No. 20-951

In the

Supreme Court of the United States

MARY STEWART, AS ADMINISTRATOR OF THE ESTATE OF LUKE O. STEWART, SR., DECEASED,

Petitioner,

v.

CITY OF EUCLID, OHIO, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

This Petition raises the following question that was correctly decided below:

Whether the Sixth Circuit acted in accord with settled law in *Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 406 (1997) and *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) that provide when a plaintiff claims the municipality had not directly inflicted an injury – like here – but nonetheless had caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employees.

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I. STATEMENT OF THE CASE

A. Introduction

This case arises from Luke Stewart's prolonged reckless vehicular flight during which Officer Matthew Rhodes, who was fully uniformed, was trapped inside the suspect's vehicle speeding through a residential area near a school. Officer Rhodes struggled to bring Stewart under control while the suspect thwarted his efforts at every turn and was determined to keep driving. Officer Rhodes used at least four lesser applications of force to bring the situation under control before resorting to deadly force. The suspect was dangerous, defiant, and acting in a startlingly erratic manner in which a reasonable officer would use force to protect himself and the community. The exact reason for Stewart's dangerously bizarre and erratic behavior cannot be known, but his blood alcohol level was over three times the legal limit, he had a high level of cannabinoids in his system, and that he tested positive for cocaine and Oxycodone.

The district court held as a matter of law Officer Rhodes used constitutionally proper force throughout this chaotic event. See District Court Op. at Pet. App. 35a. While the Sixth Circuit found a genuine issue of material fact on the force issue, it concluded that Officer Rhodes did not violate clearly established law and affirmed summary judgment. The Sixth Circuit also affirmed summary judgment to the City of Euclid as to the failure-to-train claim. Petitioner theorizes this order effectively granted qualified immunity to the City. This is incorrect.

This Court has long held that a municipality cannot be held liable under § 1983 on a respondeat superior theory. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978). This Court has expressly held that when a municipality's alleged responsibility for a constitutional violation stems from an *employee's* unconstitutional act, the city's failure to prevent the harm must be shown to be deliberate under "rigorous requirements of culpability and causation." *Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 415 (1997); *City of Canton v. Harris*, 489 U.S. 378, 388. The natural result is the violated right in a deliberate-indifference/failure to train case must be clearly established because a municipality cannot be deliberately indifferent to a constitutional duty unless that duty is clear. The Sixth Circuit merely followed established law under *Brown* and *Harris*.

This case involves a narrow failure to train claim against a municipality in which the Sixth Circuit concluded there is no established law that required that officers be trained regarding use of deadly force while trapped inside a moving vehicle and the City could not be deemed deliberately indifferent to a training need within the meaning of *City of Canton v. Harris*, 489 U.S. 378, 389 (1989). The Sixth Circuit simply found that Petitioner could not establish the demanding requirements of causation for a *Monell* claim and refused to impose respondeat superior liability. Petitioner's general position that qualified immunity does not apply to municipalities, is well established law in this Court and every circuit. Neither the district court, the Defendants/Respondents, nor the Sixth Circuit argued contrary to this established law. The Sixth Circuit applied the rigorous standards of culpability and causation to ensure that a municipal employee is not

held liable solely for the actions of its employees under *Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 406 (1997) and *City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

To inflame, Petitioner repeatedly focuses on excerpts of material used in one in-service training session that contained a distasteful attempt at humor. But, as the Sixth Circuit held, despite a "tasteless" element to training, it is "[o]nly where a municipality's failure to train its employees in a relevant respect evidences a deliberate indifference to the rights of its inhabitants can such a shortcoming be properly thought of as a city policy or custom that is actionable under § 1983." *Harris*, 489 U.S. 378, 389 (1989) (internal quotation marks omitted).

Petitioner claims a "well-developed circuit split." Yet, Petitioner's cases do not meaningfully address the issues raised here and do not establish a "well-developed" split. To the extent that there is a conflict at all, it is inconsequential and undermined by the well-established application of deliberate indifference jurisprudence. And, this Court has very recently denied certiorari when litigants raised similar issues in *Contreras* and *Arrington-Bey*. See e.g.s: *Contreras on Behalf of A. L. v. Dona Ana Cty. Bd. of Cty. Commissioners*, No. 20-811, 2021 WL 666438, at *1 (U.S. Feb. 22, 2021)(denying certiorari); *Arrington-Bey v. City of Bedford Heights, Ohio*, 138 S. Ct. 738 (U.S. Jan. 16, 2018)(denying certiorari).

