

No.

---

---

IN THE  
**Supreme Court of the United States**

---

ULYSSES LEE FEAGIN,

*Petitioner,*

*v.*

MANSFIELD POLICE DEPARTMENT; JORDAN MOORE;  
MARK BOGGS; CLAY BLAIR,

*Respondents.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

---

**PETITION FOR A WRIT OF CERTIORARI**

---

Rachael Jensen  
ORRICK, HERRINGTON &  
SUTCLIFFE LLP  
200 West 6th Street,  
Suite 2250  
Austin, TX 78701

Samuel Weiss  
RIGHTS BEHIND BARS  
416 Florida Ave. N.W.  
Washington, D.C. 20001

Daniel A. Rubens  
*Counsel of Record*  
Alyssa Barnard-Yanni  
ORRICK, HERRINGTON &  
SUTCLIFFE LLP  
51 West 52nd Street  
New York, NY 10019  
(212) 506-5000  
drubens@orrick.com

*Counsel for Petitioner*

---

---

## QUESTION PRESENTED

Our adversarial system “rel[ies] on the parties to frame the issues for decision.” *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (quotation marks omitted). Courts “do not, or should not, sally forth each day looking for wrongs to right.” *Id.* at 376 (quotation marks omitted).

Here, the district court found a genuine dispute of material fact about whether Petitioner was actively resisting arrest when he was tased, precluding a grant of qualified immunity to Respondents. Respondents argued on appeal that the district court had erred because non-video evidence (namely, the officers’ affidavits and police reports) conclusively demonstrated that Petitioner *was* actively resisting arrest. The Court of Appeals lacked jurisdiction over this argument under *Johnson v. Jones*, 515 U.S. 304, 313 (1995). The Court of Appeals nonetheless reversed the district court on other grounds, relying on its independent review of the record.

The question presented is:

Whether the Court of Appeals violated the party-presentation principle by reversing the district court on grounds never raised, and in fact affirmatively disavowed, by Respondents?

**RELATED PROCEEDINGS**

*Ulysses Feagin v. Mansfield Police Dept., et al.*,  
No. 24-3710 (6th Cir. Judgment entered Sept. 11,  
2025).

*Ulysses Feagin v. Mansfield Police Dept., et al.*,  
No. 1:22 cv 1201 (N.D. Ohio Opinion and Order en-  
tered Aug. 8, 2024).

## TABLE OF CONTENTS

	<b>Page</b>
QUESTION PRESENTED .....	i
RELATED PROCEEDINGS.....	ii
TABLE OF AUTHORITIES .....	vi
INTRODUCTION .....	1
OPINIONS AND ORDERS BELOW.....	2
JURISDICTION.....	2
STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	3
Mr. Feagin sues for excessive force after he is repeatedly tased by police officers .....	3
The district court denies summary judgment on qualified immunity, and a divided panel of the Sixth Circuit reverses on grounds not raised by Respondents .....	6
REASONS FOR GRANTING THE PETITION .....	8
I. The Sixth Circuit Egregiously Violated The Party-Presentation Principle By Reversing On Grounds Not Raised And Affirmatively Disavowed By Respondents. ....	8
A. Tasing someone who is not resisting arrest is a clearly established violation of the Fourth Amendment. ....	9

B.	The Sixth Circuit lacked jurisdiction to consider Respondents’ argument that non-video evidence proved Mr. Feagin was resisting arrest.....	11
C.	The Sixth Circuit reversed the district court on grounds Respondents chose not to present. ....	14
II.	Summary Reversal Is Warranted To Deter Violations Of The Party-Presentation Principle And Enforce The Limits Congress Placed On Appellate Jurisdiction. ....	16
A.	The Sixth Circuit’s blatant disregard of the party-presentation principle led to serious factual errors prejudicing Mr. Feagin. ....	17
B.	The lack of adversarial presentation on the application of <i>Barnes</i> to well-settled law on taser use prejudiced Mr. Feagin. ....	20
C.	Summary reversal is appropriate to ensure courts heed the party-presentation principle and the jurisdictional limits set by Congress. ....	24
	CONCLUSION.....	25
APPENDIX A	Opinion of the Sixth Circuit (Sep. 11, 2025).....	1a
APPENDIX B	Opinion & Order of the Northern District of Ohio (July 15, 2024).....	50a

APPENDIX C	Order of the Sixth Circuit denying rehearing en banc (Nov. 12, 2025) .....	80a
------------	----------------------------------------------------------------------------------	-----

## TABLE OF AUTHORITIES

<i>Abbott v. Sangamon Cnty.</i> , 705 F.3d 706 (7th Cir. 2013).....	10
<i>Acosta v. Miami-Dade Cnty.</i> , 97 F.4th 1233 (11th Cir. 2024) .....	10
<i>Barnes v. Felix</i> , 605 U.S. 73 (2025).....	1, 7, 21, 22
<i>Brown v. City of Golden Valley</i> , 574 F.3d 491 (8th Cir. 2009).....	10
<i>Brown v. Cwynar</i> , 484 F. App'x 676 (3d Cir. 2012).....	10
<i>Casey v. City of Fed. Heights</i> , 509 F.3d 1278 (10th Cir. 2007).....	10
<i>Clark v. Sweeney</i> , 607 U.S. 7 (2025).....	2, 8, 24
<i>Cloud v. Stone</i> , 993 F.3d 379 (5th Cir. 2021).....	10
<i>Getzen v. Long</i> , No. 21-16437, 2023 WL 118743 (9th Cir. Jan. 6, 2023).....	10
<i>Goodwin v. City of Painesville</i> , 781 F.3d 314 (6th Cir. 2015).....	23
<i>Gradisher v. City of Akron</i> , 794 F.3d 574 (6th Cir. 2015).....	22
<i>Graham v. Connor</i> , 490 U.S. 386 (1989).....	10
<i>Hagans v. Franklin Cnty. Sheriff's Off.</i> , 695 F.3d 505 (6th Cir. 2012).....	10

