APPENDIX

TABLE OF CONTENTS

Appendix 1

United States Court of Appeals for the Second Circuit
Electronically FILED on July 29, 2024, by Catherine O'Hagan Wolfe, Clerk of Court

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of July, two thousand twenty-four.

PRESENT:

JOSEPH F. BIANCO,
BETH ROBINSON,
SARAH A. L. MERRIAM,
Circuit Judges.

JOSE VEGA-COLON, individually and as administrator of the Estate of Anthony Vega-Cruz, ANTHONY COLON, individually and as administrator of the Estate of Anthony Vega-Cruz,

Plaintiffs-Appellees,

v. 23-1211-cv

LAYAU EULIZIER, OFFICER, in his official and individual capacity,

Defendant-Appellant,

TOWN OF WETHERSFIELD, JOHN DOES, I-XX, whose names and identities are not currently known,

Defendants.

FOR PLAINTIFFS-APPELLEES: ERIC VALENZUELA (Dale K. Galipo, *on the brief),* Law Offices of Dale K. Galipo,

Woodland Hills,
California.

FOR DEFENDANT-APPELLANT: ELLIOT BRUCE SPECTOR,
Hassett and George, P.C.,
Simsbury,
Connecticut.

Appeal from an order of the United States District Court for the District of Connecticut (Kari A. Dooley, *Judge)*.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order, entered on August 11, 2023, is **AFFIRMED.**

Defendant-Appellant Layau Eulizier, a former police officer of the Wethersfield Police Department ("WPD"), appeals from the order of the district court denying his motion for summary judgment on the excessive force claim brought by Plaintiffs-Appellees Jose Vega-Colon and Anthony Colon under 42 U.S.C. § 1983. Specifically, Vega-Colon and Colon (together, "Plaintiffs"), acting as administrators of the Estate of Anthony Vega-Cruz,' allege that then-Officer Eulizier

---

[1] We note that the caption on appeal identifies two different individuals as plaintiffs and administrators of the decedent's estate because of ambiguity on that issue created by various filings in the district court. A review of the district court docket indicates that the original complaint named Jose Vega-Colon as plaintiff. Plaintiffs counsel later filed an unopposed motion to substitute Anthony Colon as the sole named plaintiff, indicating that counsel had "mistakenly listed Jose Vega-Colon as the administrator for the estate of his son, Anthony Vega-Cruz. However, Anthony Colon, Decedent's brother, was actually appointed as the administrator of Anthony Vega-Cruz's estate."

used excessive force in violation of the Fourth Amendment when he fatally shot Vega-Cruz after a vehicle pursuit on April 20, 2019 in Wethersfield, Connecticut. The district court denied Eulizier's motion for summary judgment, concluding that the record, which included video evidence from police vehicles and nearby surveillance cameras, presented genuine issues of material fact as to whether Eulizier's use of deadly force was excessive and whether he was entitled to qualified immunity. In this interlocutory appeal, Eulizier challenges the denial of summary judgment on qualified immunity grounds, arguing that the district court failed to properly analyze whether it was clearly established that his use of force violated the Fourth Amendment under the circumstances presented in this case. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision to affirm.

"We review a district court's denial of a motion for summary judgment sounding in qualified immunity *de novo.* On a motion for summary judgment, of course, the moving party has the burden of showing that no genuine issue of material fact

---

Colon u. Eulizier, No. 3:21CV00175(KAD), ECF No. 35 at 1 (D. Conn. Nov. 2, 2021). The motion was granted. When the motion for summary judgment was denied and the Notice of Appeal filed, Anthony Colon was the sole named plaintiff. After the Notice of Appeal was filed, plaintiffs counsel filed (with leave of the court) an amended complaint. The amended complaint, however, did not contain an updated caption that reflected the substitution of parties and erroneously listed Jose Vega-Colon, rather than Anthony Colon, as administrator and plaintiff, and the caption in the district court docket was then updated to include that error. Therefore, on remand, the district court should confirm that Anthony Colon remains the administrator and plaintiff and, if so, amend the caption accordingly.

exists and that the undisputed facts entitle him to judgment as a matter of law, and in ruling on such a motion, the district court must draw all factual inferences in favor of, and take all factual assertions in the light most favorable to, the party opposing summary judgment." *Coollick v. Hughes,* 699 F.3d 211, 219 (2d Cir. 2012) (internal quotation marks and citations omitted); *see also Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986); Fed. R. Civ. P. 56(a). However, we have jurisdiction over an interlocutory appeal of a denial of summary judgment based on qualified immunity only "when the defense can be decided based on questions of law and is not dependent on the resolution of factual issues." *Brown v. Halpin,* 885 F.3d 111, 117 (2d Cir. 2018) (per curiam). Where, as here, "a district court denies qualified immunity based on the presence of disputed material facts, an appellant may still invoke appellate jurisdiction on an interlocutory basis if the appellant contends that on stipulated facts, or on the facts that the plaintiff alleges are true, or on the facts favorable to the plaintiff that the trial judge concluded the jury might find, the immunity defense is established as a matter of law." *Jok v. City of Burlington,* 96 F.4th 291, 295 (2d Cir. 2024) (internal quotation marks and citation omitted). Eulizier accepts Plaintiffs' version of the facts for purposes of this appeal; accordingly, we have jurisdiction to determine whether he is entitled to qualified immunity under those facts.