This Court should deny certiorari.

B. Statement of the Facts

The Court of Appeals for the Sixth Circuit adequately stated the pertinent background facts. See Sixth Cir. Op. at Pet. App. 2a-6a. For this Court's convenience, the Respondents provide the following.

1. Background regarding Officer Rhodes

Officer Rhodes was appointed to the Euclid Police Department in August 2016. Officer Rhodes had worked as a police officer since 2011. Before the incident, Officer Rhodes received numerous hours of training and completed Euclid's use of force and firearms safety test. Officer Rhodes had no prior use of deadly force incidents and had no use of force violations.

2. Background regarding City of Euclid

Euclid has had in place effective policies and procedures that protect constitutional rights and provide appropriate supervision, training and discipline of police officers. Specifically, the Department's use of force and firearms policies provide clear and proper regulations relating to the appropriate degree of force to effect lawful objectives.

Use of force by a police officer results in the officer submitting a use of force report to be reviewed by supervisors. The use of force policy also establishes a shooting investigation team which is tasked with determining whether an officer's discharge of a firearm complied with departmental policies and procedures.

The policies also provide for police officer training. The training establishes in-service training as well as outsourced training for current or future assignments. This includes basic training, recertification classes, career development courses, legal updates and law enforcement seminars.

The policies also establish appropriate procedures for supervision, discipline and investigation of citizen complaints. Citizen complaints are fully investigated and a final determination is made as to whether a departmental policy was violated. Appropriate discipline is meted to a police officer in accordance with the departmental policy and the collective bargaining agreement.

3. Incident involving Luke Stewart

On March 13, 2017 at around 6:51 a.m., a concerned citizen called the Euclid Police dispatch to report a suspicious black Honda parked on South Lakeshore Boulevard in Euclid. The citizen informed the dispatcher that the Honda had been parked and idling for 20 minutes. Officers Rhodes and Catalani responded to the dispatch.

Both Officers were wearing their standard police department uniforms that rendered them clearly identifiable as police officers, and they were driving marked police cruisers.

Officer Catalani arrived on scene first. He parked his cruiser behind the Honda, which had its headlights on, and he turned on his cruiser's take-down lights and spot light and directed them at the Honda. Officer Catalani did not activate his overhead red and blue lights, initially because

he did not know if the car was occupied, and later due to indications that Stewart may be intoxicated and passed out which could lead to a volatile situation if he was startled awake in an uncontained vehicle.

Officer Catalani exited his cruiser and approached the Honda's driver side window. He shined his flashlight in the vehicle and saw Stewart in the driver's seat apparently passed out. Officer Catalani also saw inside the Honda a key in the ignition, a silver digital scale with a powder residue, a half burnt marijuana blunt and a screw top cap from an alcoholic beverage. Furthermore, Stewart did not match the description of the 60-year-old registered owner of the Honda and the registered owner had an outstanding warrant. The flashlight was not waking Stewart so Officer Catalani decided to wait for Officer Rhodes before attempting further contact with Stewart.

Believing that Stewart was passed out and intoxicated, Officer Catalani radioed Officer Rhodes stating "we are going to end up pulling this guy out of the car." Officer Catalani explained pulling him out of the car meant having Stewart exit the vehicle. This was necessary due to Officer Catalani's observations and suspicion that Stewart was intoxicated and in possession of illegal drugs.

Officer Rhodes arrived and Officer Catalani informed him of what he observed inside the Honda. Officer Rhodes pulled his cruiser in front of the Honda to prevent a potentially impaired driver from fleeing upon being awakened. Officer Rhodes turned on his take-down lights and exited the cruiser. As Officer Rhodes approached the passenger side of the Honda, Officer Catalani knocked on the driver side window. Stewart woke up and looked at

Officer Catalani. Officer Catalani waved at Stewart and Stewart waved back while starting to sit forward. Stewart then immediately started the Honda and began to reach for the gear shift.