<i>Johnson v. Jones</i> , 515 U.S. 304 (1995).....	12
<i>Jones v. Treubig</i> , 963 F.3d 214 (2d Cir. 2020) .....	10
<i>Kent v. Oakland Cnty.</i> , 810 F.3d 384 (6th Cir. 2016).....	6
<i>Lash v. Lemke</i> , 786 F.3d 1 (D.C. Cir. 2015).....	10
<i>Meyers v. Baltimore Cnty.</i> , 713 F.3d 723 (4th Cir. 2013).....	10
<i>Miller v. Jackson</i> , 152 F.4th 258 (1st Cir. 2025).....	10
<i>Rudlaff v. Gillispie</i> , 791 F.3d 638 (6th Cir. 2015).....	15, 20, 21
<i>Scott v. Harris</i> , 550 U.S. 372 (2007).....	13, 20
<i>State v. Feagin</i> , No. 2021-CA-0084, 2022 WL 6949422 (Ohio Ct. App. Oct. 12, 2022).....	18
<i>Tennessee v. Garner</i> , 471 U.S. 1 (1985).....	11
<i>United States v. Sineneng-Smith</i> , 590 U.S. 371 (2020).....	1, 8, 24
<b>Constitutional Provisions</b>	
U.S. Const. IV amend. ....	2, 9, 10, 11
<b>Statutes &amp; Rules</b>	
28 U.S.C. § 1254(1).....	2
42 U.S.C. § 1983.....	3

Ohio Rev. Code, § 2921.331 .....	18
Ohio Rev. Code, § 2921.331(B) .....	18
Ohio Rev. Code, § 2921.331(C)(4) .....	18
Ohio Rev. Code, § 2921.331(C)(5) .....	18
6th Cir. R. 30(g)(1)(A) .....	13

## INTRODUCTION

In the decision below, the Sixth Circuit egregiously violated the principle of party presentation by reversing the district court on grounds never raised (and indeed disavowed) by Respondents. The result is not only manifestly unfair to Petitioner Ulysses Feagin, but also flouts the core tenet of our adversarial system—and defies the limits Congress has imposed on appellate jurisdiction to boot.

Courts of appeals across the country have long (and uniformly) held that law enforcement may tase a suspect who is actively resisting arrest, but not a suspect who is not, or has stopped, resisting. Without challenging this clearly established law, Respondents argued, in the district court and on appeal, that they were entitled to qualified immunity because non-video evidence supposedly showed that “Mr. Feagin was actively resisting arrest at the time Officer Moore deployed [his] taser.” C.A. Opening Brief at 10. Appellate courts lack jurisdiction over this kind of fact-based argument in an interlocutory qualified-immunity appeal. But the Sixth Circuit nonetheless reversed. The Sixth Circuit panel majority did so only by advancing a host of arguments Respondents did not make and to which Mr. Feagin had no opportunity to respond, including how this Court’s recent decision in *Barnes v. Felix*, 605 U.S. 73 (2025)—decided *after* oral argument in this case—affects the well-settled rule that law enforcement may not tase suspects who are not resisting arrest.

Courts “do not, or should not, sally forth each day looking for wrongs to right.” *United States v.*

*Sineneng-Smith*, 590 U.S. 371, 376 (2020) (quotation marks omitted). The problems with violating the party-presentation principle are compounded where, as here, an appellate court injects into the case questions of great significance without adequate briefing—and circumvents the jurisdictional limits on interlocutory appeal to do so. The Sixth Circuit’s grave departure from the party-presentation principle in this context warrants summary reversal. *See Clark v. Sweeney*, 607 U.S. 7, 8 (2025).

### **OPINIONS AND ORDERS BELOW**

The Sixth Circuit’s decision is reported at 155 F.4th 595 and reproduced at Pet. App. 1a-49a. The Sixth Circuit’s order denying rehearing is reproduced at Pet. App. 80a. The district court’s order denying qualified immunity is unreported and reproduced at Pet. App. 50a-79a.

### **JURISDICTION**

The Sixth Circuit issued its decision on September 11, 2025 and denied a timely petition for rehearing on November 12, 2025. On January 30, 2025, Justice Kavanaugh extended the time to petition for a writ of certiorari to March 12, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### **STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED**

The Fourth Amendment of the U.S. Constitution provides in relevant part that “[t]he right of the people to be secure in their persons, houses, papers, and

effects, against unreasonable searches and seizures, shall not be violated.”

