No. 25-1088

IN THE

Supreme Court of the United States

ULYSSES LEE FEAGIN,

Petitioner,

v.

MANSFIELD POLICE DEPARTMENT, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the party-presentation principle is implicated when qualified immunity is raised from the inception of a suit, fully presented by motion and appellate briefing, and addressed by both parties to the proceedings, resulting in a final determination finding the defense applicable?

PARTIES TO THE PROCEEDING

Petitioner Ulysses Feagin was the appellee in the Sixth Circuit Court of Appeals. Respondents Mansfield Police Department, Jordan Moore, Mark Boggs, and Clay Blair were the appellants.

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INTRODUCTION

The Court has utilized the party-presentation principle to correct those instances where a lower court deviates from its role to independently adjudicate issues presented by the parties and, instead, assumes a position as advocate. This case does not present such a pattern or outcome. The issue determined by the Sixth Circuit was the applicability of the defense of qualified immunity for a police officer's actions during an arrest. That defense was raised in the Respondents' answer, presented throughout the briefing of a summary judgment motion in the District Court, and further briefed, by both parties, before the Sixth Circuit. Consequently, qualified immunity triggered the appellate court's interlocutory jurisdiction and was lawfully before the court for review and determination.

The Petitioner does not seek review on certiorari of the Sixth Circuit's decision extending qualified immunity for the Respondents. Rather, the Petitioner confines his question presented to application of the party-presentation principle. The question posed by the Petitioner, however, is premised upon bold assertions that simply are not borne out by even a cursory review of the record. The defense of qualified immunity was timely raised, thoughtfully argued, and never disavowed.

STATEMENT OF THE CASE

1. Qualified Immunity was Raised from the Inception of the Suit

Petitioner filed his *pro se* complaint on July 6, 2022. In the Complaint, Mr. Feagin alleged that the Respondent

Police Officer, Jordan Moore, used excessive force when he deployed a taser and pepper spray to effectuate Petitioner's arrest on July 6, 2020. On August 9, 2022, the named defendants, including Respondent Moore, filed their answer to the complaint, timely asserting qualified immunity as an affirmative defense. Thereafter, the parties engaged in discovery, with defendants focusing on developing support for their defense of qualified immunity. After a lengthy discovery process, defendants collectively filed their motion for summary judgment, arguing that they were entitled to qualified immunity.

Specifically, as part of the defendants' motion, they stressed that:

> The United States Supreme Court has set forth a "settled and exclusive framework for analyzing whether the force used in making a seizure complies with the Fourth Amendment." *Mendez*, at *12, citing *Graham*, 490 U.S. at 395. "The operative question in excessive force cases is 'whether the totality of the circumstances justifie[s] a particular sort of search or seizure.'" *Mendez*, at *12, quoting *Garner*, 471 U.S. at 8-9. "The reasonableness of the use of force is evaluated under an 'objective' inquiry that pays 'careful attention to the facts and circumstances of each particular case.'" *Mendez*, at *12, quoting *Graham*, 490 U.S. at 396.

(Defendants' Motion for Summary Judgement, p.9; ECF 46, PAGE ID # 267).

2. The District Court Denied Summary Judgment on Qualified Immunity

On July 15, 2024, the District Court granted in part and denied in part the defendants' motion for summary judgment. The court granted the motion as to the use of pepper spray, but it denied the motion as to the use of the taser. The court determined that Petitioner's claim of excessive force against Respondent Moore, regarding use of a taser, and a deliberate indifference claim remained for trial.

3. Qualified Immunity was Presented to the Court of Appeals by Interlocutory Appeal

On August 13, 2024, defendants filed their notice of appeal to the Sixth Circuit, including a challenge to the denial of Respondent Moore's qualified immunity defense for use of the taser. Shortly after the notice of appeal was filed, Mr. Feagin was permitted by the District Court to obtain pro-bono counsel. In the appellate brief, appellants argued that the District Court erred in denying Officer Moore qualified immunity. (Sixth Circuit Brief of Appellant, Doc.8 p.7). Again, the appellants argued that the question in an excessive force case is whether an officer acted reasonably under the totality of the circumstances. (Sixth Circuit Brief of Appellant, Doc.8 p.13). In response, on December 23, 2024, Mr. Feagin's pro-bono counsel filed a brief, arguing in part that the Sixth Circuit lacked jurisdiction over the appeal, and that the District Court did not err in denying Respondent Moore qualified immunity.