BACKGROUND[2]

[2] The following facts, which are drawn from the parties' Local Rule 56(a) statements in the district court, are uncontroverted unless otherwise noted.

On April 20, 2019, eighteen-year-old Vega-Cruz was driving with his girlfriend through Wethersfield, Connecticut, in his Infiniti G35. WPD Officer Peter Salvatore observed the Infiniti make a right turn onto Silas Deane Highway while its left turn signal was activated. Salvatore followed the Infiniti into a vacant parking lot and ran its license plate number, which he found was linked to a suspended registration of a Hyundai, suggesting a misuse of license plates. When the Infiniti left the parking lot at a high rate of speed, Salvatore radioed that he was going to stop the vehicle and requested backup. The Infiniti pulled over in the right lane outside a Goodyear Auto Service store on Silas Deane Highway, but sped off when Salvatore approached on foot. Eulizier, who was nearby, heard the call for backup and started driving toward Salvatore's cruiser, which was visible from Eulizier's location. As the Infiniti was about to pass him, moving in the opposite direction, Eulizier straddled the double yellow line between lanes; the parties dispute whether Eulizier intentionally blocked the road in front of the Infiniti, but soon after Eulizier performed this maneuver, Vega-Cruz lost control of the Infiniti and came to a stop. Eulizier then hit the front of the Infiniti with his vehicle, blocking it on the side of the road. He then exited his vehicle and drew his gun, yelling "show me your hands." Joint App'x at 178. The Infiniti had begun to reverse in the direction of the road when Salvatore arrived; Salvatore collided with the left side of the Infiniti. Eulizier, on foot, came around the front of Salvatore's vehicle and stood near the front driver's side of the Infiniti; the parties dispute whether Eulizier intentionally stepped in front of the Infiniti or merely found himself there. As the Infiniti started moving forward, Eulizier fired two shots into the windshield; the first struck Vega-Cruz in the head, killing him.

In the complaint, among other claims, Plaintiffs allege that Eulizier's use of deadly force violated Vega-Cruz's Fourth Amendment right to be free from excessive force, because Vega-Cruz "posed no imminent or immediate threat of death or serious bodily injury to anyone, including the involved officers." Joint App'x at 14-15. According to the complaint: (1) Vega-Cruz "never attempted to strike the involved officers, or anyone else with his vehicle"; (2) Vega-Cruz "never intentionally struck the involved officers' vehicles, or anyone else's vehicle, with his car"; and (3) neither Eulizier nor anyone else was "in the direct path of the car [Vega-Cruz] was driving and Eulizier was easily able to step out of the way or path of the vehicle" at the time he used deadly force. *Id.* at 14.

Following discovery, Eulizier moved for summary judgment on both the merits of the excessive force claim and, in the alternative, on the defense of qualified immunity. The district court denied the motion, concluding that the evidence in the record created genuine issues of fact that precluded summary judgment on either ground. *See generally Colon v. Eulizier,* No. 3:21-CV-00175 (KAD), 2023 WL 5177788 (D. Conn. Aug. 11, 2023). In declining to afford qualified immunity to Eulizier at the summary judgment stage, the district court noted that, although the parties agree that Eulizier approached the Infiniti on foot, "[t]he parties dispute . . . the series of events leading up to [Eulizier's] approach—specifically, whether he intentionally stepped in front of the vehicle or whether it was happenstance that as he came around Salvatore's vehicle, he `found himself near the front of the Vega-Cruz vehicle." *Id.* at *4. The district court then identified various other factual disputes, including the following:

> [W]hile the parties agree that the vehicle began to move forward, the parties disagree as to both the speed of the car and the direction it was travelling. Plaintiff[s] assert[] the car was moving slowly and was turning away from [Eulizier], that Vega-Cruz was trying to avoid [Eulizier] as he fled, and further, that [Eulizier] could have stepped out of the way of the vehicle. [Eulizier] asserts the vehicle "accelerated towards" him, at which time he reasonably and, out of necessity, fired two shots into the vehicle.

Id. The district court explained that it had reviewed the relevant portions of the record, including the video evidence, relied upon by the parties to support "their competing narratives" with respect to "each of these critical facts," and emphasized that "although video evidence can often resolve a motion for summary judgment, in this case it [did] not do so." *Id.* at *5 (citation omitted). In short, based upon its review of the record, the district court concluded that it was "left with no firm conviction as to the objective reasonableness of [Eulizier's] use of deadly force for purposes of either the Fourth Amendment or qualified immunity analysis." *Id.* Eulizier filed an interlocutory appeal challenging the district court's denial of summary judgment on qualified immunity grounds.