42 U.S.C. § 1983 provides in relevant part:

Every 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, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

### STATEMENT OF THE CASE

***Mr. Feagin sues for excessive force after he is repeatedly tased by police officers***

In July 2020, Mr. Feagin was driving down a narrow residential street in Mansfield, Ohio when his vehicle veered across the road and nearly collided with a marked police vehicle belonging to Officer Mark Boggs. Pet. App. 51a-52a. Officer Boggs and Officer Jordan Moore (driving in separate cars) turned their vehicles around to follow Mr. Feagin. Pet. App. 52a. The officers did not activate the lights and sirens on

their cars, and Mr. Feagin proceeded slowly down the street for about 30 seconds before turning left into a parking lot. Pet. App. 52a.

Around the time Mr. Feagin started pulling into the parking lot, the officers finally activated their lights and sirens. Pet. App. 52a. The officers then approached Mr. Feagin, yelling at him to get out of the car and attempting to break his window when Mr. Feagin did not immediately comply. Pet. App. 52a. When Mr. Feagin opened his car door, officers forcefully yanked him out of the car. Pet. App. 52a-53a. Once Mr. Feagin was out of the car, the officers each took one of Mr. Feagin's arms and pulled them behind his back. Pet. App. 53a. Mr. Feagin went "limp as the officers wrestle[d] him ... to a standing position," and "within a second or two," "the officers ha[d] Mr. Feagin's arms under control pinned behind him." Pet. App. 53a. Officer Moore "struggle[d] to place Mr. Feagin in handcuffs, but Mr. Feagin" "cooperate[d] and [did] not resist." Pet. App. 53a.

While Mr. Feagin was securely restrained, Officer Moore used his right hand to hold Mr. Feagin's right arm behind Mr. Feagin's back, and used his left hand to retrieve his taser and place it at Mr. Feagin's back.



RB11; Boggs Dashcam at 3:43; Pet. App. 53a. Without warning, Officer Moore then tased Mr. Feagin in the back twice. Pet. App. 53a-54a. While being tased, Mr. Feagin yelled “you shot me.” C.A. Response Br. 12. One of the officers replied, “you almost hit me.” C.A. Response Br. 12.<sup>1</sup>

---

<sup>1</sup> Officers subsequently pepper sprayed Mr. Feagin while he was confined in a locked police vehicle and failed to provide him with medical assistance despite Mr. Feagin’s repeated statements that he was having difficulty breathing. C.A. Response Br. 12-16. Mr. Feagin’s deliberate-indifference claim arising out of these allegations survived summary judgment and is not at issue in this petition.

Mr. Feagin, proceeding pro se, sued the Mansfield Police Department and individual officers for excessive force. Pet. App. 56a-57a. Respondents moved for summary judgment on qualified-immunity grounds, arguing that tasing Mr. Feagin was warranted because he was resisting arrest. Pet. App. 50a, 53a-54a, 67a-68a. Mr. Feagin disputed that he was resisting arrest. Pet. App. 50a.

***The district court denies summary judgment on qualified immunity, and a divided panel of the Sixth Circuit reverses on grounds not raised by Respondents***

Respondents moved for summary judgment on Mr. Feagin's excessive-force claim, asserting qualified immunity. Pet. App. 57a. The district court denied that motion. Pet. App. 50a-79a. It explained that "the use of a Taser on a non-resistant suspect constitutes excessive force." Pet. App. 67a (quoting *Kent v. Oakland Cnty.*, 810 F.3d 384, 396 (6th Cir. 2016) (quotation marks omitted)). And it found a genuine dispute of material fact as to whether Mr. Feagin was resisting arrest at the time he was tased: Based on the evidence in the record, including dashcam video, the district court concluded that "a jury would be justified in finding that Mr. Feagin was largely under control or had stopped resisting by the time Officer Moore used his taser." Pet. App. 69a (quotation marks omitted). Because the parties' "dispute [wa]s not whether the facts fit cleanly within case law, but instead whether the disputed facts show excessive or acceptable uses of force," Pet. App. 76a, the district court determined that qualified immunity could not be granted at summary judgment. Pet. App. 69a.

Instead, a jury had to resolve the relevant factual disputes at trial.

Respondents appealed from the district court’s denial of qualified immunity. They argued that the district court erred in denying summary judgment based on qualified immunity because “admissible evidence in the record establishes conclusively that Mr. Feagin was actively resisting arrest at the time Officer Moore deployed the taser.” C.A. Opening Br. at 10. In essence, Respondents argued that the district court had erred in finding a genuine dispute of material fact precluding a grant of qualified immunity. In response, Mr. Feagin argued that the Court lacked jurisdiction over Respondents’ appeal and that Respondents were wrong on the merits. C.A. Response Br. at 25-31.

In a published decision, a divided panel of the Sixth Circuit reversed the district court’s denial of qualified immunity on Mr. Feagin’s excessive-force claim. As discussed in more detail below, the majority asserted jurisdiction to address any legal arguments “[e]mbedded” within Respondents’ challenge to the denial of qualified immunity, whether or not raised by Respondents. Pet. App. 21a. The majority also focused its legal analysis on this Court’s decision in *Barnes v. Felix*, 605 U.S. 73 (2025), which issued after the Sixth Circuit held oral argument in this case. Without the benefit of any adversarial briefing on the issue, the Sixth Circuit misread *Barnes* to radically alter clearly established law regarding the permissibility of tasing a non-resisting suspect. Judge Clay dissented from the majority’s resolution of qualified immunity, arguing that the Court lacked jurisdiction over the

arguments Respondents actually advanced on appeal. Pet. App. 33a-49a.