Officer Catalani then opened the driver side door while Stewart was attempting to grab the gear shift. Officer Catalani yelled "no" and "stop" multiple times. Officer Catalani pulled Stewart toward him while Stewart was trying to get the car into gear. When Stewart started the Honda, Officer Rhodes opened the passenger side door and heard Stewart yell "police." Officer Rhodes leaned into the vehicle while pushing Stewart toward Officer Catalani. As he pushed, Officer Rhodes went forward into the Honda and was kneeling on the passenger seat with his legs protruding out the passenger door.

Despite the Officers' attempt to gain compliance, Stewart put the Honda in gear. Stewart hit both cruisers and maneuvered the Honda so that it was travelling westbound on South Lakeshore Boulevard. Officer Catalani was still inside the open driver side door and was running laterally with the vehicle as it was gaining speed. Officer Catalani saw an SUV traveling toward the Honda. Concerned that the SUV would strike him or the open driver side door causing him to be crushed, Officer Catalani stopped running alongside the Honda and disengaged his attempt to stop Stewart's flight. Stewart sped away with Officer Rhodes trapped inside the vehicle.

Inside the Honda, Officer Rhodes pulled his legs into the car because he was fearful that the open passenger door would hit his cruiser and slam shut on his legs. Officer Rhodes tried to place the car into park at several points to

no avail. When Officer Rhodes would get the Honda into neutral, he would reach for the keys in an attempt to shut off the engine but as he did so, Stewart would then reach for the gear shift and place the Honda back into drive. This exchange happened multiple times during the incident.

Unable to get the car out of gear or turn it off, Officer Rhodes attempted to gain compliance by striking Stewart with his fist, but Stewart continued to drive with Officer Rhodes trapped in the car. Officer Rhodes then used his taser in an attempt to gain Stewart's compliance. The taser did not have the full effect, and Stewart continued driving. At the intersection of South Lakeshore and East 222nd, the Honda stopped and Officer Rhodes was able to get the car into neutral and the engine turned off. Officer Catalani had been running and caught up to the stopped vehicle. However, before Officer Catalani could get to the car, Stewart was able to start the engine and accelerated down East 222nd.

Stewart was accelerating and driving erratically down East 222nd, including driving up on a curb and around a telephone pole. Officer Rhodes saw telephone poles flying by. Stewart accelerated and drove over another curb while pushing and fighting with Officer Rhodes. At this time, Officer Rhodes believed that Stewart posed a serious risk of harm or death if allowed to continue.

Notably, this incident was occurring close to a school and at a time when children would be pedestrians. Having exhausted other means of ending the threat, Officer Rhodes fired his gun at Stewart. Stewart swung at Officer Rhodes but ultimately slumped forward and stopped resisting. An EMS crew responded and provided

emergency medical services. However, Stewart died from the gunshot wounds.

Subsequently, the Ohio Bureau of Criminal Investigation ("BCI") fully investigated the incident and confirmed the aforementioned events. The investigation also determined that, at the time of the incident, Stewart had a blood alcohol level over three times the legal limit, that he had a high level of cannabinoids in his system, and that he tested positive for cocaine and Oxycodone.

II. REASONS FOR DENYING THIS PETITION

A. Petitioner has not articulated a "compelling" reason for this Court's review.

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. This case involves a narrow failure to train claim against a municipality in which the Sixth Circuit concluded there is no established law that required that officers be trained regarding use of deadly force while trapped inside a moving vehicle and the City could not be deemed deliberately indifferent to a training need within the meaning of *City of Canton v. Harris*, 489 U.S. 378, 389 (1989).

The present case did not involve a direct municipal act by the City, but rather the Petitioner is trying to impose liability on the City for the acts of its employees. See Sixth Cir. Op. at Pet. App. 17a (explaining the difference between types of *Monell* claims when an injury arises directly from a municipal act, and those that arise from an *employee's* unconstitutional act). The Sixth Circuit properly found that a litigant cannot sue a city for training material

that has "tasteless elements," despite the Petitioner's disproportionate focus on one document used during one in-service training session. See Sixth Cir. Op. at Pet. App. 16a. Rather, a municipality can only be held liable for the constitutional violations of its employees when the municipality's custom or policy led to the violation. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694-95 (1978).