The qualified immunity issues were fully briefed, with both sides developing their respective positions. In the lead brief of appellants, support for qualified immunity was identified as follows:

> 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. *The arrest reports, the affidavits of the officers, the response to resistance forms, and the video all establish that Mr. Feagin was actively and persistently resisting arrest when Officer Moore deployed his taser.* (See Response to Resistance Report, R. 46-2, Page ID#300, Boggs Affidavit, R. 46-1, Page ID# 294-296). Upon arriving at the apartment complex where Mr. Feagin eventually brought his vehicle to a stop, Mr. Feagin rolled his windows up and begin to reverse out of his parking spot when officers approached the vehicle. (See Response to Resistance Report, R. 46-2, Page ID#300, Boggs Affidavit, R. 46-1, Page ID# 294-296). Further, the deposition of Mr. Boggs, cited by Mr. Feagin in his opposition to the Mansfield defendants' Motion for Summary Judgment, also supports the fact that Mr. Feagin was resisting arrest and that the officers observed ammunition in Mr. Feagin's vehicle at the time of arrest. (See Feagin Opposition to Motion for Summary Judgment, R. 61-6, Page ID# 486). (Emphasis added).

(Sixth Circuit Brief of Appellant, Doc 8 Page 15). It is manifestly clear that the Respondents did not disavow

reliance on the arrest "video," as has been suggested. In the later reply, Respondents merely emphasized the totality of the evidence approach that was applicable to the record.

After oral argument was held, the Sixth Circuit issued its Opinion on September 12, 2025. Specifically, the court noted that "Moore's lead argument is that the district court erred in denying him qualified immunity." (Pet. App. 21a). Additionally, the court stated that the Sixth Circuit does not "evaluate a particular use of force by considering just one tile in the reasonableness mosaic. Rather, the totality of the circumstances, not just one circumstance in isolation, informs our views." (Pet. App. 25a). The court then elaborated on that position with regard to the facts of this case, stating that "the timeframe to consider here is not just the seconds before Feagin's tasing, but instead all of the events that foreseeably led to the use of force. Viewed in this light, the undisputed evidence reveals active, unceasing resistance, as well as threatening behavior by Feagin up to the point he was tased." (Pet. App. 29a-30a). The court then concluded that a grant of summary judgment was warranted as to the tasing claim against Respondent Moore. (Pet. App. 32a).

REASONS FOR DENYING PETITION

In *Clark v. Sweeney*, 607 U.S. 7 (2025), the Court reversed under the party-presentation principle because the Fourth Circuit entered judgment on a habeas petition "relying on a claim that Sweeney never asserted." Sweeney had argued an ineffective-assistance claim (premised upon inadequate *voir dire* of the jury). When the Fourth Circuit reversed, "it was not on the ineffective-assistance claim

that Sweeney brought." The Fourth Circuit was reversed, by this Court, "for granting relief on a claim that Sweeney never asserted and that the State never had the chance to address." Sweeney had "asserted 'one, and only one' claim." The Court observed, under such circumstances, that the "Fourth Circuit's 'radical transformation' of Sweeney's simple ineffective-assistance claim 'departed so drastically from the principle of party presentation as to constitute an abuse of discretion.'" Citing, *United States v. Sineneng Smith*, 590 U.S. 371, 380 (2020). No such transformation or departure occurred in this case.

From the inception of this case in the District Court, the Respondents timely raised and presented the defense of qualified immunity. When the District Court overruled the Respondents' motion for summary judgment on the grounds of qualified immunity, the Respondents pursued the interlocutory appeal to the Sixth Circuit. In that appeal, the Respondents once again advocated for qualified immunity, as a matter of law, advancing the applicable totality of the circumstances approach to consideration of all of the operative evidence (including, but not limited to, available video). The Petitioner, in turn, fully developed his opposition to the immunity defense, contending that the video undermined the claim that Petitioner was actively resisting arrest. The Sixth Circuit held that the record on appeal—the totality of the evidence—supported the defense. (Pet. App. 32a). The Sixth Circuit did not rely upon a claim never asserted by the Respondents or, somehow, disavowed. Notably, the Sixth Circuit stated that "the totality of the circumstances, not just one circumstance in isolation, informs our views." (Pet. App. 25a). The Sixth Circuit even indulged Petitioner in an application of the moment-of-threat doctrine, which Petitioner argued

for in his briefing, repeatedly suggesting that the only relevant consideration is "whether the suspect was actively resisting arrest when the officer tased him." (Sixth Circuit Appellee Brief, Doc. 14, p.42). The Sixth Circuit considered this argument, stating that "in the seconds around the time of the tasing—a relevant (but not the lone) consideration in assessing the permissibility of the force used—Feagin's right arm was flailing against the SUV as Moore tried to handcuff him." (Pet. App. 30a). Consequently, the party-presentation principle is not implicated in this case.