Mr. Feagin filed a petition for panel rehearing and rehearing en banc. His petition argued that the panel majority had violated the principle of party presentation in refusing to address the arguments actually presented by Respondents and instead reversing on grounds either not advanced or affirmatively disavowed by Respondents. C.A. Rehearing Pet. 8-15. Mr. Feagin also argued that disregarding the party-presentation principle in this way was fundamentally unfair, because it deprived him of any meaningful opportunity to respond to the issues raised for the first time in the majority's opinion. C.A. Rehearing Pet. 15-17. The Sixth Circuit denied rehearing without explanation.

## **REASONS FOR GRANTING THE PETITION**

### **I. The Sixth Circuit Egregiously Violated The Party-Presentation Principle By Reversing On Grounds Not Raised And Affirmatively Disavowed By Respondents.**

Our legal system “rel[ies] on the parties to frame the issues for decision.” *Sineneng-Smith*, 590 U.S. at 375 (quotation marks omitted). Courts “do not, or should not, sally forth each day looking for wrongs to right.” *Id.* at 376 (quotation marks omitted). They are instead “passive instruments of government,” “decid[ing] only questions presented by the parties.” *Id.* (quotation marks omitted). “To put it plainly, courts call balls and strikes; they don’t get a turn at bat.” *Clark*, 607 U.S. at 9 (quotation marks omitted).

Both in the district court and on appeal, the parties agreed that Respondents were not entitled to qualified immunity unless Mr. Feagin was actively resisting arrest at the time he was tased. *See* Pet. App. 50a, 53a-54a, 67a-68a. The arguments at both stages thus focused on whether a jury could reasonably conclude from the evidence that Mr. Feagin was resisting arrest. The Sixth Circuit flouted the fundamental principle of party presentation by reversing the district court based on different arguments Respondents never made, and indeed, affirmatively disavowed.

**A. Tasing someone who is not resisting arrest is a clearly established violation of the Fourth Amendment.**

There was no dispute in the district court or on appeal that Respondents' entitlement to qualified immunity hinged on whether Mr. Feagin was resisting arrest when Officer Moore tased him. *See* C.A. Opening Br. at 9 (“[O]fficers may tase a person who actively resists arrest.”); *id.* at 10 (“In the present case, admissible evidence in the record establishes conclusively that Mr. Feagin was actively resisting arrest at the time Officer Moore deployed the taser.”); Defendants’ Motion for Summary Judgment at 11-13, *Feagin v. Mansfield Police Dep’t*, No. 22-cv-1201 (N.D. Ohio Dec. 14, 2023), ECF No. 46 (“MSJ Br.”) (same). This is because tasing someone who is not actively resisting arrest is a clearly established violation of the Fourth Amendment.

An excessive force claim like Mr. Feagin’s implicates the Fourth Amendment’s “reasonableness” standard. *See Graham v. Connor*, 490 U.S. 386, 395

(1989). Generally speaking, the reasonableness of an officer’s use of force depends on “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.” *Id.* at 396. Applying this overall reasonableness framework to the context of tasing, the Courts of Appeals have uniformly held that “[a] suspect’s active resistance” to arrest “marks the line between reasonable and unreasonable tasing.” *Hagans v. Franklin Cnty. Sheriff’s Off.*, 695 F.3d 505, 509-10 (6th Cir. 2012) (collecting cases).<sup>2</sup> Thus, “[i]f a suspect actively resists arrest and refuses to be handcuffed, officers do not violate the Fourth Amendment by using a taser to subdue him.” *Id.* at 509. “By contrast,” if a suspect is “compliant or ha[s] stopped resisting,” tasing constitutes “excessive force.” *Id.*

And this well-established line between permissible and excessive force in the tasing context makes sense: Much like an officer cannot shoot a fleeing suspect that “poses no immediate threat to the officer ...

---

<sup>2</sup> See also *Miller v. Jackson*, 152 F.4th 258, 269-70 (1st Cir. 2025); *Jones v. Treubig*, 963 F.3d 214, 226 (2d Cir. 2020); *Brown v. Cwynar*, 484 F. App’x 676, 681 (3d Cir. 2012); *Meyers v. Baltimore Cnty.*, 713 F.3d 723, 734-35 (4th Cir. 2013); *Cloud v. Stone*, 993 F.3d 379, 384-85 (5th Cir. 2021); *Abbott v. Sangamon Cnty.*, 705 F.3d 706, 730 (7th Cir. 2013); *Brown v. City of Golden Valley*, 574 F.3d 491, 499-500 (8th Cir. 2009); *Getzen v. Long*, No. 21-16437, 2023 WL 118743, at \*2 (9th Cir. Jan. 6, 2023); *Casey v. City of Fed. Heights*, 509 F.3d 1278, 1285-86 (10th Cir. 2007); *Acosta v. Miami-Dade Cnty.*, 97 F.4th 1233, 1241 (11th Cir. 2024); *Lash v. Lemke*, 786 F.3d 1, 7 (D.C. Cir. 2015).

[or] others,” *Tennessee v. Garner*, 471 U.S. 1, 11 (1985), officers cannot tase a suspect who is not resisting arrest because someone who is not resisting arrest does not pose any danger to law enforcement or the public.

