

No. 25-1295

IN THE
Supreme Court of the United States

DONOVAN MOORE AND JEFF KURTZ,
Petitioners,
v.

ASHLY ROMERO, PERSONAL REPRESENTATIVE FOR THE
ESTATE OF STEPHEN ROMERO, DECEASED, *et al.*,
Respondents.

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

**BRIEF OF *AMICUS CURIAE*
MICHIGAN MUNICIPAL LEAGUE
IN SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICUS CURIAE*

The Michigan Municipal League is a nonprofit, nonpartisan association representing more than 500 cities, villages, and urban townships throughout the State of Michigan. The League educates and supports local leaders and works to advance the effectiveness of local government. It regularly participates as *amicus curiae* in cases raising questions of substantial importance to its members.

This case presents such a question. The decision below bears directly on the framework within which municipalities train, supervise, equip, and deploy their first responders, including officers who must make split-second judgments in rapidly evolving and dangerous situations on which the safety of the communities they serve depends. Because that ruling carries significant institutional consequences for Michigan's municipalities, their employees, and the citizens they serve, the League submits this brief to bring that institutional perspective to the Court's consideration of the petition.¹

SUMMARY OF THE ARGUMENT

This case presents two recurring questions that courts confront every time body camera footage captures a law enforcement use of force. This Court's guidance on both is overdue.

As it stands, the Sixth Circuit has instructed law enforcement officers that they cannot use deadly force a second time, just seconds later, when a dangerous

¹ No counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus curiae* and its counsel made a monetary contribution to its preparation or submission. *See Sup. Ct. R. 37.6*. Counsel of record for all parties received timely notice of *amicus curiae*'s intent to file this brief.

individual reaches, again, for a firearm, solely because their first use of force did not sufficiently neutralize the threat. The danger in this scenario is self-evident and beyond the pale. An officer who has just watched a man grab a gun, fired, and is still ordering him to stop cannot be required to wait for the weapon to clear the waistband before responding. The rule sanitizes the danger officers actually face and is irreconcilable with this Court's repeated instruction that force is measured from the perspective of a reasonable officer on the scene, not the vantage of a court reviewing a frozen frame in chambers.

That dangerous result was no accident. It followed directly from two doctrinal errors that warrant this Court's review. First, the majority held that qualified immunity may be analyzed less rigorously at the pleading stage than at summary judgment, even where unambiguous video captures the entire encounter and the legal question is purely objective. That holding cannot be squared with the settled rule that qualified immunity is an immunity from suit, to be resolved at the earliest possible stage; where video fixes the facts and the date of the incident fixes the law, no discovery can change the answer, and deferral serves only to delay. Second, the majority defined the clearly established right at so high a level of generality—the right not to be subjected to force absent a threat—that it described every excessive-force case ever filed, decided nothing, and gave the officers no fair notice. Corrected, that level-of-generality error is the common root: it is what allowed the court to condemn the shooting of a man reaching for a gun and to defer to discovery a question discovery cannot touch.

The consequences fall hardest on the municipalities the League represents. Cities equip officers with body

cameras precisely so an objective record exists when force is questioned, and they train officers to recognize the very danger the decision below declares may not be a threat. A rule that discounts that record where immunity matters most, and a right too abstract to teach, leaves municipalities unable to train, supervise, or protect the officers and communities that depend on clear guidance from this Court.

ARGUMENT

I. THE MAJORITY’S RULE THAT A WOUNDED, ARMED SUSPECT WHO AGAIN REACHES FOR HIS FIREARM DOES NOT PRESENT AN IMMEDIATE THREAT IS WRONG AND DANGEROUS.

“No doubt the use of deadly force by police officers is a serious matter and ought to be avoided—but not at all costs and not in all situations.” *Hocker v. Pikeville City Police Dep’t*, 738 F.3d 150, 154 (6th Cir. 2013). That principle has guided this Court’s precedent, and the Sixth Circuit’s, for decades. But the opinion below wipes it away, requiring officers to wait and stare down the barrel of a gun before they use deadly force.