The party-presentation principle is limited; that is, it requires an examination when an issue or claim has not been presented at all. "[W]hen an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *United States v. Hohn*, 123 F.4th 1084, 1129 (10th Cir. 2024); citing *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am. Inc.*, 508 U.S. 439, 446 (1993) (quoting *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991)). Thus:

> The party-presentation principle, however, restricts courts from *raising* new issues. The principle does not say that once an issue has been raised and responded to, a court must render its decision in accordance with the position of one of the parties. Courts have always had authority to resolve raised issues as fairness requires.

Hohn, supra; citing, *United States v. Cortez-Nieto*, 43 F.4th 1034, 1052 (10th Cir. 2022) (emphasis in original; citation

omitted); accord *Novella v. Westchester Cnty.*, 661 F.3d 128, 147 (2d Cir. 2011) (adopting a third approach after rejecting the parties' positions); *Clark v. A&L Homecare & Training Ctr., LLC*, 68 F.4th 1003, 1009-1011 (6th Cir. 2023) (adopting a middle ground after rejecting the approaches urged by both sides); *United States v. Arnold*, 238 F.3d 1153, 1155 (9th Cir. 2001) (adopting a third approach after rejecting the parties' positions).

Illustrative of the limited application of the party-presentation principle are the examples used by the Tenth Circuit in *United States v. Cortez-Nieto* (and often cited by other courts):

> If one party says that a contract unambiguously means A and the opposing party says that it unambiguously means B, the court may decide that the contract is ambiguous and that its meaning needs to be decided using extrinsic evidence. If one party challenges the admissibility of evidence and the proffering party provides a ground of admissibility, the court may admit the evidence but give a limiting instruction.

United States v. Cortez-Nieto, supra, at 1052.

The Sixth Circuit was presented with two competing positions on the issue of qualified immunity. The essential factor is that the qualified immunity defense was directly asserted, fully briefed as to the competing views of the evidentiary record, and the Sixth Circuit decided precisely the issue before it (not something "never asserted" or that the Petitioner "never had the chance to address."). *Clark*

v. Sweeney, supra. On this latter point, the Petitioner contends that the Sixth Circuit's citation to *Barnes v. Felix*, 605 U.S. 73 (2025) somehow demonstrates that the appellate court went astray. The timing of the Court's decision in *Barnes*, after the presentation of argument to the Sixth Circuit, is of absolutely no consequence. The only operative outcome of *Barnes* is that feature of the opinion reenforcing that a "totality of the circumstances" review of the evidence is called for in a Fourth Amendment case (as opposed to a "moment-of-threat" doctrine). *Barnes* ratified *Graham v. Connor*, 490 U.S. 386 (1989), *Tennessee v. Garner*, 471 U.S. 1 (1985), and *County of Los Angeles v. Mendez*, 581 U.S. 420 (2017)—all of which were relied upon by the Respondents in the proceedings below. (Sixth Circuit Brief of Appellant, Doc. 8 pps. 12-14).

Much has been written, of late, giving consideration to the scope of the party-presentation principle, or the "*Sineneng-Smith* doctrine." Scholars, among others, have examined the principle for its underpinning, evaluated whether it operates broadly, or narrowly to constitutional questions such as overbreadth, and have questioned whether the principle functions as a rule. See, Randy E. Barnett & Lawrence B. Solum, *Making the Party Presentation Principle Safe for Originalism*, 174 U. Pa. L. Rev. (Pending, 2026); Rory Little, *Party Presentation: A Mysterious New Rule?*, SCOTUS Blog (Dec. 17, 2025); Zachary B. Pohlman, *The Sineneng-Smith Doctrine*, 14 Fed. Cts. L. Rev. (2022); Jeffrey M. Anderson, *The Principle of Party Presentation*, 70 Buffalo L. Rev. (2022). Perhaps that explains the Petitioner's effort to latch on to the principle for the purpose of seeking certiorari. However, any open questions, academic or otherwise, concerning the foundation and breadth of the

party-presentation principle must await consideration in a different case providing a fact pattern, and outcome, in which the questions are ripe. E.g., *Margolin v. Natl. Assn. of Immigration Judges*, U.S.S.C. Case No. 25-767. This case is not such a vehicle. Review was recently denied by the Court in *Comcast Cable Comm., LLC v. WhereverTV, Inc.*, U.S.S.C. Case No. 25-820 (Cert. Denied, Feb. 23, 2026), a case thoroughly presenting a direct party-presentation question. This case does not provide any stronger framework for consideration of the principle. The Sixth Circuit's determination of this case was not a "radical transformation" of the parties' respective arguments going to the defense of qualified immunity, and its Opinion did not "depart[] so drastically from the principle of party presentation as to constitute an abuse of discretion." *Sineneng-Smith*, supra at 375, 380 (A "court is not hidebound by the precise arguments of counsel," but is not to engage in "radical transformation of [a] case [that] goes well beyond the pale.").

For all of these reasons, the party-presentation principle is not implicated for review of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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