No. 22-_____

IN THE SUPREME COURT OF THE UNITED STATES

John Turnure

Petitioner

v.

Latrent Redrick

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Did the Sixth Circuit contravene *Scott v. Harris*, 550 U.S. 372 (2007) by ignoring record admissions, videos, and photographs to credit to Redrick with a telling of the facts that no reasonable jury could believe?

II. Did the Sixth Circuit violate this Court's clear establishment jurisprudence by holding that Officer Turnure's conduct was obviously unconstitutional, or alternatively clearly established, using cases involving different justifications for use of lethal force?

LIST OF PARTIES & CORPORATE DISCLOSURE

The Petitioner is John Turnure, a former police officer for the City of Akron, sued in his individual capacity. The Respondent is Latrent Redrick.

Pursuant to this Court's Rule 29.6, petitioner states that all parties involved in this appeal are individuals.

LIST OF RELATED PROCEEDINGS

1. *Latrent Redrick v. City of Akron, Ohio*, Case No. 21-3027 (6th Cir.) (judgment entered November 15, 2021) (McKeague, J., authoring. Sutton, C.J. and White, J. concurring).

2. *Latrent Redrick v. City of Akron, Ohio*, Case No. 5:18-CV-2523 (N.D. Ohio) (judgment entered December 13, 2020) (Adams, J.).

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INTRODUCTION

This case presents an all-too-common problem: a circuit court circumventing qualified immunity by applying impossible factual assumptions and broadening the definition of "clearly established law" beyond this Court's allowances. Here, the Sixth Circuit's application of clearly established law presents a distinct problem. In the face of unusual facts (a police officer using force to stop what he perceived as an imminent threat to the life of another), the court below used broad generalizations from a different use-of-force doctrine to declare the officer's conduct an obvious constitutional violation. Then, as support, the court gave a cursory list of cases that "support" its denial of qualified immunity; none of these cases involve use of force to stop an imminent threat to the life of another.

Here, Officer Turnure asks the Supreme Court to nip in the bud this massive expansion of clear establishment. The Sixth Circuit did not try to apply cases particularized to the facts presented to it; it named broad, generalized doctrines and decided that Officer Turnure, faced with a distinct situation, obviously violated the law. Such an expansion undermines the very basis underlying clear establishment doctrine.

Therefore, because the Sixth Circuit's opinion blows open clear establishment doctrine and suggests to the Circuit and its constituent district courts that any language from any case, regardless of factual

similarity, can clearly establish a constitutional violation, this Court should grant Officer Turnure's petition for a writ of *certiorari* and reverse.

OPINIONS BELOW

The Sixth Circuit's opinion is online at *Redrick v. City of Akron*, No. 21-3027, 2021 WL 5298538 (6th Cir. Nov. 15, 2021), and reproduced at Pet.App.A.

The District Court's decision is online at *Redrick v. City of Akron*, No. 5:18-CV-2523, 2020 WL 7334818 (N.D. Ohio Dec. 13, 2020), and reproduced at Pet.App.B.

JURISDICTIONAL STATEMENT

The District Court had jurisdiction over this case from 21 U.S.C. § 1441(c). The Sixth Circuit reviewed this case under the collateral order doctrine. *See Mitchell v. Forsyth*, 472 U.S. 511, 524–25 (1985). This petition seeks review under 28 U.S.C. § 1254(1) and the collateral order doctrine.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or

> affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

And 42 U.S.C. § 1983 states in relevant part that:

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

STATEMENT OF THE CASE

On September 30, 2017, brothers Latrent Redrick and Jamon Pruiett travelled from Cleveland to Akron, Ohio to attend Redrick's 21st birthday party. (R. 20, Redrick Trial Testimony, at PageID #134; R. 19, Pruiett Trial Testimony, at PageID #113).[1] Redrick and Pruiett left the party around 1:30 a.m. and went to Redrick's friend's apartment located above the Zar Nightclub, at the corner of South Main

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[1] Citations to the previously existing record are formatted as R. [number], [description], at PageID# [number]).

The citations to testimony relate to the criminal trial testimony taken in *State of Ohio v. Jamon Pruiett/Latrent Redrick,* Summit County Common Pleas No. CR 2017-10-3831, A and B.

Street and East Exchange Street in Downtown Akron. (R. 20, Redrick Tr. Test., at PageID #136). After 20 minutes at the friend's apartment, Redrick, Pruiett and five friends went downstairs to a street food stand located outside of Zar "to get some food, and get out of there." (R. 20, Redrick Tr. Test., at PageID #136; R. 19, Pruiett Tr. Test., at PageID #115). While the group ordered, a fight broke out outside Zar. (R. 20, Redrick Tr. Test., at PageID #136; R. 19, Pruiett Tr. Test., at PageID #115). City of Akron Police Officers working extra duty instructed the crowd outside Zar to cross East Exchange Street to move away from the fight. (R. 20, Redrick Tr. Test., at PageID #137; R. 19, Pruiett Tr. Test., at PageID #115).

Petitioner, City of Akron Police Officer John Turnure, an 11 ½ year veteran of the Department and Officer Utomhin Okoh, a three year veteran were working together that morning in uniform in a cruiser. (R.23-9, Turnure Declaration & Trial Testimony, at PageID ##316-317; R. 23-8, Okoh Declaration & Trial Testimony, at PageID #271). Turnure and Okoh were downtown to establish a police presence during closing time at Zar due to prior criminal activity. (R. 23-9, Turnure Dec'l, at PageID #317; R.23-8, Okoh Dec'l, at PageID #272). Turnure tactically parked the cruiser across from Zar on South Main Street. (R. 23-9, Turnure Dec'l, at PageID #317; R. 23-8, Okoh Dec'l, at PageID #273). From the cruiser, Turnure and Okoh saw the large fight break out in front of Zar, but "decided that [they] were not

going to involve ourselves with this fight unless it escalated any farther." (R. 23-9, Turnure Dec'l, at PageID ##317-18).