The officers in this case arrived at the scene of a confirmed domestic shooting. They encountered a man with a firearm who refused to go face down, grabbed his gun without instruction or invitation, and—after being shot—grabbed for it again despite an explicit command to stop. [App. 2a, 23a-27a] The majority found that the second grab did not present an immediate threat. That holding is wrong and dangerous.

A. Force is measured from the perspective of a reasonable officer on the scene, not the vantage of the reviewing court.

The governing standard is familiar. Excessive-force claims are analyzed under the Fourth Amendment's objective-reasonableness standard, which evaluates force from the perspective of a reasonable officer on the scene rather than with the benefit of hindsight. *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). The calculus must allow for the fact that officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. *Id.* The critical question in a deadly force case is whether the officer had "probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

That question is answered not by a court at leisure examining a frozen frame, but by placing oneself in the position of the surrogate—the reasonable officer at the scene, with exactly the information the defendants had—and asking what that officer would have done. *Graham*, 490 U.S. at 396. Courts may not substitute a sanitized account of events for the dangerous reality officers face, nor replace one hazard with another by demanding analysis officers cannot afford in the moment. The law does not require perfection; it requires reasonable action.

B. An armed suspect reaching for a weapon while defying commands to stop presents an immediate threat as a matter of law, regardless of his physical position.

The majority's central error is the conclusion that Romero did not present an immediate threat when he reached for his gun a second time because he was wounded and lying on the ground. [App. 11a, 14a] That conclusion fails to account for what the surrogate 'reasonable officer' would have known, perceived, and been able to process in those seconds—not minutes, but seconds.

The officers had not told Romero to grab his gun. They had not asked him to surrender it. Every action he took was inconsistent with compliance: he refused to go face down when ordered, he reached for his weapon unprompted, and—after being shot—he reached for it again while Officer Moore was still ordering him to stop. The majority's focus on Romero's position, on the ground, on his stomach, ignores that he remained capable of reaching his firearm and did so quickly. The video confirms he removed it from his waistband before the second round of shots ended. [App. 25a-26a]

That Romero said "I got you, I got you" before reaching the second time does not change the analysis. Officers responding to a confirmed domestic shooting near midnight are not positioned to parse the semantic nuances of a wounded suspect's vernacular while he reaches toward the weapon he was just shot for grabbing. [App. 35a] What matters is what the surrogate officer would have observed: a non-compliant, wounded man, beside a vehicle holding his wife, in a driveway where dispatch reported a shooting, defiantly reaching again for the gun that just got him shot. The Fourth

Amendment does not require officers to adopt the most charitable reading of conduct objectively consistent with a lethal threat.

The majority's reliance on *Bletz v. Gribble*, 641 F.3d 743 (6th Cir. 2011), and *Lee v. Russ*, 33 F.4th 860 (6th Cir. 2022) underscores the problem. In *Bletz*, the decedent was shot while *lowering* his rifle, i.e., actively moving away from a threatening posture. While in *Lee*, the suspect had calmed down, lowered his knife, and was standing thirty feet from the nearest officer. Neither case involved a suspect who was actively reaching for a weapon while defying a direct command to stop. The distinction between lowering a weapon and grabbing one is not a matter of degree; it is dispositive.