DISCUSSION

"The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly

established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan,* 555 U.S. 223, 231 (2009) (internal quotation marks and citation omitted). As set forth in the two-step framework articulated by the Supreme Court in *Saucier v. Katz,* 533 U.S. 194 (2001), "when a defendant official invokes qualified immunity as a defense in order to support a motion for summary judgment, a court must consider two questions: (1) whether the evidence, viewed in the light most favorable to the plaintiff, makes out a violation of a statutory or constitutional right, and (2) whether that right was clearly established at the time of the alleged violation." *Tracy v. Freshwater,* 623 F.3d 90, 96 (2d Cir. 2010). A right is clearly established if it would have been "clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Jones v. Treubig,* 963 F.3d 214, 224 (2d Cir. 2020) (internal quotation marks and citation omitted). "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Mullenix v. Luna,* 577 U.S. 7, 12 (2015) (per curiam) (internal quotation marks and citation omitted).

Eulizier argues that he is entitled to qualified immunity because it would not have been clear to a reasonable officer, based on existing precedent, that his conduct was unlawful in the situation that he faced, even when viewing the facts most favorably to Plaintiffs. We disagree.

As an initial matter, at the time of the incident in April 2019, it was clearly established law in this Circuit that "it is not objectively reasonable for an officer to use deadly force to apprehend a [fleeing motorist] unless the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or

others." *Cowan ex rel. Estate of Cooper v. Breen,* 352 F.3d 756, 764 (2d Cir. 2003) (internal quotation marks and citation omitted); *see also Tennessee v. Garner,* 471 U.S. 1, 11 (1985) ("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 to do so."). Thus, Eulizier concedes that "if suspects are driving away from officers during their escapes and pose no risk as no persons [are] in the immediate area[,] officers would not be entitled to qualified immunity" for using deadly force against a fleeing motorist in such a circumstance. Appellant's Br. at 23 (citing *Cowan,* 352 F.3d 756); *see also* Reply Br. at 6 (acknowledging that *"Cowan v. Breen* establishes that using deadly force against the driver of a vehicle who . . . poses no potential risk to officers or others is unconstitutional").

Here, viewing the evidence in the light most favorable to Plaintiffs, including reasonable inferences that can be drawn from that evidence, a reasonable jury could find that Eulizier used deadly force in violation of the Fourth Amendment under the legal standard articulated in *Cowan.* In particular, a jury could credit Plaintiffs' account of the following facts: After Vega-Colon lost control of the Infiniti and then came to a full stop, the Infiniti started moving forward and to the right at a slow rate of speed, away from Eulizier, who was standing on the side of the road to the left of the Infiniti. Eulizier then suddenly ran out into the roadway toward the front of the Infiniti as it continued to slowly move to the right, away from Eulizier, and, as Eulizier began stepping backwards, he fired two shots into the front window of the Infiniti, the first of which struck Vega-Cruz in the head from about four feet away. Under those factual circumstances, a rational jury could find that there

was no probable cause to believe that Vega-Cruz posed a significant threat of death or serious physical injury to Eulizier or anyone else, and thus that it was objectively unreasonable for Eulizier to use deadly force against Vega-Cruz at that moment. Moreover, if such a finding is made by the jury after the factual disputes identified by the district court are resolved at trial, Eulizier would not be entitled to qualified immunity under the second prong of *Saucier* because it was clearly established at that time under *Cowan* that the use of deadly force in that context violated the Fourth Amendment, and thus it would have been "clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Jones,* 963 F.3d at 224 (internal quotation marks and citation omitted). Accordingly, the district court correctly determined that Eulizier was not entitled to qualified immunity at the summary judgment stage under the Plaintiffs' version of the facts, with all permissible inferences drawn in their favor.

The district court's determination is consistent with the circumstances in *Cowan,* where we explained that the plaintiff had presented evidence that the officer's use of deadly force occurred when the plaintiffs vehicle was traveling slowly and making no sudden turns as it travelled along the roadway, and the officer "was not in front of the vehicle but substantially off to its side when he fired the second, fatal shot." 352 F.3d at 763. We concluded that "[hooking at *only* [the plaintiffs] version of the events . . . suggests that no reasonable officer in [the defendant's] position would have believed that at the crucial moment use of deadly force was necessary"; thus, summary judgment was inappropriate on the ground of qualified immunity. *Id.* In reaching that determination, we further noted that the lawfulness of the officer's conduct could be resolved through jury

interrogatories on key factual disputes, "such as whether [the decedent] drove her car towards [the officer], whether [the officer] was in the zone of danger, and if so, whether he safely could have gotten out of the way." *Id.* at 764. In this case, although summary judgment is unwarranted on the qualified immunity issue, Eulizier can likewise propose jury interrogatories at trial regarding the material factual disputes to assist the district court in the ultimate qualified immunity determination.