A municipality cannot be held liable under § 1983 on a respondeat superior theory. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978). This Court has expressly held that when a municipality's alleged responsibility for a constitutional violation stems from an *employee's* unconstitutional act, the city's failure to prevent the harm must be shown to be deliberate under "rigorous requirements of culpability and causation." *Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 415 (1997); *City of Canton v. Harris*, 489 U.S. 378, 388. The natural result is that the violated right in deliberate-indifference/failure to train cases thus must be clearly established because a municipality cannot be deliberately indifferent to a constitutional duty unless that duty is clear. The Sixth Circuit merely followed established law.

The circuits that have touched on this issue in a meaningful way routinely observe – and have done so for decades – that if there is not some clear notice to the city of a constitutional violation that a failure to train theory would simply impose impermissible respondeat superior liability on a city. See e.g.s, *Febus-Rodriguez v. Betancourt-Lebron*, 14 F.3d 87, 94 n.10 (1st Cir. 1994); *Townes v. City of New York*, 176 F.3d 138, 143–44 (2d Cir. 1999); *Hagans v. Franklin Cty. Sheriff's Office*, 695 F.3d

505, 511 (6th Cir. 2012); *Robles v. City of Fort Wayne*, 113 F.3d 732, 735 (7th Cir. 1997); *Young v. City of Augusta*, 59 F.3d 1160, 1172 (11th Cir. 1995).

1. The Sixth Circuit's opinion is consistent with Supreme Court precedent.

Petitioner suggests that the Sixth Circuit's decision is in conflict with the established law that qualified immunity does not apply to a municipality. The Sixth Circuit did not hold that a municipality could raise qualified immunity as a defense to a *Monell* claim. This Court and all circuits have long held that qualified immunity is not available to municipalities. See, e.g., *Leatherman v. Tarrant Co. Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 166 (1993) ("Municipalities do not enjoy immunity from suit—either absolute or qualified—under § 1983."). No legitimate controversy exists.

The Sixth Circuit's decision is consistent with the Court's decision *City of Canton v. Harris*, supra. The *Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 406 (1997) case reaffirms *Canton's* requirement that a municipality's deliberate indifference must in fact be deliberate. This Court held in *Brown* where a plaintiff claims that the municipality has not directly inflicted an injury – like here – but nonetheless has caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee. *Id.* In a deliberate-indifference case, the claimant must show not only that an employee's act caused a constitutional tort, but also that the city's failure to train its employees caused the employee's violation and that the city culpably declined

to train its "employees to handle recurring situations presenting an obvious potential for such a violation." *Id.* at 409; see *Szabla*, 486 F.3d at 393.

"[O]bvious potential for such a violation" has two elements: It must be obvious that the failure to train will lead to certain conduct, and it must be obvious (i.e., clearly established) that the conduct will violate constitutional rights. As Judge Colloton pointed out in his opinion for the en banc Eighth Circuit in *Szabla*, requiring that the right be clearly established does not give qualified immunity to municipalities; it simply follows *City of Canton's* and *Brown's* demand that deliberate indifference in fact be deliberate. *Szabla*, 486 F.3d at 394.

The Sixth Circuit simply relied on this Court's *Brown* and *City of Canton* precedent to conclude that a "municipality cannot deliberately shirk a constitutional duty unless that duty is clear." (Sixth Cir. Op. at Pet. App. 16a-17a.) Here, the Sixth Circuit determined that Petitioner cannot sue the City of Euclid for a "distasteful" training program. But, a municipality may be held liable for the constitutional violations of its employees when the municipality's custom or policy led to the violation. *Monell*, 436 U.S. at 694-95. But "[o]nly where a municipality's failure to train its employees in a relevant respect evidences a deliberate indifference to the rights of its inhabitants can such a shortcoming be properly thought of as a city policy or custom that is actionable under § 1983." *City of Canton v. Harris*, 489 U.S. 378, 389 (1989). (Sixth Cir. Op. at Pet. App. 16a-17a.) No established law required that officers be specifically trained regarding use of deadly force while trapped inside a moving vehicle and the City could not be deemed deliberately indifferent

to a training need within the meaning of *City of Canton v. Harris*.