As police ushered Redrick and Pruiett's group across the street, Redrick said that "a group of guys walked through us, and they bumped my friend TJ." (R. 20, Redrick Tr. Test. at PageID #138). Redrick recalled that the men were saying "a bunch of junk about, 'Cleveland, Akron all you Cleveland n------, we beat y'all ass,' you know, smack talk." (*Id.* at PageID #139). Redrick thought that, "[w]e're going to get jumped or harmed." (*Id.* at PageID #138). Redrick, who possessed a valid Carrying Concealed Weapon license, was carrying a Taurus 9 mm pistol at the time. (*Id.* at PageID #135; R. 23-1, Morgan Dec'l, at PageID #194). Redrick, in response to the group's verbal barbs, "showed [the gun], [told] them to back off." (R. 20, Redrick Tr. Test., at PageID ##138-39, 144-45, 150) ("I did announce that I had a gun, which led me to pull it once the threat continued."). Redrick remembers thinking, "[w]hy---why are they still threatening to beat our ass if I showed them I had a weapon already." (*Id.* at PageID #138).

As Okoh watched the fight from the cruiser, he observed "a group of people [run] from the nightclub, as if they were cowering away from whatever was happening," and saw a "male dressed in blue emerge from that crowd, coming northbound still." (R. 23-8, Okoh Dec'l, at PageID #274). Okoh saw the man in blue raise what appeared to be a pistol up to shoulder

height and continued walking toward individuals that were standing on the corner of East Exchange Street and South Main Street. (*Id.* at PageID ##274-75). Okoh alerted Turnure by yelling, "Gun, gun, gun. He's got a gun." (R. 23-9, Turnure Dec'l, at PageID ##318, 322; R. 23-8, Okoh Dec'l, at PageID #276). Turnure testified,

> I look across the street to – on the other side of Main Street, and I see a suspect with an outstretched arm, with a gun in his hand, pointing it at people on the sidewalk.

(R. 23-9, Turnure Dec'l, at PageID #322). Turnure further testified,

> I exit my cruiser, and I start walking across Main Street to approach the suspect with the firearm [Redrick]. As I'm walking, I guess out of my periphery -- I see Officer Jones, who was working a side job in front of the Zar -- I see him walking across Exchange Street towards my suspect that has a gun in his hand. Officer Jones isn't walking in a manner that would be consistent as approaching an armed suspect.
>
> ***
>
> He's walking in a manner, to me, that appears to be he is not unaware there's an armed suspect. He – Al is not saying anything. I am screaming at Al, "Gun,

gun. Guy's got a gun." I was screaming it repeatedly. The only way I can describe it, it's a nightmare that when you scream, nothing comes out; or you're screaming and no one can hear you. It was along those lines. I'm just screaming, screaming, "Al, he's got a gun. Al. he's got a gun." Al's not going to hear me for whatever reason. I have to take my eyes off the suspect with the gun, attempting to get Al's attention. I make my way across Main Street, and I find myself behind the suspect with the gun in hand [Redrick]. I can now locate he's got a gun down at his side. I can see the butt of the gun in his hand, and I'm walking behind him. I had my gun drawn. My gun is pointed at him. And I'm screaming now with at the suspect. I'm screaming , "Drop the gun. Drop the gun. Drop the gun."

***

I'm focusing on the butt of that gun.

***

I'm following him, and the gun separates from his body in a manner. So I know there's potential victims in front of him. And he goes – he begins the motion to raise the pistol. At that point, I begin to fire into the suspect's back.

***

> The suspect fell to the ground. I continued to fire until I saw the gun was no longer in his possession. At that point, I came off the top of my pistol. My eyes came off the top of my pistol to search and assess the area, like I've been trained. At that point, a second suspect [Pruiett] dove for the pistol. I began to engage that suspect by firing at him. I was firing into the suspect. He was able to roll over and point the gun directly at me and pull the trigger. I remember seeing the puff of smoke, and the suspect looking right at me. And the puff of smoke come off the barrel of the gun. At that point, I began to retreat back into the street, at which point I fell. And I actually thought I had been shot. I couldn't get my legs underneath me. Officer Okoh grabbed me by the belt and said, "We've got to get out of here. We've got to get out of here."
>
> ***
>
> We make our way behind a car that was in traffic on Main Street.
>
> ***
>
> I did a magazine exchange. I put a fresh magazine into my service weapon. Me and Okoh stood up, and Okoh checked me to make sure that I had not been shot.

(*Id.* at PageID ##318-19).

Turnure elaborated on Redrick's hand movement that initially caused Turnure to fire,

> He started to raise the gun away from his body. I don't know what the end result would have been, but he started to go into the motion of raising the firearm into a shooting position.
>
> ***
>
> It's preparing the gun to be fired. It's – obviously, you have to raise it in some manner to be able to use the firearm on a victim.
>
> ***
>
> That's where my visual cue is happening. He's bringing the gun away from his body. Yes, it was right about this time that I deployed my firearm.

(*Id.* at PageID ##323, 325).

Pruiett testified at his criminal trial about his lunging for Redrick's gun and firing a shot at Turnure. (R. 19, Pruiett Tr. Test., at PageID ##118–19). He saw Redrick's gun on the ground, picked it up, and fired the gun "thinking that I'm going to shoot that gun for the shooting to stop." (*Id.* at PageID #118). Pruiett fired a shot "th[inking] it was one of those guys…firing shots at us." (*Id.* at PageID #118).