Eulizier concedes that there are factual disputes with respect to the speed and direction of the Infiniti at the time he used deadly force, but argues that his "observation of the vehicle driving forward for less than 2 seconds and within a distance of less than 5 feet renders the speed and direction [of the Infiniti] irrelevant in the context of the qualified immunity context under clearly established law." Appellant's Br. at 13 *[sic].* In other words, Eulizier suggests that the brief period of time that he had to make a decision regarding the use of deadly force and his close proximity to the moving vehicle, taken together, mandate that he be cloaked with qualified immunity, even if the vehicle was pulling away from him at a low rate of speed. We disagree.

To be sure, the split-second nature of the decision to use force is a relevant and often important factor in assessing the objective reasonableness of the use of force and the parameters of qualified immunity in excessive force cases. *See Graham v. Connor,* 490 U.S. 386, 396-97 (1989) ("The calculus of reasonableness must embody allowance 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."). However, such factors still must be considered under

the "totality of the circumstances," which includes the circumstances leading up to that split-second decision. *Sullivan v. Gagnier,* 225 F.3d 161, 165 (2d Cir. 2000) (per curiam); *see also Salim v. Proulx,* 93 F.3d 86, 92 (2d Cir. 1996) ("The reasonableness inquiry depends only upon the officer's knowledge of circumstances immediately prior to and at the moment that he made the split-second decision to employ deadly force."). Thus, if a jury determines (after resolving the factual disputes) that the Infiniti was moving away from Eulizier at a low rate of speed posing no threat to him or other officers, and that it was objectively unreasonable for him to perceive otherwise, the fact that he was in close proximity to the vehicle and fired within seconds of it moving forward would not support a grant of qualified immunity. *See, e.g., Jones,* 963 F.3d at 237 (holding that, where officer "had time to re-assess whether [plaintiff] was still resisting arrest before using the taser a second time against [plaintiff], the rapidly evolving nature of the situation as a whole does not cloak [the officer] with qualified immunity for the unreasonable use of force following that re-assessment"); *see also Abbott v. Sangamon Cnty.,* 705 F.3d 706, 731, 733 (7th Cir. 2013) (holding that officer was not entitled to summary judgment on excessive force claim even where it was a "rapidly unfolding situation" because he had sufficient time to assess the "reasonable quantum of force").

Eulizier also contends that he is entitled to qualified immunity with respect to any reasonable mistake of fact he may have made as to the nature of the threat posed by the moving vehicle at the time he used deadly force. However, we have repeatedly held that "disputed material issues regarding the reasonableness of an officer's perception of the facts (whether mistaken or not) [are] the province of the jury, while the reasonableness of an officer's view of

the law is decided by the district court." *Jones,* 963 F.3d at 231; *see also Green v. City of New York,* 465 F.3d 65, 83 (2d Cir. 2006) ("If there is a material question of fact as to the relevant surrounding circumstances, the question of objective reasonableness is for the jury. If there is no material question of fact, the court decides the qualified immunity issue as a matter of law." (citation omitted)); *Cowan,* 352 F.3d at 762 ("Whether the officer is entitled to qualified immunity is resolved by the latter part of the *Saucier* analysis, which looks at an `officer's mistake as to what the law requires."' (quoting *Saucier,* 533 U.S. at 205)); *Stephenson v. Doe,* 332 F.3d 68, 78 (2d Cir. 2003) ("[A]s the Supreme Court clarified in *Saucier,* claims that an officer made a reasonable mistake of fact that justified the use of force go to the question of whether the plaintiffs constitutional rights were violated, not the question of whether the officer was entitled to qualified immunity."). Here the district court determined that there are genuine disputed issues of fact on the question of whether, at the time Eulizier used deadly force, his perception of the surrounding factual circumstances—whether mistaken or not—was reasonable. On this limited interlocutory appeal, Eulizier cannot challenge the determination that such factual disputes exist. *See Ortiz v. Jordan,* 562 U.S. 180, 188 (2011) ("[I]nstant appeal [of a denial of summary judgment on qualified immunity grounds] is not available . . . when the district court determines that factual issues genuinely in dispute preclude summary adjudication."); *Bolmer v. Oliveira,* 594 F.3d 134, 140-41 (2d Cir. 2010) ("[W]here the district court denied immunity on summary judgment because genuine issues of material fact remained, we have jurisdiction to determine whether the issue is *material,* but not whether it is *genuine.').* Thus, a jury

must resolve those factual issues regarding the reasonableness of any mistaken perception of the facts by Eulizier before a court can determine whether he is entitled to qualified immunity under the law. *See Anderson,* 477 U.S. at 255 ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . .").