The cases that actually govern point the other way. In *Mullins v. Cyranek*, 805 F.3d 760 (6th Cir. 2015), the Sixth Circuit upheld the use of deadly force where the suspect being detained on the ground for throwing weapons to others at an event, grabbed a gun in his right hand, was told to drop it, threw it over the officer's shoulder, and was then shot—even though the suspect was technically disarmed at the moment of the shooting. A video capturing the shooting showed that “at most, five seconds elapsed between when Mullins threw his firearm and when [the officer] fired his final shot.” *Id.* at 764. The court, finding the force constitutional, reasoned that the officer faced a severe threat and a rapidly escalating situation without time to realize that a deadly situation had dissolved. *Id.* at 767. The court specifically cautioned that to hold otherwise would be to sanitize the dangers officers actually face. *Id.*

In *Thomas v. City of Columbus*, 854 F.3d 361 (6th Cir. 2017), the court held that it was reasonable to

shoot a suspect holding a gun who was running toward an officer from approximately ten feet away, even though the gun was not raised or pointed. If running with a gun at ten feet justifies deadly force, reaching for a gun while directly in front of officers and explicitly refusing their command to stop unquestionably does.

C. The majority reached that dangerous result only by stripping the encounter of the context *Barnes* requires.

The majority did not arrive at its rule by confronting the full encounter. It arrived there by carving the encounter into pieces and discarding the pieces that mattered—the precise move this Court forbade in *Barnes v. Felix*, 605 U.S. 73 (2025).

Barnes struck down the Fifth Circuit’s “moment of the threat” rule, which confined the reasonableness inquiry to the seconds before a fatal shooting. *Id.* at 81-82. The flaw was that such chronological blinders prevent a court from seeing the prior events that inform what a reasonable officer perceived; the totality inquiry instead “has no time limit.” *Id.* at 80.

The majority paid *Barnes* lip service while doing the opposite of what it requires. It announced that it “need not dwell on the first two stages of the encounter because the facts of the second shooting are well-pled enough,” and that “[t]he circumstances of the second shooting were materially different from the first.” [App. 10a] On that basis it walled off the dispatch information, the approach, and the first shooting, reasoning that an officer’s need for force “may decline as a situation progresses.” [App. 9a] That gloss inverts *Barnes* and directs officers to also put on blinders. The question is not whether each segment was “materially different,” but whether, viewing “all the relevant

circumstances, including facts and events leading up to the climactic moment,” a surrogate reasonable officer would reasonably perceive a threat. *Id.* at 76. A severe threat that has not clearly dissipated justifies the force that follows seconds later. *See Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) (officers “need not stop shooting until the threat has ended”).

Restored to its context, the encounter permits only one conclusion. The officers arrived at what every indicator marked as an active domestic shooting—calls this Court has recognized are among the most dangerous officers answer. *United States v. Rahimi*, 602 U.S. 680, 707 (2024) (Sotomayor, J., concurring). They found a man in the driveway beside a vehicle containing his wife—and this Court has observed that, with “70 people shot and killed by an intimate partner each month in the United States, the seriousness of the problem can hardly be overstated.” *Id.* He defied commands, revealed and grabbed his firearm without any gesture of surrender, and was shot; this Court has told officers that when a suspect is within feet, showing no surrender, and continuing to threaten with a weapon, “[n]othing in the Fourth Amendment bar[s] . . . [officers] from protecting themselves, even . . . [if] it mean[s] firing multiple rounds.” *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 613 (2015). Then, seconds later, he reached again while ignoring a direct command to stop. The officers had already watched him grab the gun once; they had already fired; they were still ordering him to stop. No reasonable officer would read the second reach as carrying less meaning than the first.

The consequence of the majority opinion’s contrary rule reaches well beyond this case: it tells every officer in the Circuit that a renewed reach for a weapon may

not count as a threat—a proposition irreconcilable with how municipalities train and equip their officers to recognize precisely that danger.

II. WHEN UNAMBIGUOUS VIDEO CAPTURES THE ENTIRE ENCOUNTER, QUALIFIED IMMUNITY MUST BE ANALYZED WITH THE SAME RIGOR AT THE PLEADINGS STAGE AS AT SUMMARY JUDGMENT.

If the rule of Section I is dangerous, it is due in part to the confusing rule that produced it. The majority held, explicitly, that the qualified immunity analysis at the pleading stage is more favorable to the plaintiff than the identical analysis would be at summary judgment—even when clear body-camera footage of the entire encounter is already before the court. [App. 13a] That holding has no footing in this Court’s qualified immunity cases, and it produces a result the doctrine cannot tolerate.