In this case, the material facts of Turnure's use of force were captured by a video surveillance camera

at a Goodwill Boutique store located at the corner of South Main Street and East Exchange Street. (R. 21, R. 22, Stipulation & Video, PageID #153).

Akron Police Lieutenant (then Sergeant) Scott Lietke responded to the scene where he became the lead investigating detective in the officer involved shooting investigation. (R. 23-7, Lietke Dec'l, at PageID #241). City of Akron Police Legal Advisor Craig Morgan also responded to the scene. (R. 23-1, Morgan Dec'l, at PageID #194). Lietke and Morgan both walked-through the scene with Turnure to get his perspective on what happened. (Id.).

On October 2, 2017, Lietke learned of and obtained a copy of a video recording from a surveillance camera located outside the Blue/A Goodwill Boutique at 355 South Main Street. (R. 23-1, Morgan Dec'l, at PageID #194). The video recorded the officer involved shooting incident. (*Id.*). The same day, Morgan watched the video numerous times in the Akron Police Department Detective Bureau with Lietke, Summit County Prosecutor Brian LoPrinzi, and Lietke's supervisors. (*Id.*). Morgan also reviewed statements of other officers and civilian witnesses, and the physical evidence. (*Id.*). Morgan authorized Lietke to file criminal complaints in Akron Municipal Court against Redrick for two counts of Inducing Panic, and against Pruiett for one count of Felonious Assault on a Police Officer. (*Id.*).

On October 2, 2017, Lietke and Detective Troy Looney signed criminal complaints in Municipal

Court against Redrick for two counts of Inducing Panic (R.C. 2917.31), 4th degree felonies, and against Pruiett for one count of Felonious Assault (R.C. 2903.11(A)(2)), a 1st degree felony. (R. 23-2, Charging Documents, at PageID #196).

On November 16, 2017, the Summit County Grand Jury indicted Pruiett for one count of Felonious Assault on a Peace Officer, a 1st Degree Felony, with a Firearm Specification, and Redrick for one count of Inducing Panic, a 4th Degree Felony. (R. 23-3, Indictments, at PageID #203). On January 4, 2018, the Summit County Grand Jury returned a supplemental indictment against Latrent Redrick for two counts of Felonious Assault, 2nd Degree Felonies, with two Firearm Specifications. (*Id.*).

The two criminal cases proceeded to trial in July, 2018. Prior to trial, the court granted the State's motion to dismiss the two Felonious Assault charges (and Firearm Specifications) against Redrick in the supplemental indictment. (R. 23-4, Criminal Trial Journal Entries, at PageID #207). At trial, the court granted the State's motion to amend the Inducing Panic felony indictment against Redrick to the offense of Inducing Panic, a first degree misdemeanor. (*Id.*). Redrick pled no contest to misdemeanor Inducing Panic, and the Court found him guilty. (*Id.*). The trial proceeded against Pruiett; the jury found him not guilty. (R. 23-5, Criminal Trial Excerpts, at PageID ##210-214; R. 23-4, Criminal Trial Journal Entries, at PageID #207).

Redrick and Pruiett filed a civil complaint in state court; Officer Turnure removed it to United States District Court. (R. 1, Complaint, at PageID #1). Officer Turnure eventually moved for summary judgment for all claims based in part on qualified immunity, which the district court denied. (Pet. App'x 2). On appeal, the Sixth Circuit reversed the district court's denial of qualified immunity to Officer Turnure on Pruiett's claims, but affirmed denial on Redrick's claims. (Pet. App'x 1).

REASONS FOR GRANTING THE PETITION

This Court has made that it will not tolerate weakening of qualified immunity by circuit courts. *See, e.g., City of Tahlequah v. Bond*, 142 S. Ct. 9, 11 (2021) (per curiam); *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7–8 (2021) (per curiam); *City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019) (per curiam); *Kisela v. Hughes*, 138 S. Ct. 1148, 1152–53 (2018) (per curiam); *District of Columbia v. Wesby*, 138 S. Ct. 577, 589–90 (2018); *White v. Pauly*, 137 S. Ct. 548, 551–52 (2017) (per curiam). Here, the Sixth Circuit did exactly that. Faced with an officer-shooting-in-defense-of-others case, where Petitioner John Turnure shot and wounded Respondent Latrent Redrick in response to what he perceived as Redrick maneuvering to shoot a third-party, the court used other use-of-force doctrines to declare this an obvious case and backed that holding with factually distinct circuit caselaw. The Sixth Circuit's decision made

factual assumptions contradicted by the record to help it to that point.

This decision, though unpublished, signals the Sixth Circuit's willingness to ignore this Court's instructions in favor of a broad definition of clear establishment, one that does not require a plaintiff provide a case *using the same doctrine*. This Court may agree with this broad reading, but that instruction should come from the Supreme Court, not an unpublished circuit court decision based on tortured facts. Unless this Court holds otherwise, the Sixth Circuit's holding in this case clearly violates this Court's qualified immunity jurisprudence, and therefore deserves attention.

I. Did the Sixth Circuit contravene *Scott v. Harris*, 550 U.S. 372 (2007) by ignoring record admissions, videos, and photographs to credit to Redrick with a telling of the facts that no reasonable jury could believe?