We are similarly unpersuaded by Eulizier's reliance on cases where the Supreme Court held that an officer was entitled to qualified immunity even though the officer used deadly force against a fleeing motorist. *See* Appellant's Br. at 19-23 (citing *Mullenix,* 577 U.S. 7; *Plumhoff v. Rickard,* 572 U.S. 765 (2014); *Scott v. Harris,* 550 U.S. 372 (2007); *Brosseau v. Haugen,* 543 U.S. 194 (2004) (per curiam)). In each of those cases, there was uncontroverted evidence regarding the presence of a significant threat of at least serious bodily injury to either a law enforcement officer or innocent bystanders. *See Mullenix,* 577 U.S. at 14 (explaining that plaintiff was traveling "at extremely high speeds, was reportedly intoxicated, had twice threatened to shoot officers, and was racing toward an officer's location"); *Plumhoff,* 572 U.S. at 776-77 (explaining that "the chase in this case exceeded 100 miles per hour and lasted over five minutes," and that "it [was] beyond serious dispute that [plaintiff's] flight posed a grave public safety risk"); *Scott,* 550 U.S. at 380, 384 (describing undisputed video evidence showing that plaintiff led police on "a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury"); *Brosseau,* 543 U.S. at 197, 200 (explaining that the suspect, who was shot while fleeing in a vehicle, "posed a major threat" to those in the immediate area and noting that the suspect later pled

guilty to a felony, admitting "that he drove his Jeep in a manner indicating a wanton or willful disregard for the lives of others" (alteration adopted) (internal quotation marks and citations omitted)).

Here, in contrast, the district court has determined that there are disputed issues of fact that preclude summary judgment on the issue of whether there was a threat of serious bodily injury to Eulizier or others at the time he used deadly force. Accordingly, we discern no error in the district court's denial of summary judgment on qualified immunity grounds.

* * *

We have considered Eulizier's remaining arguments and find them to be without merit. Accordingly, we AFFIRM the order of the district court and direct the district court to confirm that Anthony Colon remains the administrator and plaintiff and, if so, amend the caption accordingly.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Appendix 2

United Stated District Court, District of Connecticut
Electronically FILED on August 11, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ANTHONY COLON	)	3:21-CV-00175 (KAD)
	)	
Individually and as	)	
Administrator of the	)	
Estate of Anthony	)	
Vega-Cruz	)	
Plaintiff,	)	
	)	
v.	)	AUGUST 11, 2023
	)	
LAYAU EULIZIER ET AL.		
Defendant.		

MEMORANDUM OF DECISION
RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (ECF NO. 45)

Kari A. Dooley, United States District Judge:

This case arises out of the shooting death of Anthony Vega-Cruz ("Vega-Cruz") on April 20, 2019 by Defendant Layau Eulizier ("Defendant" or "Eulizier")[1] a former police officer with the Wethersfield Police Department. Plaintiff, Anthony Colon, filed this civil rights action as the administrator of the Vega-Cruz estate asserting, *inter*

[1] Plaintiff also sued the Town of Wethersfield but all references to "Defendant" herein shall be to Eulizier.

alia, that Defendant's use of excessive force violated Vega-Cruz's Fourth Amendment rights under the United States Constitution. Pending before the Court is Defendant's motion for summary judgment in which he asserts that he is entitled to judgment as a matter of law because the shooting did not amount to excessive force and, in any event, he is entitled to qualified immunity. Plaintiff opposes summary judgment and asserts that there are issues of material fact as to whether Defendant's use of deadly force was excessive or whether qualified immunity protects Eulizier. For the reasons that follow, Defendant's motion for summary judgment is DENIED.

Standard of Review

The standard under which motions for summary judgment are decided is well known and well established. Under Rule 56(a), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A fact is "material" if it "might affect the outcome of the suit under the governing law," while a dispute about a material fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). Significantly, the inquiry conducted by the Court when reviewing a motion for summary judgment focuses on "whether there is the need for a trial—whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Id.* at 250. The moving party bears the burden of showing "that there is an absence of evidence to support the

nonmoving party's case" at trial. *PepsiCo, Inc. v. Coca-Cola Co.,* 315 F.3d 101, 105 (2d Cir. 2002).

If the moving party meets this burden, the nonmoving party "must set forth `specific facts' demonstrating that there is `a genuine issue for trial.'" *Wright v. Goord,* 554 F.3d 255, 266 (2d Cir. 2009). In deciding a motion for summary judgment, the Court "must construe the facts in the light most favorable to the non-moving party and must resolve all ambiguities and draw all reasonable inferences against the movant." *Beyer v. Cnty. Of Nassau,* 524 F.3d 160, 163 (2d Cir. 2008). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *See Anderson,* 477 U.S. at 249—50 (citations omitted). Importantly, "[a]ssessments of credibility and choices between conflicting versions of the events are matters for the jury, not for the court on summary judgment." *Adamson v. Miller,* 808 F. App'x 14, 16 (2d Cir. 2020) (summary order) (internal quotation marks omitted).

Facts[2]

On April 20, 2019, Plaintiffs decedent, Vega-Cruz, was operating his Infiniti G35 Lexus on or near the Silas Deane Highway in Wethersfield, Connecticut. At approximately 5:45 p.m., Officer Salvatore of the Wethersfield Police Department

[2] This summary is comprised of facts taken from the parties' respective Local Rule 56(a) statements and derives principally from those facts about which there is no dispute. As discussed *infra.,* there are significant disagreements as to how the events of April 20, 2019 unfolded.

