexts. *Ziglar v. Abbasi*, 582 U.S. 120, 139–40 (2017); *Egbert v. Boule*, 596 U.S. 482, 492 (2022). If the claim presents a new context, the court cannot extend *Bivens* if there is “any reason to think that Congress might be better equipped to create a damages remedy.” *Egbert*, 596 U.S. at 492.

The plaintiffs’ *Bivens* claim arises in a new context, and special factors counsel against extending it. This context is “new”—the Supreme Court held in *Egbert* that an incident involving a CBP agent involved a “glaringly obvious” new context for purposes of *Bivens*. *See Egbert*, 496 at 492. *See also Hernandez v. Mesa*, 589 U.S. 93 (2020) (no Fourth Amendment *Bivens* claim against CBP agent who shot boy at the border).

The district court erred when it determined it was not a new context because, similarly to *Bivens*, this was a Fourth Amendment claim and the agents were carrying out general investigative activities. The Supreme Court, however, rejected such reasoning in *Hernandez* and *Egbert*. *See id.* (“A claim may arise in a new context

even if it is based on the same constitutional provision”); *Egbert*, 596 U.S. at 495-96 (even “almost parallel circumstances” to *Bivens* are “new context”).

There are also several special factors that counsel against extending *Bivens*. The existence of alternative remedies provided by the CBP weigh against extension. *See id.* at 497 (CBP’s grievance procedures “independently foreclose[d] a *Bivens* action”). The Court in *Egbert* also emphasized that “the Executive Branch already had investigated alleged misconduct by the defendant Border Patrol agent,” which counseled against extension. *Egbert*, 596 U.S. at 497; *see Hernandez*, 589 U.S. at 104–06. Here, the U.S. Attorney investigated the agents’ use of force. Further, the Court has cautioned against extending *Bivens* into any context that touches on national security, including border enforcement. *Hernandez*, 589 U.S. at 108-09. Finally, we risk interfering with the Executive Branch’s collaboration with Indian tribes if we hear this claim. *See Ziglar*, 582 U.S. at 122.

Given that the Court has made clear that we must inquire “whether there is *any* rational reason (even one) to think that Congress is better suited to ‘weigh the costs and benefits of allowing a damages action to proceed,’” these factors counsel against extending a *Bivens* remedy. *Egbert*, 596 U.S. at 496 (quoting *Ziglar*, 582 U.S. at 137) (emphasis in original).

I respectfully dissent.