Questions of evidentiary sufficiency—"*i.e.*, which facts a party may, or may not, be able to prove at trial"—are not reviewable on appeal from the denial of summary judgment. *Johnson v. Jones*, 515 U.S. 304, 313 (1995). However, appellate courts may review questions of law, including those relating to the application of facts. *See Plumhoff v. Rickard*, 572 U.S. 765, 771–73 (2014). When considering an appeal from a denied motion for summary judgment, "the facts are viewed in the light most favorable to the"

non-moving party. *White*, 137 S. Ct. at 550. "In qualified immunity cases, this usually means adopting . . . the plaintiff's version of the facts." *Scott v. Harris*, 550 U.S. 372, 378 (2007). But when the non-moving party's facts are directly contradicted by record evidence "so that no reasonable jury could believe it," the court must follow the record's story, not the party's. *Id.* at 380.

The nature of the qualified immunity defense adds another important hitch: "the Court considers only the facts that were knowable to the defendant officers" at the time of the alleged deprivation of constitutional rights. *White*, 137 S. Ct. at 550. The "[C]ourt must judge the reasonableness of the force used from the perspective and with the knowledge of the defendant officer." *Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015).

Here, the Sixth Circuit made three mistakes under *Scott v. Harris*: it ignored material admissions by Redrick and in doing so construed facts in a way that no reasonable jury would; it ignored record evidence and in doing so construed facts in a way that no reasonable jury would; and it incorrectly attributed to Officer Turnure facts that no reasonable officer on scene could have known.

First, the Sixth Circuit ignored material admissions by Redrick. The court, in discussing whether Officer Turnure violated Redrick's constitutional rights, stated "Redrick maintains that . . . he pulled only the butt of his gun out of his pocket

to reveal that he possessed a weapon." (Pet.App.A at A9). The court is wrong—Redrick admits repeatedly in the record that he had the gun drawn when advancing on the crowd at East Exchange Street and South Main Street, exactly when Officer Turnure shot him. (Video, Stipulation, R. 21-22, at PageID# 153, 3:41 (frame 8 and 9); Dep. of Redrick, R. 20, at PageID# 150). The Sixth Circuit, by finding otherwise, (Pet.App.A at A10) ("[w]atching the video in real time, it appears that Redrick was simply holding the gun *in his pocket* or at his side while walking down the sidewalk") ignored record evidence in a way barred by *Scott*—no reasonable jury could find that Redrick's gun was in his pocket when Redrick himself admits otherwise repeatedly in the record. *See Scott*, 550 U.S. at 380. Therefore, the Sixth Circuit went beyond viewing the facts in a light most favorable to Redrick; it created facts for him that contravene his own testimony.

Second, clear record evidence shows that Redrick had his gun out and at his side when advancing. As seen in the video stills below, Redrick (furthest to the left on the sidewalk, in dark pants without a hat) had the gun in his right hand at or near his side. (R. 27, Dec'l of Bourgeau, at PageID ##528–29 att. 1, 3:41 Frame 8; Pet.App.C). The next frame (shown second in this brief) shows Redrick swing his gun-carrying hand forward. (*Id.* at 3:41 Frame 9; Pet.App.D). This clear, uncontroverted record evidence shows that the Sixth Circuit's finding that the gun was in Redrick's pocket or at his side is

incorrect. Further, the stills below show Redrick quite clearly moving his gun in the direction of the third parties. Though this movement might be part of his natural gait, no reasonable officer on scene could know that. A reasonable officer on scene could interpret the movement depicted here as Redrick moving his firearm into a firing position facing a third-party, particularly when, just moments earlier, the officer observed Redrick displaying the gun during an argument with the same individual. This directly contradicts the Sixth Circuit's finding that "the video

does not show any definitive movement of Redrick's hand prior to him being shot in the back." (Pet.App.A at A10). Therefore, record evidence contravenes the Sixth Circuit's factual analysis of how Redrick was

holding the gun, where he was holding it, and what he did with it such that no reasonable juror could believe them. The court, by finding and holding otherwise, acted in violation of *Scott*. 550 U.S. at 380–81.

Third, the Sixth Circuit failed to credit Officer Turnure with the benefit of the perceptions of a reasonable officer on scene. This flaw stems back to how the court analyzed Redrick's possession of the gun. The court made much of Redrick's possession being legal, (Pet.App.A at A8), but that argument is flawed.

Redrick, by displaying his gun while advancing on people, was posturing to take an action he legally could not. In 2017, Ohio required persons not inside their homes or cars to retreat prior to using defensive deadly force. Ohio Rev. Code § 2901.09(B) (eff. Sept. 9, 2008, amended Apr. 5, 2021); *see, e.g.*, *State v. Preston*, No. 29730, 2021 WL 1237207, at *2, *2 n. 1 (Ohio Ct. App. Mar. 31, 2021) (Ohio web-cite 2021-Ohio-1052, at ¶ 7, ¶ 7 n. 1). The transition from Ohio's version of the castle doctrine to its current stand-your-ground law took place in April 2021, so Redrick, being in public, had a duty to attempt retreat prior to employing deadly force in self-defense or defense-of-others. Redrick acknowledges that he made no attempt at retreat; he instead began approaching a crowd of people, people he had just engaged in a skirmish with, with his gun in his hand at his side.

Nor should the fact that Redrick had a CCW and was carrying legally matter. "The

'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989). The Sixth Circuit, despite acknowledging this rule, ignored it. By putting the weight it did on Redrick carrying his gun legally and relying upon "his CCW training," (Pet.App.A at A8–A9), the court seems to assume that a reasonable officer would know these facts. But there is no evidence that Officer Turnure—nor any other officer—interacted with Redrick prior to the shooting. There is no evidence nor argument that Redrick somehow made it known to the Akron Police officers in the area that he had a CCW license or legal firearm. Therefore, the belief of a reasonable officer on scene could not have been that Redrick was legally carrying a concealed weapon and trying to "diffuse the situation[] pursuant to his CCW training," (*id.*), since none of that information was knowable to officers at the time.