("WPD") observed heavily tinted windows on Vega-Cruz's vehicle and observed the vehicle making a right turn while activating its left turn signal. While the vehicle was parked in a parking lot, Officer Salvatore checked the COLLECT system for the vehicle's license plates, which revealed that the plates were tied to the suspended registration of a Hyundai, which indicated a misuse of Connecticut license plates. Officer Salvatore decided to conduct a motor vehicle stop, advising WPD dispatch of his decision. When Officer Salvatore activated his lights to conduct the stop, Vega-Cruz did not immediately stop, and instead sped off at a high rate of speed.[3] Officer Salvatore advised dispatch that the driver had sped off and requested back up.[4] Officer Salvatore promptly caught up with Vega-Cruz, who pulled over by 1078 Silas Deane Highway, where a Goodyear Auto Service store is located.

Defendant was in the same vicinity, heard the request for back up, and decided to assist Salvatore. As Officer Salvatore approached the vehicle on foot, Vega-Cruz sped off traveling north on the Silas Dean Highway. The road was wet, and the traffic was moderate. At point, the parties' narratives diverge as to what Defendant did, each citing to the DashCam videos from both police cruisers.[5] Ultimately, the

---

[3] Defendant asserts that Vega-Cruz was weaving in and out of traffic, citing, *inter cilia,* Salvatore's cruiser video. Plaintiff asserts Vega-Cruz made a single lane change, citing the same video. This disagreement is emblematic of the cross-briefing in this case.

[4] Plaintiff adds to this fact that Officer Salvatore advised dispatch that he was attempting a traffic stop (presumably as opposed to an investigative stop in connection with a criminal offense).

[5] Defendant asserts that as he observed the Infiniti traveling in his direction—with Officer Salvatore behind—he traveled south

parties agree that Vega-Cruz lost control of the vehicle, spun out and came to a stop, facing southbound in front of a parking lot servicing businesses at 943-957 Silas Dean Highway. After Vega-Cruz passed Defendant, Defendant performed a U-turn and accelerated toward Vega-Cruz's vehicle, hitting the front end of the vehicle before coming to a stop. Defendant's vehicle blocked the Infiniti from proceeding southbound. Defendant exited his vehicle with his firearm drawn. Vega-Cruz then began to drive in reverse. At this point, Officer Salvatore arrived at the scene. As Vega-Cruz backed up into the southbound lanes of the Silas Deane Highway, Officer Salvatore collided with the Infiniti. It nonetheless continued in reverse, attempting to align the front of the vehicle in a northbound direction. Defendant then came around the front of Officer Salvatore's vehicle with his weapon drawn and yelled at the driver to "show me your hands." The Infiniti, now facing northbound, began to move forward. Defendant fired two shots into the windshield, the first striking Vega-Cruz in the head. The vehicle stopped momentarily and then slowly rolled forward, coming to a stop at a business across the highway. Sixty seconds elapsed from the time that Defendant began on an intercept course with the Infiniti to the time the shots were fired.

---

on the Silas Deane Highway and straddled the yellow line between a turning lane and the northbound lanes. Plaintiff asserts that Defendant crossed into the northbound lane in which Vega-Cruz was travelling to block the northbound lane. As Vega-Cruz approached, he swerved into the southbound lanes to avoid Defendant's vehicle. The Court's review of the available video footage does not definitively resolve the factual dispute as to what Defendant did as he traveled across the southbound lanes and into the northbound lane in which Vega-Cruz was driving.

Discussion

Defendant seeks summary judgment on both the merits of Plaintiffs Fourth Amendment claim of excessive force, or alternatively, on his defense that he is entitled to qualified immunity. Plaintiff opposes summary judgment and asserts that the record evidence reveals genuine issues of material fact which must be decided before a determination as to whether Defendant's use of deadly force was excessive, or alternatively, whether he is protected by qualified immunity.[6] Upon review of the substantial submissions,[7] the Court agrees with Plaintiff. There are genuine issues of material fact as to the circumstances giving rise to the death of Plaintiffs decedent, which precludes, at the summary judgment

---

[6] Defendant also asserts that he is entitled to governmental immunity. As the Court finds that genuine issues of material fact exist which preclude summary judgment, no further discussion regarding the applicability of governmental immunity is included herein.

[7] In addition to briefing, the Court received as exhibits thereto from Defendant a State Police Investigative report; sworn statements from Officer Salvatore and Defendant; a witness statement from Mr. Braga; Officer Salvatore's cruiser video; Defendant's cruiser video; a surveillance video report; a DashCam Report; various photographs; and a report of an interview with Officer Santiago. From Plaintiff, the Court received Officer Salvatore's DashCam footage; an interview with Officer Santiago; Defendant's DashCam footage; surveillance video; Defendant's cruiser interior video; the State of Connecticut's Chief Medical Examiner's report; the State's Attorney for the Judicial District of Hartford's report; deposition testimony of Officer Santiago; two WPD incident reports; WPD's Investigation Report, including a transcript of the dispatch recordings; deposition testimony of Defendant; WPD's Call Summary Report; General Order 5-412 regarding Vehicle Pursuits; and deposition testimony of Ms. Salvatore.

stage, a determination as to whether the use of deadly force was excessive or whether Defendant is entitled to qualified immunity. These are issues for the jury to decide.