**B. The Sixth Circuit lacked jurisdiction to consider Respondents’ argument that non-video evidence proved Mr. Feagin was resisting arrest.**

In the proceedings below, Respondents did not challenge the clearly established rule that tasing a suspect who is not resisting arrest constitutes excessive force and violates the Fourth Amendment. Instead, in the district court Respondents sought to defend their use of force by citing Mr. Feagin’s supposed “physical resistance” to Officer Moore’s attempts to handcuff him. MSJ Br. at 16. Respondents maintained this focus on active resistance on appeal.

Respondents’ opening brief in the Sixth Circuit was framed around the proposition that “officers may tase a person who actively resists arrest.” C.A. Opening Br. 9. From there, Respondents argued that “admissible evidence in the record establishes conclusively that Mr. Feagin was actively resisting arrest at the time Officer Moore deployed the taser.” *Id.* at 10; *see also id.* (“Mr. Feagin was actively and persistently resisting arrest when Officer Moore deployed his taser.”); C.A. Oral Argument Audio 9:54-9:58 (arguing officers were “actively in a fight with Mr. Feagin” during the tasing).

This argument was record-based, not law-based: Respondents argued that “the District Court erred when it found that there was a genuine dispute of material fact in this case.” C.A. Opening Br. 11. According to Respondents, their version of events was supported by, among other things, “the affidavits of the officers,” and the court should disregard Mr. Feagin’s “self-serving affidavit” contradicting the officers’ account. C.A. Opening Br. 10-11. As Respondents explained on reply, “the Trial Court simply lost its way in its consideration of the evidence presented.” C.A. Reply 2. Or as counsel for Respondents summarized at oral argument:

The law with respect to the reasonableness, the objective reasonableness of tasing, is that it can be done when someone is resisting, and it should be stopped when someone has stopped resisting. And we accept that. We simply take the position, based upon Officer Boggs’s statement, that [Mr. Feagin] was ... continuing to resist and that is why he was tased.

Oral Argument Audio 10:55-11:19.

Respondents’ argument was precisely the kind of “evidence sufficiency” argument appellate courts lack jurisdiction to hear in an interlocutory qualified-immunity appeal. *Johnson v. Jones*, 515 U.S. 304, 313 (1995); *see also* Pet. App. 40a (Clay, J., dissenting) (“Defendants’ arguments defeat our jurisdiction because they reflect a challenge to the district court’s determinations about genuine disputes of fact.”).

To be sure, there is one narrow circumstance in which an appellate court can review the sufficiency of the evidence underlying a district court’s denial of qualified immunity: In cases involving video evidence, a court of appeals can reverse if, “view[ing] the facts in the light depicted by the videotape,” the plaintiff’s version of the facts is so “blatantly contradicted” by the video “that no reasonable jury could believe it.” *Scott v. Harris*, 550 U.S. 372, 380-81 (2007); *see also* C.A. Response Br. 28 (discussing Sixth Circuit precedents on this point). But Respondents did not argue that the district court’s finding of a genuine dispute of material fact was “blatantly contradicted by” the video here. Indeed, they did not rely on the video on appeal at all: They did not designate the video as relevant to their appeal under Sixth Circuit Rule 30(g)(1)(A), did not provide the video footage to the Sixth Circuit for review, and in their reply brief expressly *disavowed* any argument centered on the video. They argued (for example) “that a court should [not] substitute video replay of an event in place of what the actual police officer saw, heard, and experienced in real time.” C.A. Reply 1; *see also id.* at 3-4 (arguing video “should not be given disproportionate value” in the “balancing act” of weighing evidence when “there is video *versus* the police officer’s recitation of facts”) (emphasis added).

Thus, Respondents’ only argument—that the district court should have decided, based on the non-video evidence, that there was no triable fact issue about whether Mr. Feagin was actively resisting arrest when he was tased—was one the Sixth Circuit lacked jurisdiction to consider.

**C. The Sixth Circuit reversed the district court on grounds Respondents chose not to present.**

Instead of holding Respondents to their jurisdictionally barred arguments, the Sixth Circuit constructed new arguments out of whole cloth on Respondents' behalf—and proceeded to reverse the district court on those grounds.

Purporting to rely on its own interpretation of the video evidence, the Sixth Circuit conducted a de novo totality-of-the-circumstances analysis of Mr. Feagin's encounter with law enforcement. Pet. App. 13a-20a, 24a-32a. Evaluating Mr. Feagin's entire course of conduct leading up to the tasing incident, the severity of the traffic violations the Sixth Circuit accused him of committing, and other aspects of the dashcam video footage, the Sixth Circuit ultimately concluded that Respondents were entitled to qualified immunity based on the totality of the circumstances even if Mr. Feagin's conduct immediately before he was tased as seen on the video fell in a "zone of twilight" "neither wholly submissive ... nor engaging in active resistance." Pet. App. 12a-13a; *see also* Pet. App. 13a-20a, 24a-32a.