Even accepting the Sixth Circuit's prior holding that Ohio law enforcement officers must assume the legality of firearms until shown otherwise, *Northrup v. City of Toledo Police Dep't*, 785 F.3d 1128, 1132 (6th Cir. 2015) (speaking to openly carried firearms, unlike the originally concealed firearm in this case), a reasonable officer on scene would have at least reasonable suspicion that Redrick had recently committed a crime with the weapon. Neither party disputes that Redrick was amongst the crowd leaving Zar. Ohio makes "possess[ing] a firearm in any room

in which any person is consuming beer or intoxicating liquor in a [licensed] premises"—like Zar—a fifth-degree felony. Ohio Rev. Code § 2923.121(A). Contrary to the Sixth Circuit's conclusion that Redrick's possession was entirely legal, and to the Circuit's here-unmentioned presumption of gun-legality, a reasonable officer could conclude that an armed person standing within a crowd exiting a bar violated Ohio's prohibition on carrying a firearm inside a premises with a liquor permit. That alone is probable cause of a felony gun crime.

All told, the reasonable officer on scene would have seen Redrick, who just left a bar, flash a gun at people he had just argued with, then start walking towards those people—who were moving away from him—with his gun drawn and at his side, demonstrating probable cause of multiple felonies—a fact made clear by Redrick's later indictment on one count of felonious inducing panic and two counts of felonious assault with firearm specifications based on his actions that night.[2] (R. 23-3, Indictment, at

[2] The Sixth Circuit held that Officer Turnure "could not have known about a subsequent indictment and conviction at the time he shot Redrick. Thus, Turnure cannot rely on the severity of any crime to justify his use of force." This statement is facially incorrect; this Court has repeatedly instructed that the severity of an alleged crime may justify use of force. *See, e.g., Tennessee v. Garner*, 471 U.S. 1, 11–12 (1985). It also misinterprets Officer Turnure's point. The Summit County Grand Jury, by indicting Redrick on two counts of felonious assault with firearm specifications, found probable cause that Redrick was feloniously assaulting individuals with a gun that night. That is incontrovertible record evidence admissible at trial; no

PageID# 203). A reasonable officer would have seen that Redrick had ample space to retreat but chose instead to press onward. The Sixth Circuit found otherwise by misapplying facts and ignoring both admissions and clear record evidence. Doing so clearly contravenes *Scott*, and merits reversal.

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reasonable juror could ignore it and find that a reasonable officer at the scene could not have had probable cause that Redrick was committing a second-degree felony gun crime. *Scott*, 550 U.S. at 380. The Sixth Circuit erred by not only ignoring the indictment, but dismissing it as irrelevant.

Second, the Sixth Circuit's holding that an officer may not rely on a grand jury's subsequent indictment leads to absurd results. Take a different example—an officer not wearing body cam who shoots someone immediately after observing her stab a third party. Under the Sixth Circuit's broad language, if the stabber claims that she did not stab the third party, the officer could not use the results of the stabber's criminal prosecution at any point to contradict her claim. Based on the circuit's language, even if a jury convicts the stabber of murder, if the stabber claimed in the civil case that she did not do it, the officer cannot use the conviction to avoid trial. This violates the very point of qualified immunity by allowing any half-truth or lie, no matter how many people previously found it non-credible, to destroy the officer's immunity from suit.

II. Did the Sixth Circuit violate this Court's clear establishment jurisprudence by holding that Officer Turnure's conduct was obviously unconstitutional, or alternatively clearly established, using cases involving different justifications for use of lethal force?

The Sixth Circuit covered the clear establishment prong of qualified immunity in a single paragraph:

> Accepting Redrick's account of the facts, Turnure violated Redrick's clearly established rights when he shot him six times from behind without warning and without any indication that Redrick would use his lawfully carried gun to harm officers or others. In general, cases like *Graham* and *Garner* cannot clearly establish a constitutional violation because they are cast at a high level of generality. But in an obvious case, these standards can clearly establish the answer, even without a body of relevant case law. Under Redrick's facts, this is a case where no reasonable officer could believe deadly force was justified. And beyond that, a body of relevant case law from this Circuit supports the denial of qualified immunity here. Therefore, summary judgment is inappropriate.

(Pet.App.A at A12–A13 (internal quotation marks and citations omitted)). As explained above, this paragraph contains several factual inaccuracies and

improper suppositions. But the analysis, as cursory as it is, also contains numerous legal flaws.

Most readily apparent, and most troubling, is the Sixth Circuit's blurring of numerous doctrines to find clear establishment here. This case involves defense of others—that is, that Officer Turnure used deadly force on Redrick not because he feared for his own life, but rather because, he alleges, he thought Redrick was about to use deadly force without privilege on a third-party Redrick had just tussled with. This Court has instructed that the proper application of deadly force "requires careful attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers *or* others." *See Graham*, 490 U.S. at 396 (emphasis added). The use of the disjunctive "or" suggests that the concept of "immediate threat to the safety of the officers"—the doctrine each case cited by the Sixth Circuit factually relates to—is distinct from the concept of "immediate threat to the safety of . . . others." *See id.* The Court also extended proper use of deadly force to preventing escape of a felony suspect "[w]here [an] officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

Thus, this Court's precedent creates four categories of justifiable deadly force: immediate threat to the safety of the officer, immediate threat to the safety of others, immediate threat to safety of the

officer if the suspect escapes, and immediate threat to the safety of others if the suspect escapes.

All four categories share similarities, and several share tests. But similarities between doctrines does not create clear establishment. The clear establishment "inquiry 'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier*, 533 U.S. at 202, *rev'd in part on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). This Court has emphasized the importance of these tests in Fourth Amendment cases, where officers must quickly determine how various relevant legal doctrines apply to specific factual scenarios. *Rivas-Villegas*, 142 S. Ct. at 8 (quoting *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam)).