Section 1983: Excessive Force

Plaintiff alleges that Defendant violated Vega-Cruz's Fourth Amendment rights, as incorporated against the states by the Fourteenth Amendment, *see Tenenbaum v. Williams,* 193 F.3d 581, 602 n.14 (2d Cir. 1999), using deadly force on April 20, 2019.[8] "The Fourth Amendment prohibits the use of unreasonable and therefore excessive force by a police officer in the course of effecting an arrest." *Jamison v. Metz,* 541 F. App'x 15, 19 (2d Cir. 2013) (summary order) (internal quotation marks omitted). "A police officer violates the Fourth Amendment if the amount of force he uses in effectuating an arrest is objectively unreasonable in light of the facts and circumstances confronting the officer." *Lennox v. Miller,* 968 F.3d 150, 155 (2d Cir. 2020) (internal quotation marks and alterations omitted).

"Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Graham v. Connor,*

---

[8] Plaintiff also alleges a substantive due process claim in his own right under the Fourteenth Amendment, arising out of the loss of his "protected" interest in a familial relationship with Vega-Cruz. The parties did not brief the viability of this claim separate and apart from the excessive force claims. The Court notes, however, that this claim also derives, as a factual matter, from the excessive force allegations. The Court offers no opinion as to whether a substantive due process claim is implicated by the allegations in this case.

490 U.S. 386, 396 (1989) (internal quotation marks omitted). More specifically, "[a] determination of whether the force used was reasonable requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Miller,* 968 F.3d at 155 (internal quotation marks omitted). Importantly, "[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 (internal quotation marks omitted). Thus, "[t]he calculus of reasonableness must embody allowance 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. "In sum, the standard to be applied in determining whether the amount of force used exceeded the amount that was necessary in the particular circumstances is reasonableness **at the moment."** *Rogoz v. City of Hartford,* 796 F.3d 236, 247 (2d Cir. 2015) (emphasis added; internal quotation marks omitted).

"In light of the fact-specific nature of the inquiry on an excessive force claim, granting summary judgment against a plaintiff on such a claim is not appropriate unless no reasonable factfinder could conclude that the officers' conduct was objectively unreasonable." *Miller,* 968 F.3d at 155 (internal quotation marks and alterations omitted).

Qualified Immunity

"[qualified immunity protects government officials from suit if `their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Gonzalez v. City of Schenectady,* 728 F.3d 149, 154 (2d Cir. 2013) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). "When a defendant invokes qualified immunity to support a motion for summary judgment, courts engage in a two-part inquiry: whether the facts shown `make out a violation of a constitutional right,' and `whether the right at issue was clearly established at the time of defendant's alleged misconduct.'" *Taravella v. Town of Wolcott,* 599 F.3d 129, 133 (2d Cir. 2010) (quoting *Pearson v. Callahan,* 555 U.S. 223, 129 S. Ct. 808, 815-16 (2009). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Taylor v. Barkes,* 575 U.S. 822, 135 S. Ct. 2042, 2044 (2015). "Rights must be clearly established in a `particularized' sense, rather than at a high level of generality, *Grice v. McVeigh,* 873 F.3d 162, 166 (2d Cir. 2017), and while "a case directly on point" is not required, "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd,* 563 U.S. 731, 743 (2011).

"Therefore, an official is entitled to qualified immunity if, considering the law that was clearly established at the time, the official's conduct was `objectively legally reasonable.'" *Nazario v. Thibeault,* No. 3:21-cv-216-VLB, 2022 WL 2358504, at *8 (D. Conn. June 30, 2022) (quoting *Taravella,* 599 F.3d at 133). "The objective reasonableness of an official's conduct cis a mixed question of law and fact.'" *Id.* "At the summary judgment stage, while a conclusion that an official's conduct `was objectively reasonable as a matter of law may be appropriate where there is no

dispute as to the material historical facts, if there is such a dispute, the factual question must be resolved by the factfinder."' *Id.*

Considering these standards, it is manifest that the merits of Plaintiffs claim and the question of qualified immunity overlap significantly, as both require an assessment of the objective reasonableness of Defendant's conduct. *Diaz v. City of Hartford Police Dep't,* No. 3:18-CV-01113 (KAD), 2021 WL 1222187, at *5 (D. Conn. Mar. 31, 2021). Indeed, in some excessive force cases, the qualified immunity and Fourth Amendment issues converge on one question: "Whether in the particular circumstances faced by the officer, a reasonable officer would believe that the force employed was lawful." *Cowan ex rel. Est. of Cooper v. Breen,* 352 F.3d 756, 764 n.7 (2d Cir. 2003).