A. Qualified immunity is an immunity from suit and its value is lost if it cannot be vindicated at the earliest possible stage.

This Court has repeatedly emphasized that qualified immunity is an immunity from suit, not merely a defense on the merits. *Pearson v. Callahan*, 555 U.S. 223, 237 (2009). The doctrine spares officials the burdens of broad discovery and trial when the law shields their conduct. For that reason, this Court has stressed that immunity questions should be “resolve[d] . . . at the earliest possible stage in litigation.” *Id.* at 232. An immunity available only after officers have endured years of litigation and costly discovery is no immunity at all.

That principle does not bend to procedural posture. Where video captures the entire relevant encounter and the legal question it raises is objective, discovery yields nothing that bears on immunity; the court must decide, as a matter of law, what a reasonable officer would have perceived. The dissenters below put it directly: where video “captures the relevant events,” courts “must resolve those cases at the earliest possible stage rather than neglecting that duty in favor of unnecessary process and delay.” [App. 118a]

B. The majority’s video analysis substituted the plaintiff’s account for the objective perspective the Fourth Amendment actually requires.

The fundamental error in the majority’s treatment of the video was not methodological but substantive. The Fourth Amendment does not measure force against the plaintiff’s characterization of events. It measures force objectively, against the perspective of the surrogate reasonable officer at the scene. When the majority said it “interprets the video differently” from the officers [App. 16a] and concluded that a factfinder could plausibly read the footage as surrender rather than threat, it inverted the constitutional inquiry. The question is not what the footage shows to a suspect’s wife, her attorney, or a panel reviewing it frame-by-frame in chambers. It is what a reasonable officer in the driveway would have perceived in the moments before deciding whether to fire.

That inversion is embodied in the majority’s decision to credit the plaintiff’s reading of “I got you, I got you” as compliance. [App. 11a–12a] Setting aside the majority’s resort to the Oxford English Dictionary, an officer on the scene could not hear those words, assign them a meaning, weigh alternative meanings, and still

process that the man who had just prompted gunfire was again reaching for the same weapon—all in the instant the decision demanded. The dissent had it right: the officers “did not have the benefit of stopping time and contemplating the nuances of English vernacular.” [App. 35a] The Constitution does not require that.

C. The majority created an improper two-tier system in which officers face a higher bar at the stage that matters most.

The majority acknowledged that the footage in this case “will likely be dispositive evidence at summary judgment or trial.” [App. 6a] It nonetheless declined to conduct a detailed analysis at the pleading stage, reasoning that its “use of [bodycam] videos is limited at this stage” and that additional discovery might affect the outcome. [App. 5a-6a] The practical result is a system in which the same officer, confronted with the same video, must clear one bar on a motion to dismiss and a more demanding one at summary judgment, though the evidence and the legal question are identical at both.

Judge Bush’s dissent identified the constitutional defect precisely. He explained how the majority’s reasoning means “an officer should have a harder time receiving qualified immunity at the pleadings stage than at other stages of the case, even when the facts are identical.” [App. 99a] When clear video fixes the facts at both stages, the date of the incident fixes the clearly established law, and no discovery can change it, the majority’s thumb on the scale cannot be reconciled with immunity from suit.

For the municipalities that equip their officers with body cameras, the perversity is acute. Communities

invest in this technology precisely so that an objective record exists when force is questioned. A rule that treats that record as less capable of resolving the legal question at the pleading stage, where immunity matters most, erodes the certainty videos provide, makes it more difficult for officers to receive the critical guidance they need from the courts, and wipes away any protections of immunity.

III. THE CLEARLY ESTABLISHED LAW ANALYSIS WAS CONDUCTED AT TOO HIGH A LEVEL OF GENERALITY WHICH LICENSED THE RESULT AND DENIED THE OFFICERS FAIR NOTICE.