Here, the Sixth Circuit failed this test. First, the Sixth Circuit identified this as a legal unicorn: an "obvious case" "where no reasonable officer could believe deadly force was justified," citing to *Garner* for support. (Pet.App.A at A13). The problem being that *Garner* dealt with when officers may use deadly force to prevent escape—a different category of permissible use of deadly force than the case at bar. *See generally Garner*, 471 U.S. 1. Second, the Sixth Circuit

identified five circuit decisions that, it claims, support clear establishment, and one circuit decision that post-dated the shooting but pre-dated the court's decision that found the comparable acts to *not* violate clearly established law. But all six cases dealt with shootings in the face of an immediate threat to the safety of the officer—again, a different category of permissible use of deadly force than the case at bar.

The Sixth Circuit failed to identify a single case involving the use of deadly force to stop an immediate threat to the safety of others, let alone a case with a high degree of factual specificity. The Circuit failed to abide by this Court's long-standing instruction "not to define clearly established law at a high level of generality." *Mullenix*, 577 U.S. at 12 (internal quotation marks omitted) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)). Therefore, the decision below "decided an important federal question in a way that conflicts with relevant decisions of" the Supreme Court. Sup. Ct. R. 10(c). This Court should grant a writ of certiorari and, because the clear record evidence, taken in a light most favorable to Redrick, does not show that Officer Turnure violated clearly established law, the decision below vacated and reversed.

A. The Sixth Circuit incorrectly identified this case as "obvious" by using caselaw involving a different doctrine.

Even accepting the Sixth Circuit's telling of the facts, this is not such an obvious case that "no reasonable officer could believe deadly force was justified." (Pet.App.A at A13); *see also Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020) (using the "no reasonable officer" test for obvious case doctrine under the Eighth Amendment). The answer why lies in the very case the panel used to justify its holding: *Garner*. First, *Garner* involved an escaping felon; this Court there held in part that "[t]he use of deadly force *to prevent the escape of all felony suspects*, whatever the circumstances, is constitutionally unreasonable." *Garner*, 471 U.S. at 11 (emphasis added). The obvious case doctrine does not apply "[w]here constitutional guidelines seem inapplicable or too remote." *See Kisela*, 138 S. Ct. at 1153. A reasonable officer would not think to consider escaping felon caselaw when faced with what Redrick describes as a person "showing" a gun to others during an escalating argument; these are wholly different factual scenarios. In fact, Redrick's entire defense belies the application of escape caselaw to the present scenario—he argues that he was actively using his gun, in connection with his concealed carry training, to deescalate. Far from fleeing, Redrick admits that he inserted himself, and his firearm, into the tiff.

Garner is too removed from the present facts to make this an obvious case.

Of course, courts typically present *Garner* alongside an excessive force case, *Graham v. Connor*, when discussing obvious case doctrine. *See, e.g., Rivas-Villegas*, 142 S. Ct. at 8 (quoting *Brosseau*, 543 U.S. at 199; referencing *Graham*, 490 U.S. at 396; *Garner*, 471 U.S. at 11). The Sixth Circuit mentioned *Graham* while introducing the obvious case doctrine, but does not cite to it. (*See* Pet.App.A at A12–A13). This omission shows that the Sixth Circuit chose to rely only on *Garner* in delcaring this an obvious case.

Regardless, *Graham* provides no additional help to the Sixth Circuit's holding. *Graham* notes that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. It instructs to apply an objective standard of reasonableness based on the "facts and circumstances confronting" the officer, that allows "for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396–97.

Nor is *Graham* factually on-point. That case involved officers using force on someone who claimed to be suffering a diabetic sugar reaction that officers perceived as resisting; there was no imminent need for lethal force. *Id.* at 389–90.

That the Sixth Circuit only cites *Garner* reveals its decision-making process. It cited *Garner* for the proposition that "deadly force is unreasonable unless the suspect poses an immediate threat of harm and, if feasible, a warning has been given." (Pet.App.A at A13 (citing *Garner*, 471 U.S. at 7, 11–12)). It acknowledged that *Graham* and *Garner* cannot generally establish a constitutional violation, but then holds without factual analysis that "[u]nder Redrick's facts, this is a case where no reasonable officer could believe deadly force was justified," evidently a holding that the obvious case doctrine applies. (Pet.App.A at A13 (citing *Garner*, 471 U.S. at 7, 11–12)). What facts did the Sixth Circuit rely upon to come to this conclusion? The analysis leaves this important detail unsaid, but the opinion's facts section focuses on two disputes: whether Redrick ever removed his gun from his pocket, and whether Officer Turnure shouted commands to "drop the gun."

By failing to give actual analysis for why *this* case is so obvious as to say that no reasonable officer would have used deadly force, the Sixth Circuit leaves only one supposition: that, under Redrick's telling of the facts, he posed no immediate threat of harm and Officer Turnure never gave warnings—exactly what the panel cited *Garner* for. Therefore, in this case, the Sixth Circuit reasoned that Officer Turnure's actions were unreasonable because he violated these two tenants from *Garner*. Fair enough, but this Court's caselaw makes exceedingly clear that "*Graham* and *Garner*, following the lead of the Fourth Amendment's

text, are cast at a high level of generality," such that they can clearly establish law only in obvious cases. *Brosseau*, 543 U.S. at 199. As stated above, *Garner* is an escape case; it has nothing to say about someone who, as far as the officer can tell, brought a gun to a fist fight. *Garner*, 471 U.S. 1, 11 ("The use of deadly force *to prevent the escape* of all felony suspects . . . is constitutionally unreasonable. . . . Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting *from failing to apprehend him* does not justify the use of deadly force. . . . Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable *to prevent escape* by using deadly force." (emphasis added)).