This analysis bears no resemblance to the argument Respondents advanced. Respondents never asked the Sixth Circuit to undertake a de novo "totality of the circumstances" inquiry based on the dashcam footage. Again, they disavowed reliance on the video footage and did not even provide it to the Sixth Circuit. *Supra* 11-13. Similarly, Respondents did not argue that they were entitled to qualified immunity

as a matter of law if Mr. Feagin’s conduct as seen on the video fell in a “zone of twilight” where he was “neither wholly submissive ... nor engaging in active resistance” when he was tased. Pet. App. 12a-13a. They argued that non-video evidence “conclusively” showed that Mr. Feagin was actively resisting arrest at the moment he was tased. C.A. Opening Br. 10-11; *supra* 11-13. And Respondents never argued that the particular traffic violations Mr. Feagin may have committed bore on the qualified-immunity analysis; indeed, the statutes cited by the Sixth Circuit, *see* Pet. App. 14a, are cited nowhere in Respondents’ briefs on appeal or in the district court. *See infra* 18-19.

As an alternative holding, the Sixth Circuit concluded that Mr. Feagin had not discharged his burden of “identify[ing] a closely analogous precedent that would have put [Officer] Moore on notice that his actions were unlawful.” Pet. App. 17a. But again, Respondents never once argued that they were entitled to qualified immunity on this legal ground. To the contrary, everyone agreed on the relevant line separating permissible from impermissible taser use: “[T]asing ... can be done when someone is resisting, and it should be stopped when someone has stopped resisting.” Oral Argument Audio 10:55-11:05; *see also Rudlaff v. Gillispie*, 791 F.3d 638, 642 (6th Cir. 2015) (“When a suspect actively resists arrest, the police can use a taser ... to subdue him; but when a suspect does not resist, or has stopped resisting, they cannot.”); *supra* 9-11. Thus, as discussed above, everyone was focused, both in the district court and on appeal, on whether the record created a genuine dispute of material fact as to whether Mr. Feagin was resisting arrest when Office Moore tased him. C.A. Opening Br.

10 (“Mr. Feagin was actively and persistently resisting arrest when Officer Moore deployed his taser.”); *supra* 9, 11.

The Sixth Circuit majority, apparently recognizing the extent to which its decision deviated from Respondents’ arguments, conceded that Respondents “overindulge[] in record-based arguments,” but claimed “legal questions” were nonetheless “[e]mbedded within” Respondents’ “argument ... that the district court erred in denying ... qualified immunity.” Pet. App. 21a. Respectfully, no such legal questions could be fairly discerned in Respondents’ briefing. This is not a case where “an appealing party simply mentions an issue of fact in their appellate briefing.” Pet App. 20a. The entirety of Respondents’ argument was that non-video record evidence conclusively established that Mr. Feagin was resisting arrest when he was tased, so there was no genuine dispute of material fact for trial. *Supra* 11-13. Under the principle of party presentation, the fact that Respondents’ argument can be viewed, at a high level of generality, as asserting “that the district court erred in denying ... qualified immunity,” Pet. App. 21a, does not grant a court license to address any legal argument theoretically “[e]mbedded” within that question, whether or not actually invoked by the parties.

## **II. Summary Reversal Is Warranted To Deter Violations Of The Party-Presentation Principle And Enforce The Limits Congress Placed On Appellate Jurisdiction.**

The Sixth Circuit’s disregard of the party-presentation principle in this case was especially egregious

because, without the benefit of adversarial presentation, the panel majority distorted both the facts and the law. Summary reversal is appropriate here to send a message that courts cannot inject new issues on appeal to circumvent jurisdictional limits in an effort to make up for a party's inadequate presentation.

**A. The Sixth Circuit's blatant disregard of the party-presentation principle led to serious factual errors prejudicing Mr. Feagin.**

Because the Sixth Circuit's decision confronted arguments Respondents did not make, that court had no adversarial briefing on the issues it resolved. And that lack of adversarial presentation had a predictable result: The Sixth Circuit's decision was infected by egregious factual errors, and even resorted to extra-record facts to rule for Respondents. *See* Pet. App. 42a (Clay, J., dissenting) (“[T]he majority reaches outside of the video and distorts facts in Defendants’ favor in order to grant qualified immunity.”).

Start at the beginning. The Sixth Circuit begins its factual narrative by accusing Mr. Feagin of “drinking liquor and smoking marijuana” while driving an SUV with a “shot out back window.” Pet. App. 6a-7a (quotation marks omitted). Respondents never argued any of these supposed facts to the Sixth Circuit, because they are wholly without evidentiary support in this case.<sup>3</sup> Instead, the Sixth Circuit went out of its

---

<sup>3</sup> The video evidence in this case shows that Mr. Feagin's rear window was *broken*; no one ever argued (and no evidence in the record shows) that it was “shot out.”

way to conduct a sua sponte review of Mr. Feagin’s state-court criminal proceedings, which Respondents never cited, for the purpose of injecting gratuitous but incriminating accusations from those proceedings into this case. *See* Pet. App. 6a (citing *State v. Feagin*, No. 2021-CA-0084, 2022 WL 6949422, at \*1 (Ohio Ct. App. Oct. 12, 2022)).<sup>4</sup>

After disparaging Mr. Feagin, the Sixth Circuit proceeded to mischaracterize his encounter with law enforcement. The Sixth Circuit first claimed that Mr. Feagin “refus[ed] to stop [his car] for roughly half a minute as two cruisers tailed him,” Pet. App. 14a, characterizing this behavior as a violation of Ohio Rev. Code. § 2921.331(B), (C)(4)-(5), which makes it a felony to “willfully ... flee a police officer after receiving a visible or audible signal from a police officer to bring the person’s motor vehicle to a stop.” But the video footage clearly shows (and the district court found) that the officers did not activate the lights and sirens on their cars until *after* Mr. Feagin was already turning into a parking lot. Pet. App. 52a. That is presumably why Respondents never argued that Mr. Feagin violated § 2921.331; the Sixth Circuit majority injected that alleged felony into the case *sua sponte*. As for the Sixth Circuit’s claim that Mr. Feagin “may have been trying to escape” because his “SUV began