The errors in Sections I and II share a single root. The majority could declare a renewed reach for a firearm not a threat, and could defer that question to discovery, only because it defined the clearly established right at a level of generality of that decides nothing and notifies no one. Corrected, the level-of-generality analysis is not a separate complaint; it is the explanation of how the dangerous rule and the procedural confusion arose from the same move.

The majority identified the clearly established right as the right not to be subjected to deadly force when one does not pose a threat. That is not a rule; it is a restatement of the Fourth Amendment that describes virtually every excessive-force case ever filed. This Court has held, repeatedly, that clearly established law may not be defined at such a high level of generality. *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021). The inquiry “must be undertaken in light of the specific context of the case,” because “specificity is especially important in the Fourth Amendment context,” where it is “sometimes difficult for an officer to determine how the relevant legal doctrine . . . will

apply to the factual situation the officer confronts.” *Id.* The standard “requires that the legal principle clearly prohibit the officer’s conduct in the particular circumstances before him,” *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018), and that demand is “particularly important in excessive force cases.” *City of Escondido v. Emmons*, 586 U.S. 38, 42 (2019) (per curiam).

Defined at the level the case actually presents, no such right was clearly established. The question is not whether officers may shoot a suspect who poses no threat, but whether it was clearly established that an officer could not use deadly force against a non-compliant suspect who reached for his firearm a second time, while wounded and defying a command to stop, seconds after being shot for the same conduct, at the scene of a domestic shooting. As the dissenting judges explained, “no cases establish that using force against a suspect reaching for a gun against officers’ orders violates clearly established law.” [App. 95a] The officers thus had no fair notice that the law forbade what they did—and fair notice is the entire point of the clearly-established requirement.

The over-general right is what made the substantive result possible: a right pitched at “no force without a threat” can be invoked to condemn any shooting, including the shooting of a man reaching for a gun, because it never engages the particular danger the surrogate ‘reasonable’ officer confronted. And it exposes the procedural error for what it is. If the clearly established right is defined by the date of the incident and the precedent then on the books, no quantum of discovery can alter it. As the dissent put it, “no amount of additional evidence or fact finding would change the analysis of whether the officers violated clearly established law.” [App. 95a]

The institutional cost falls on the municipalities that must turn these decisions into training. A right stated only as “do not use force without a threat” gives a department nothing to teach; an officer cannot be instructed to conform to a rule that supplies no content until a court announces, after the fact, which side of it the officer’s split-second judgment fell. Specificity is not a technicality of immunity doctrine. It is what allows cities to train and supervise officers to a standard they can actually know in advance.

CONCLUSION

The petition presents questions of exceptional importance to the municipalities the League represents and the officers they employ. The decision below announces a rule with no foundation in this Court’s precedents and no utility in practice—and its costs are borne by the citizens left to absorb them.

Michigan’s municipalities equip their officers with body cameras precisely so that an objective record exists when force is questioned. The decision below discounts that record at the stage where immunity matters most, denying communities the return on an investment made in the name of transparency and accountability. Those same municipalities must translate this Court’s law into training their officers can follow; a right pitched so generally that it condemns even the shooting of a man reaching for a gun gives departments nothing to teach and officers no rule they can know before the split second demands it. And it is municipalities and their taxpayers who ultimately bear the fiscal exposure when officers are stripped of an immunity that was meant to be resolved before the burdens of suit ever attach.

Officers responding to confirmed domestic-shooting scenes must be able to protect themselves and others when an armed, non-compliant suspect reaches for his weapon. Courts must apply the same rigorous qualified-immunity analysis when unambiguous video resolves the factual question at the pleading stage as they would at summary judgment. And the clearly established right must be identified with the specificity that gives officers fair notice—and that allows the cities that employ them to train to a standard they can actually know in advance.

The Court should grant the petition, reverse the Sixth Circuit, and hold that the officers are entitled to qualified immunity.

Respectfully submitted,

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