Clear establishment requires "precedent . . . clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Wesby*, 138 S. Ct. at 590. Caselaw on using deadly force to prevent an accused felon from escaping does not speak to use of deadly force to prevent injury to a third-party bystander; they are two separate doctrines from two separate origins.

Should this Court allow cross-over application of *Garner*, the facts of this case do not establish that no reasonable officer would believe deadly force to be necessary. Calling a case "obvious" in this context connotes the complete absence of any threat of deadly harm to others. Officer Turnure admits that this case

itself could be an "obvious" case if the facts were that he never observed Redrick initially showing the gun to the others, and did not see Redrick carrying a gun as he approached the other individuals. With those facts, Turnure (and in turn, a reasonable officer) would only have seen a possible street fight. Using deadly force on an unarmed suspect who was aggressively moving toward others might be an obvious violation of Redrick's right to freedom from excessive force. But, as detailed above and admitted by Redrick at the Sixth Circuit, the facts of this case, construed in Redrick's favor, differ from those applied by the court of appeals. Redrick showed a gun to the crowd, and then proceeded to advance toward the patrons in a menacing manner while holding the pistol in his hand outside his pocket at the ready. It would *not* be patently obvious to a reasonable officer that Redrick posed to the other group no threat of deadly harm. After all, the imminent threat here, the manner in which Redrick maintained the gun, could have resulted in deadly action in split-seconds. *See, e.g.*, *Thomas v. City of Columbus*, 854 F.3d 361, 365–66 (6th Cir. 2017) (finding that "a reasonable officer would perceive a significant threat to his life" when he, while alone, observes "two people exit[] an apartment [about 40 feet away] and then [run] towards him, the first with a gun" because "[a]t this range, a suspect could raise and fire a gun with little or no time for an officer to react.").

Therefore, to say that no reasonable officer could believe Officer Turnure's actions, in the face of

reasonable perceptions that Redrick was about to employ deadly force on others, were justified because of rules from a case discussing prevention of flight is simply incorrect based on this Court's clear establishment caselaw.[3] The Sixth Circuit, in finding otherwise, plainly deviated from this Court's clear instructions.

Nor is there precedential support for applying the obvious case doctrine here. To Officer Turnure's knowledge, this Court has applied the obvious case doctrine twice; both in Eighth Amendment conditions-of-confinement cases. *Taylor*, 141 S. Ct. at 53–54 (correctional officials left Petitioner in two "shockingly unsanitary cells," one covered in feces, and one with a clogged toilet such that raw sewage ran across the floor once Petitioner had to use it); *Hope v. Pelzer*, 536 U.S. 730, 741–46 (2002) (prison officials left Petitioner outside, tied shirtless in the Alabama sun to a hitching post, for seven hours with no bathroom breaks and only one or two opportunities to get water). Though this Court has repeatedly suggested that a hypothetical obvious case may exist in the Fourth Amendment context, *see, e.g., Rivas-Villegas*, 142 S. Ct. at 8, it has never identified one. And the oft-identified bases for such a hypothetical case—*Graham*

[3] To the extent that Redrick may argue that Officer Turnure's alleged-failure to shout a warning makes this case an obvious violation, this Court's reasoning in *White*, 137 S. Ct. at 552 makes clear that failing to shout a warning does not *per se* violate the constitution.

and *Garner*—are both factually distinct from the present circumstances, as discussed above.

Therefore, the Sixth Circuit erred by holding that Officer Turnure's conduct violated clearly established law as an obvious constitutional violation. This Court should grant review and reverse.

B. The Sixth Circuit's alternative clear establishment argument relies on caselaw addressing an inapplicable doctrine.

Nor does the Sixth Circuit's analysis show clear establishment. Clear establishment requires "precedent . . . clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply," and "that the legal principle clearly prohibit the officer's conduct in the particular circumstances before him. The rule's contours must be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted.' This requires a high 'degree of specificity.'" *Wesby*, 138 S. Ct. at 590 (internal citation omitted) (quoting *Saucier*, 533 U.S. at 202; *Mullenix*, 577 U.S. at 13); *see also White*, 137 S. Ct. at 552. The court pointed to "a body of relevant case law . . . support[ing] the denial of qualified immunity," citing five cases supposedly supporting clear establishment and one case contradicting clear establishment. (Pet.App.A at A13–14 (citing *King v. Taylor*, 694 F.3d 650, 663–64 (6th Cir. 2012); *Bletz v. Gribble*, 641 F.3d 743, 752 (6th Cir. 2011); *Dickerson v. McClellan*, 101 F.3d 1151, 1154, 1163 (6th Cir.

1996); *Brandenburg v. Cureton*, 882 F.2d 211, 215–16 (6th Cir. 1989); *Thornton v. City of Columbus*, 727 F. App'x 829, 831, 837–38 (6th Cir. 2018); *David v. City of Bellevue*, 706 F. App'x 847, 852 (6th Cir. 2017)[4]). None of the cited cases provide sufficiently definite contours such that "any reasonable official in the defendant's shoes would have understood that he was violating [them]," *Plumhoff*, 572 U.S. at 778–79, nor that are "'particularized' to the facts of the case." *White*, 137 S. Ct. at 552 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