---

<sup>4</sup> In a similar vein, the panel majority claimed elsewhere (without citation) that Mr. Feagin’s SUV was inventoried after his arrest and contained marijuana, cocaine, crack, THC, heroin, Xanax, Desyrel, Percocet, Valium, and a stolen police gun, among other contraband. Pet. App. 8a. None of those facts are anywhere in the record of the proceedings below, nor do they have any relevance to the arguments made on appeal.

to move in reverse out of its parking spot,” Pet. App. 15a, the district court explained that the video shows something much less dramatic: Mr. Feagin’s “vehicle roll[ed] slightly backward [as] Mr. Feagin ... shifted into park and the engine settled into gear.” Pet. App. 52a. After impermissibly drawing these wholly unsupported inferences in the officers’ favor, the Sixth Circuit proceeded to find that Mr. Feagin’s supposed attempts to flee from police were serious crimes justifying his tasing. Pet. App. 14a-15a.

The Sixth Circuit majority then proceeded to distort the record about Mr. Feagin’s conduct after he parked his car. To start, the Sixth Circuit wrongly claimed it was “undisputed” that the officers “witnessed bullets fall from [Mr.] Feagin’s pocket” as they removed him from his vehicle. Pet. App. 7a, 16a. But Mr. Feagin specifically disputed this below. C.A. Response Br. at 9 n.3. As Mr. Feagin explained, only Officer Moore claimed to witness bullets fall out of Mr. Feagin’s pocket—and his unsworn “affidavit” was stricken because it was not given under penalty of perjury. Pet. App. 58a-61a. In a separate affidavit, Officer Boggs stated that “bullets were recovered ultimately from the scene outside the driver’s door,” but he did not purport to personally see bullets fall out of Mr. Feagin’s pocket when Mr. Feagin was removed from his vehicle. *See* Affidavit of Mark Boggs ¶ 11, ECF No. 46-1. Because no admissible evidence establishes that officers witnessed bullets fall out of Mr. Feagin’s pocket while they were removing him from his vehicle, the facts are not “undisputed.” Pet. App. 16a. This matters because the supposedly undisputed fact that officers *saw* bullets fall out of Mr. Feagin’s pocket was critical to the panel majority’s findings

that the officers believed Mr. Feagin “posed an immediate threat to [their] lives.” Pet. App. 16a.

The Sixth Circuit further defended Respondents’ actions on the ground that the video supposedly showed Mr. “Feagin’s right arm free and flailing against the SUV” when Officer Moore tased him. Pet. App. 7a. The panel majority treated this observation as proof of Mr. Feagin’s resistance, justifying the tasing to “restrain” him. Pet. App. 14a. But the video evidence simply bears no relationship whatsoever to what the panel majority describes. Instead, as the district court expressly found, the officers “secured both of Mr. Feagin’s arms behind his back almost immediately,” *before* tasing Mr. Feagin. Pet. App. 68a-69a (citing video evidence). Defendants never argued (and indeed, even the Sixth Circuit majority did not find) that the district court’s finding was “blatantly contradicted by” the video such that reversal was warranted under *Scott*, 550 U.S. at 380. In venturing into these areas without the benefit of adversarial briefing, the majority distorted the video evidence to reverse the district court’s grant of summary judgment.

**B. The lack of adversarial presentation on the application of *Barnes* to well-settled law on taser use prejudiced Mr. Feagin.**

As noted above, it has long been clearly established law in the Sixth Circuit and elsewhere that “[w]hen a suspect actively resists arrest, the police can use a taser (or a knee strike) to subdue him; but when a suspect does not resist, or has stopped resisting, they cannot.” *Rudlaff*, 791 F.3d at 642. As explained above, both parties agreed on this rule. Their

dispute was merely about whether, in fact, Mr. Feagin was resisting or not when Officer Moore tased him. *See supra* 11-13. Thus, the parties never briefed, and Respondents never argued, that it may be lawful to tase a suspect who has *stopped* resisting arrest based on the suspect's prior conduct. Notwithstanding the parties' agreement that clearly established law forbids tasing a suspect who is not resisting arrest, the Sixth Circuit majority read this Court's decision in *Barnes*, 605 U.S. 73 to abrogate this line of cases. According to the panel majority, after *Barnes*, the question of whether Mr. Feagin had stopped resisting when he was tased was no longer its "sole concern, as [it] might have [been] in days gone by." Pet. App. 23a. Instead, the panel majority concluded that "the timeframe to consider here is not just the seconds before [Mr.] Feagin's tasing, but instead all of the events that foreseeably led to the use of force," Pet. App. 29a; *see also* Pet. App. 24a-30a. The upshot is that the Sixth Circuit interpreted *Barnes* to mean that tasing might be permissible even "when a suspect does not resist, or has stopped resisting," *Rudlaff*, 791 F.3d at 642. In sum, the Sixth Circuit interpreted *Barnes* to completely upend long-settled law governing the standards for taser use. *Supra* 9-11.