It bears repeating that summary judgment is not appropriate in this highly fact specific context unless "no reasonable juror could conclude that [Defendant's] conduct was objectively unreasonable." *Miller,* 968 F.3d at 155. And further, that "while a conclusion that an official's conduct `was objectively reasonable as a matter of law may be appropriate where there is no dispute as to the material historical facts, if there is such a dispute, the factual question must be resolved by the factfinder."' *Nazario,* 2022 WL 2358504, at *8.

On this issue, Defendant asserts that there is no genuine issue of material fact as to the events giving rise to the use of deadly force. Defendant argues that, under the circumstances, he believed that deadly force was necessary to prevent Vega-Cruz from striking him with his vehicle as he attempted to flee, and that this belief was objectively reasonable. Although Defendant relies upon the video footage as establishing, as a matter of law, that his use of force

was reasonable, the video evidence allows for differing conclusions.

By way of example only, the parties agree that at some point, Defendant approached the vehicle on foot. The parties dispute, however, the series of events leading up to Defendant's approach—specifically, whether he intentionally stepped in front of the vehicle or whether it was happenstance that as he came around Salvatore's vehicle, he "found himself' near the front of the Vega-Cruz vehicle. The parties agree that at some point, Officer Salvatore struck the Vega-Cruz vehicle. However, Defendant asserts that Officer Salvatore intentionally struck Vega-Cruz's vehicle because he believed the vehicle was about to strike Defendant. But Plaintiff cites to Officer Salvatore's deposition wherein he denies intentionally striking Vega-Cruz's vehicle. And on this issue, it appears on Officer Salvatore's DashCam video that Officer Salvatore struck the Infiniti while it was traveling in reverse and *before* Defendant had stepped into the lane of travel. And while the parties agree that the vehicle began to move forward, the parties disagree as to both the speed of the car and the direction it was travelling. Plaintiff asserts the car was moving slowly and was turning away from Defendant, that Vega-Cruz was trying to avoid Defendant as he fled, and further, that Defendant could have stepped out of the way of the vehicle. Defendant asserts the vehicle "accelerated towards" him, at which time he reasonably and, out of necessity, fired two shots into the vehicle.[9]

---

[9] Defendant dismisses much of the Plaintiffs evidence and argument as "irrelevant" to the split second decision Defendant made "at the moment" the car began to move forward. *See* Def. Resp., ECF No. 52, at 1. These arguments ignore that the jury's assessment must be made on the totality of the circumstances. *See Heath u. Henning,* 854 F.2d 6, 9 (2d Cir. 1988) (finding that

As to each of these critical facts, the parties cite to portions of the record evidence as supporting their competing narratives. The Court has reviewed the various videos, the investigative reports, the sworn statements, and the other exhibits appended to the motion for summary judgment and the opposition to same. And although video evidence can often resolve a motion for summary judgment, *see Scott v. Harris,* 550 U.S. 372,380-81 (2007) (finding no genuine issue of fact for trial where video evidence of circumstances of a police chase contradicted plaintiffs eye-witness testimony), in this case it does not do so. Indeed, the Court is left with no firm conviction as to the objective

---

under the Fourth Amendment, "the proper standard requires that a jury consider whether the officers acted reasonably, under the totality of the circumstances, in using deadly force..."); *see also Callahan u. Wilson,* 863 F.3d 144, 149 (2d Cir. 2017) ("[T]he operative question in excessive force cases is whether the totality of the circumstances justifie[s] a particular sort of search or seizure.") (internal quotations and citation omitted). While ultimately the determination of whether Defendant used excessive force or is entitled to qualified immunity may turn on the moment he used deadly force, that does not render irrelevant the facts and circumstances that led to that moment. *See Plumhoff u. Rickard,* 572 U.S. 765 (2014) (where the Court examined and deemed relevant videotape evidence of a high-speed car chase that lasted over five minutes—and included the car driving at a speed of 100 miles per hour, dozens of other vehicles who altered course, and a clear escape attempt—to determine that a police officer acted reasonably in using deadly force); *see also Gibbs u. City of Bridgeport,* No. 3:16-cv-635 (JAM), 2018 WL 4119588, at *10 (D. Conn. Aug. 29, 2018) (finding that the objective reasonableness inquiry must focus on an officer's knowledge of the circumstances "immediately prior to **and** at the moment of his decision to use deadly force") (emphasis added; citation omitted); *see Hemphill u. Schott,* 141 F.3d 412, 414 (2d Cir. 1998) (overturning a District Court decision granting summary judgment because the Second Circuit found that there was a genuine issue of material fact regarding the version of events "immediately preceding the shooting").

reasonableness of Defendant's use of deadly force for purposes of either the Fourth Amendment or qualified immunity analysis.

Conclusion

For the foregoing reasons, Defendant's motion for summary judgment (ECF No. 45) is DENIED.

SO ORDERED at Bridgeport, Connecticut, this 11th day of August 2023.

/s/ Kari A. Dooley
KARI A. DOOLEY
UNITED STATES DISTRICT JUDGE