Instead, each case the Sixth Circuit cited as "relevant" falls into the same pitfall as the court's obviousness analysis: they all involve imminent threats to the *officer*, not imminent threats to others. *King*, 694 F.3d at 653–54; *Bletz*, 641 F.3d at 747–48; *Dickerson*, 101 F.3d at 1154–55; *Brandenburg*, 882 F.2d at 212–13; *Thornton*, 727 F. App'x 830–32; *David*, 706 F. App'x at 849. Far from cases particularized to the facts of *Redrick*, these cases relate to an entirely different justification for use of deadly force. A reasonable officer could view defense-of-self differently than defense-of-others, just as a

[4] The Sixth Circuit does not have a clear answer as to whether unpublished cases can clearly establish a right sufficient to overcome qualified immunity. *Compare Heggen v. Lee*, 284 F.3d 675, 687 (6th Cir. 2002) (explaining that a prior case emphasized the lack of *published* caselaw from the Sixth Circuit in discussing clear establishment); *McCloud v. Testa*, 97 F.3d 1536, 1555, 1555 n. 28 (6th Cir. 1996) (citing to unpublished caselaw to support clear establishment, but justifying doing so "only . . . as real-life examples" of prior precedents).

reasonable person might react differently to seeing someone approaching them with their hand on a gun versus seeing someone approaching another with their hand on a gun. Therefore, for the same reason the Sixth Circuit's obvious case doctrine analysis fails, so too must its alternative clear establishment argument.

Even setting aside the distinction between self-defense and defense-of-others, the Sixth Circuit's five cited cases—setting aside the cited case that supports qualified immunity here, *Thornton*—are not sufficiently particularized to the present facts to clearly establish that Officer Turnure's actions violated Redrick's constitutional rights. Four of the five cited cases involved incidents in or just outside the civilian's home. *King*, 694 F.3d at 662–63; *Bletz*, 641 F.3d at 752; *Dickerson*, 101 F.3d at 1154–55; *David*, 706 F. App'x at 849. The fifth occurred just outside the civilian's property. *Brandenburg*, 882 F.2d at 212–13. In two of the cases, the civilian did nothing threatening before allegedly pointing a gun. *King*, 694 F.3d at 662–63; *Bletz*, 641 F.3d at 748. In two other cases, the civilian had previously fired a gun in a believed-non-threatening manner, but some amount of time elapsed between the civilian firing and the police shooting. *Dickerson*, 101 F.3d at 1154; *Brandenburg*, 882 F.2d at 213. In the fifth, the only allegedly threatening act before the officers claimed

the defendant pulled the gun was walking towards an officer. *David*, 706 F. App'x at 849.[5]

This case presents numerous material facts, facts that any reasonable officer would consider, that appear nowhere in the Sixth Circuit's cited caselaw: the location in a crowded public area outside a bar, the plaintiff actively showing people his gun (in his words to diffuse the situation), or—as stated above—the fact that the officer shot the plaintiff believing the plaintiff sought to inflict severe bodily harm on others. Therefore, given the many distinctions between the Sixth Circuit's cited cases and the facts at bar, it cannot be said that the panel majority "identif[ied] a case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment." *White*, 137 S. Ct. at 552; *see also Bond*, 142 S. Ct. at 11–12. This Court has also suggested, though never outright held, that constitutional law cannot be clearly established by Circuit precedent, published or otherwise. *Rivas-Villegas*, 142 S. Ct. at 8; *see also Emmons*, 139 S. Ct. at 503. Aside from the Sixth Circuit's improper application of the obvious case doctrine, it did not cite

[5] Though it does not impact the officer's knowledge at the time of the incident, note also that three of the cited cases credited expert testimony that, in whole or part, contradicted the officer's telling of the incident. *King*, 694 F.3d at 662–63; *Brandenburg*, 882 F.2d at 215; *David*, 706 F. App'x at 851–52.

any Supreme Court precedent showing that Officer Turnure's actions were clearly established.[6]

Because the Sixth Circuit used inappropriately non-particularized cases to find clear establishment, placing its decision in flagrant violation of this Court's qualified immunity doctrine, this Court should grant Officer Turnure's Petition and reverse.

CONCLUSION

Therefore, the Sixth Circuit's decision in this case conflicts with *Scott v. Harris* and with this Court's long-standing instructions to not define clearly established law too generally. *See, e.g., Rivas-Villegas*, 142 S. Ct. at 8. For the reasons stated herein, this Court should vacate the Sixth Circuit's decision in the case and order summary judgment be entered for Officer Turnure, or, alternatively, remand for reconsideration of whether Officer Turnure

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[6] The Sixth Circuit also ignored the doctrine of reasonable mistake. Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments when there exists insufficient precedent to place the issue beyond debate. *al-Kidd,* 563 U.S. at 741-43. When properly applied, it protects all but the plainly incompetent or those who knowingly violate the law. *Id.* At best, Redrick presented grounds for speculation that Officer Turnure misread Redrick's innocent intention to diffuse the confrontation when Redrick advanced toward the patrons with gun in hand. Redrick failed to adduce facts demonstrating that Turnure, in potentially misinterpreting Redrick's actions, was plainly incompetent. Altogether, Officer Turnure saw Redrick show a gun to the crowd in a prior encounter, and faced an agitated Redrisk proceeding to advance toward the patrons in an aggressive manner carrying a pistol in his hand outside his pocket with the ability to resort to deadly action in a split-second.

violated clearly established caselaw from the imminent-threat-of-harm-to-others doctrine.

Respectfully submitted,

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* City of Akron Assistant Director of Law Michael A. Walsh also provided substantial assistance on this petition. The City of Akron intends to seek admission *pro hac vice* under Rule 6 for Assistant Law Director Walsh, who has not been barred long enough for admission to this Court but is otherwise qualified for admission, should this Court grant certiorari so that he may serve as back-up counsel for oral argument. The City also thanks Law Clerk Anthony M. Erhardt for his assistance with this petition.