Because *Barnes* was decided after oral argument in this case, the Sixth Circuit's conclusion that *Barnes* changed the law on taser use was reached entirely without the benefit of adversarial briefing. As a result, this case perfectly encapsulates the dangers of deciding issues of great significance without adequate briefing, as the Sixth Circuit majority erroneously created a conflict between *Barnes* and the well-

established principle that law enforcement officers cannot tase suspects who are not resisting arrest.

*Barnes* involved “the moment of threat” doctrine, which insulated an officer from liability for use of deadly force if his life was in danger at “the precise moment” deadly force was deployed. 605 U.S. at 78-79 (quotation marks omitted). This test required courts to “exclude[]” from consideration “any actions of the officer that allegedly created the danger necessitating deadly force.” *Id.* at 84. The Supreme Court held it was improper “to focus on only a single moment” and not “relevant events coming before” in this way. *Id.* at 83.

*Barnes* did not characterize its holding as a change in the law. To the contrary, it described its holding as “apparent” given this Court’s existing precedent. *Id.*; see also *id.* at 82 (“Th[e] point is so evident that not even [Respondent] quarrels with it.”). And nothing in *Barnes* calls into question the uniform line of cases across circuits holding that tasing a suspect who is not resisting, or who has “stopped resisting,” constitutes excessive force. *Gradisher v. City of Akron*, 794 F.3d 574, 585 (6th Cir. 2015). For one thing, *Barnes* itself acknowledged that, while “earlier facts and circumstances may bear on how a reasonable officer would have understood and responded to later ones,” “the situation at the precise time of the [use of force] will often be what matters most; it is, after all, the officer’s choice in that moment that is under review.” *Id.* at 80. It certainly never suggested that earlier facts and circumstances—such as a suspect’s *prior* resistance—could overshadow the facts at the moment the officer used force.

Perhaps more fundamentally, *Barnes* ultimately recognized that the use of force is not necessarily reasonable just because someone poses a threat to officers at the moment force was used; an officer's overall course of conduct can make such force unreasonable. It does not follow from *Barnes* that the use of force may be justified against someone who no longer poses a threat, because they *previously* posed a threat that has been neutralized. Put otherwise, the fact that an officer might have been justified in using force at some prior point in an encounter does not justify the "gratuitous" use of force *later*, when the suspect is under control and poses no threat. *See, e.g., Goodwin v. City of Painesville*, 781 F.3d 314, 324 (6th Cir. 2015). This is because the touchstone governing the use of force is the existence of a threat to officers or the public, *see supra* 10-11, and even a previously resistant and potentially dangerous suspect ceases to be a threat when he has stopped resisting arrest. Indeed, we are unaware of a single case in which any court anywhere has ever held that it was reasonable for officers to tase a suspect who had stopped resisting arrest. The Sixth Circuit's decision appears to have broken new ground on this front.

But for present purposes, the point is that Mr. Feagin had no opportunity to explain to the Sixth Circuit why *Barnes* did not call into question the clearly settled rule that officers cannot tase a suspect who has stopped resisting arrest. Respondents never made any argument based on *Barnes* (which again was decided after the Sixth Circuit held oral argument in this case). The first time *Barnes* came up was in the panel majority's decision reversing the district court. The fact that the Sixth Circuit majority addressed

novel legal issues of first impression not raised by the parties to *reverse* the district court amplifies the gravity of the party-presentation violation in this case.

**C. Summary reversal is appropriate to ensure courts heed the party-presentation principle and the jurisdictional limits set by Congress.**

The Court should summarily reverse the Sixth Circuit for its egregious violation of the party-presentation principle. *See, e.g., Clark*, 607 U.S. at 8. Courts have simply not received the message that it is not their job to “devise[] a new” argument for a party when its own argument fails. *Id.* at 9. And the Sixth Circuit’s “takeover of the appeal,” *Sineneng-Smith*, 590 U.S. at 379, is particularly problematic because it had the effect of expanding the Sixth Circuit’s jurisdiction in the face of the strict limits Congress set. Interlocutory review of decisions denying qualified immunity is narrowly cabined, and the Sixth Circuit plainly did not have jurisdiction to address Respondents’ argument. *Supra* at 11-13. For the Sixth Circuit to manufacture new arguments for Respondents not only disregards the judiciary’s role vis-à-vis litigants, but also the judiciary’s role vis-à-vis Congress, whose limits on appellate jurisdiction should be respected. This Court’s intervention is necessary to reinforce the need for appellate courts to respect the principle of party presentation “[i]n our adversarial system of adjudication.” *Sineneng-Smith*, 590 U.S. at 375.

**CONCLUSION**

For the foregoing reasons, the petition for a writ of certiorari should be granted and the judgment of the Sixth Circuit summarily reversed.

Respectfully submitted,

Rachael Jensen  
ORRICK, HERRINGTON &  
SUTCLIFFE LLP  
200 West 6th Street,  
Suite 2250  
Austin, TX 78701

Samuel Weiss  
RIGHTS BEHIND BARS  
416 Florida Ave. N.W.  
Washington, D.C. 20001

Daniel A. Rubens  
*Counsel of Record*  
Alyssa Barnard-Yanni  
ORRICK, HERRINGTON &  
SUTCLIFFE LLP  
51 West 52nd Street  
New York, NY 10019  
(212) 506-5000  
drubens@orrick.com

March 12, 2026