The Petitioner argues that there is a categorical rule that has been established by the present case. But, that is not correct and, for instance, obscures the distinction between *Monell* cases that "present no difficult questions of fault and those that do." *Brown*, 520 U.S. 397, 406 (1997) (Examples of those are *Pembaur* where there decision of the county prosecutor; *Owen v. City of Indep.*, 445 U.S. 622, 629, 638 (1980), where there was formal decision by a legislative body (discharged an employee without a hearing). Because fault and causation were obvious in these types of cases, "proof that the municipality's decision was unconstitutional would suffice to establish that the municipality itself was liable for the plaintiff's constitutional injury." *Brown*, 520 U.S. 397, 406 (1997).

Moreover, municipalities are not vicariously liable in § 1983 actions merely because they employ someone who has committed a constitutional violation. *Monell*, 436 U.S. at 694. They must pay for violations only if the injury is caused by a municipal custom or policy, or if the city's failure to train employees amounts to deliberate indifference to constitutional rights. See *City of Canton*, 489 U.S. at 388. This is well established law. The City could not be deliberately indifferent in this case because a constitutional duty was not clear.

Petitioner asserts that qualified immunity is not a defense to a *Monell* claim, and deliberate indifference for failure to train is a *Monell* claim. Therefore, the Sixth Circuit erred. But, the Sixth Circuit did not apply qualified immunity to the City.

> Where the municipality has not directly inflicted an injury, however, "rigorous standards of culpability and causation must be applied," [*Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 405], and a showing of deliberate indifference is required. The absence of clearly established constitutional rights-what Justice O'Connor called "clear constitutional guideposts," [*City of Canton v. Harris*, 489 U.S. 378, 397 (1989)] – undermines the assertion that a municipality deliberately ignored an obvious need for additional safeguards to augment its facially constitutional policy. **This is not an application of qualified immunity for liability flowing from an unconstitutional policy. Rather, the lack of clarity in the law precludes a finding that the municipality had an unconstitutional policy at all, because its policymakers cannot properly be said to have exhibited a policy of deliberate indifference to constitutional rights that were not clearly established.**

Szabla v. City of Brooklyn Park, Minnesota, 486 F.3d 385, 394 (8th Cir. 2007), emphasis added.

The Sixth Circuit's opinion is consistent with this Court's jurisprudence. The Sixth Circuit applied the deliberate indifference standard in this particular context and acted in accord with the established law of *Brown* and *Harris*.

2. There is no substantial conflict.

The patchwork of cases that Petitioner collects endeavors to create the impression of a "well-developed circuit split." Yet, Petitioner's cases do not meaningfully address the issues raised here and do not establish or even expressly acknowledge a purported "well-developed" split.

To the extent that there is a conflict at all, it is inconsequential and undermined by the well-established application of deliberate indifference jurisprudence that provides, "[W]ithout some form of notice to the city, and the opportunity to conform to constitutional dictates both what it does and what it chooses not to do, the failure to train theory of liability could completely engulf *Monell*, imposing liability without regard to fault." *City of Canton*, 489 U.S. at 395 (O'Connor, J., concurring in part and dissenting in part)). The violated right in a deliberate-indifference case naturally must be clearly established because a municipality cannot deliberately shirk a constitutional duty unless that duty is clear.

Further, this Court has very recently denied certiorari by litigants raising similar issues in *Contreras* and *Arrington-Bey*. See e.g.s: *Contreras on Behalf of A. L. v. Dona Ana Cty. Bd. of Cty. Commissioners*, No. 20-811, 2021 WL 666438, at *1 (U.S. Feb. 22, 2021) (denying certiorari); *Arrington-Bey v. City of Bedford Heights, Ohio*, 138 S. Ct. 738 (U.S. Jan. 16, 2018)(denying certiorari).

The Petitioner is incorrect that there is a per se rule or categorical rule that prohibits municipal liability in all

cases where clearly established law does not exist. Rather, the lack of clarity in the law in some instances will preclude a finding that the municipality had an unconstitutional policy, because a city could not have a policy of deliberate indifference to constitutional rights that were not clearly established. See e.g., Sixth Cir. Op. at Pet.'s Apx. 17(a), citing *Arrington-Bey v. City of Bedford Heights, Ohio*, 858 F.3d 988, 994 (6th Cir. 2017)(also explaining differences between entity claims). Petitioner's position of a conflict is undermined by the general requirements of *City of Canton v. Harris,* supra.

Petitioner relies on *Quintana v. Santa Fe Cty. Bd. of Commissioners*, 973 F.3d 1022 (10th Cir. 2020) that is distinguishable and does not address whether a city was deliberately indifferent to use of force training. In fact, the court there found that Santa Fe County may incur liability based on a custom reflecting deliberate indifference to the serious medical needs of inmates experiencing withdrawal. *Quintana*, at 1054 (… we need not address the allegation of inadequate training). And, the *Quintana* plaintiff had established a custom of deficient intake of those with withdrawal symptoms (for which the DOJ put the defendant on notice) and resulted in several inmates at the jail experiencing withdrawal-related deaths.) The *Quintana* decision, decided in 2020, does not suggest a legitimate split of authority and does not specifically identify one. It merely found that an individual defendant need not be held liable before an entity could be liable under *Monell* when there is a custom that results in injury and meets the requirements of causation.

Myers v. Oklahoma Cty Bd. Of County Com'rs, 151 F.3d 1313 (10th Cir. 1998) is likewise distinguishable,

because whether or not the individual could be held liable, the plaintiff must still establish the requirements of causation – that is, "where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality – a 'policy'… – can a city be liable for such failure under §1983." *Myers* at 1318, citing *City of Canton v. Harris*, 489 U.S. 378, 379 (1989). The issue in the present case is whether the City of Euclid was "deliberately indifferent" to the rights of citizens with regard to its use of force training of officers inside moving vehicles under *Harris*. The fact that the law is not established on that relevant point in this case renders a claim of deliberate indifference untenable.

The *Kirkpatrick v. County of Washoe*, 843 F.3d 784 (9th Cir. 2016) case is also distinguishable. There, the court found that the social workers' training regarding separating parents and children was "so obvious" that failure to do so was deliberately indifferent. Here, there was not an "obvious" lack of training, despite Petitioner's emphasis on one distasteful portion of a training session. Officer Rhodes was well trained in the constitutional use of force. Likewise, Petitioner's observation that certain aspects of qualified immunity are not inextricably intertwined for purposes of interlocutory appellate jurisdiction over an entity does not create a conflict with the present decision. (Pet. at 13-14, citing *Horton v. City of Santa Maria*, 915 F.3d 592 (9th Cir. 2019), *Saunders v. Sheriff of Brevard Cty.*, 735 F. App'x 559, 563 (11th Cir. 2018), and similar cases.)

Petitioner's citation to *Young v. Augusta, Ga.*, 59 F.3d 1160 (11th Cir. 1995) is distinguishable because it did not deal with an individual or clearly established law; further,

there was a pattern of deliberate indifference that should have put the city policy makers on notice, which does not exist here.

Petitioner's reliance on *Wright v. City of Euclid,* 962 F.3d 852 (6th Cir. 2020) is distinguishable factually and legally. The present case involves Stewart's prolonged reckless vehicular flight during which Officer Rhodes, who was fully uniformed, was unsecured and trapped inside the suspect's moving vehicle. Officer Rhodes used at least four lesser applications of force to bring the situation under control before resorting to deadly force. The suspect was dangerous, defiant, and acting in a startlingly erratic manner in which a reasonable officer would use force to protect himself and the community. In stark contrast, the *Wright* panel determined the officers improperly used non-lethal force on an unarmed, compliant or passively resisting citizen whose mobility was impaired by a colostomy bag. That plaintiff feared he was being robbed when plain clothes officers approached him with guns drawn, subsequently and simultaneously using a Taser and pepper spray. Officer Rhodes was properly trained and had worked as a police officer outside of the City of Euclid from 2008 to 2016 and was adequately trained in use of force throughout his career. Here, Petitioner contended that the Euclid Police Department's policies and procedures were inadequate because they did not address the specific tactics to be employed under the circumstances surrounding this incident (i.e., the use of force when an officer is trapped in a suspect's moving vehicle). In *Wright*, the plaintiff contended broadly the connection to the training was a result of the use of force on a compliant but passively resisting person.

III. CONCLUSION

The Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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