

No. 25-

IN THE
Supreme Court of the United States

JONATHAN GRANADO,

Petitioner,

v.

JUANITA RAMIREZ, PERSONALLY AND AS
THE PERSONAL REPRESENTATIVE OF THE
ESTATE OF ESTEVAN RAMIREZ,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Officer Jonathan Granado’s use of deadly force on September 3, 2021 violated the Fourth Amendment when, after a high-speed chase, Estevan Ramirez emerged from the vehicle with gun in hand, refused an order to “get on the ground,” physically resisted an officer’s attempt to arrest, and attempted to escape towards the darkness of a residential neighborhood with gun still in hand.
 - a. Did the panel correctly set forth the elements of an excessive force claim?
 - b. Did the panel invert the qualified immunity analysis by shifting the burden from Ramirez to Officer Granado?
 - c. Does the panel’s approach to qualified immunity force officers “to play roulette with their own existence”?
2. Whether any court other than the Supreme Court can clearly establish the law for purposes of qualified immunity, and if so, whether the panel majority correctly identified the clearly established law applicable to this case.
3. Whether this Court should resolve the controversies regarding qualified immunity by examining the source of qualified immunity as of 1791, when the Bill of Rights was ratified, and/or, by applying statutory stare decisis to *Pierson v. Ray* and its progeny.

PARTIES TO THE PROCEEDING

***Juanita Ramirez, Personally and as the Personal
Representative of the Estate of Estevan Ramirez
v. Jonathan Granado***

Cause No. 24-10755;

United States Court of Appeals for the Fifth Circuit

Plaintiff: Juanita Ramirez, Personally and as the
Personal Representative of the Estate of Estevan
Ramirez

Defendant: Jonathan Granado

RELATED CASES

- *Juanita Ramirez, Personally and as the Personal Representative of the Estate of Estevan Ramirez v. Jonathan Granado*, United States District Court for the Northern District of Texas, Fort Worth Division, Cause No. 4:22-cv-009030-O
 - o August 9, 2024, Document 48 – Memorandum Opinion and Order Granting Defendant Jonathan Granado’s Motion for Summary Judgment. Available at 2024 WL 3748027. App. 36a-42a.
- *Juanita Ramirez, Personally and as the Personal Representative of the Estate of Estevan Ramirez v. Jonathan Granado* – United States Court of Appeals for the Fifth Circuit, No. 24-10755
 - o December 30, 2025 – United States Court of Appeals for the Fifth Circuit Opinion. Available at 163 F.4th 204 (5th Cir. 2025). App. 1a-35a.
- *Juanita Ramirez, Personally and as the Personal Representative of the Estate of Estevan Ramirez v. Jonathan Granado* – United States Court of Appeals for the Fifth Circuit, No. 24-10755
 - o February 20, 2026 – United States Court of Appeals for the Fifth Circuit – Order Denying Petition for Rehearing *En Banc*. Available at 167 F.4th 807 (5th Cir. 2026). App. 44a-47a.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jonathan Granado respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit issued its opinion in *Juanita Ramirez, Personally and as the Personal Representative of the Estate of Estevan Ramirez v. Jonathan Granado* – United States Court of Appeals for the Fifth Circuit No. 24-10755 on December 30, 2025. This opinion is published at 163 F.4th 204 (5th Cir. 2025) and reproduced at App. 1a-35a. The Fifth Circuit’s February 20, 2026 denial of petitioner’s motion for rehearing *en banc* in *Juanita Ramirez, Personally and as the Personal Representative of the Estate of Estevan Ramirez v. Jonathan Granado* – United States Court of Appeals of the Fifth Circuit No. 24-10755 is published at 167 F.4th 807 (5th Cir. 2026) and reproduced at App. 44a-47a. The District Court’s August 9, 2024 opinion in *Juanita Ramirez, Personally and as the Personal Representative of the Estate of Estevan Ramirez v. Jonathan Granado*, United States District Court for the Northern District of Texas, Fort Worth Division, Cause No. 4:22-cv-009030-O is available at 2024 WL 3748027 and reproduced at App. 36a-42a.

JURISDICTION

The court of appeals entered its judgment and opinion in this case on December 30, 2025. App. 1a-35a. The court of appeals denied Officer Granado’s timely petition for rehearing *en banc* on February 20, 2026. App. 44a-47a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The respondent brought this action under 42 U.S.C. § 1983, alleging that Officer Granado's use of force on the decedent was excessive in violation of the Fourth Amendment.

The Fourth Amendment to the U.S. Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV (1791).

Section 1983 provides:

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. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983 (1871).

INTRODUCTION

This case arises from Officer Jonathan Granado's use of deadly force against Estevan Ramirez moments after Ramirez, holding a gun, emerged from a vehicle at the conclusion of a dangerous, high-speed car chase.¹

Officer Granado heard that Officer Watson was engaged in a high-speed vehicle pursuit of suspects who were armed and dangerous. Granado followed in pursuit. The suspect vehicle hit a curb and became disabled in a residential neighborhood. Four suspects exited the vehicle. Ramirez emerged from the vehicle with a gun in his left hand. Watson approached Ramirez and shouted, "get on the ground!" Watson briefly wrestled with Ramirez in an attempt to take him into custody. Watson then saw that Ramirez had a gun. Granado, seeing the gun, shouted "he's got a gun! he's got a gun!" Granado fired

1. The record contains video and audio recordings of the pursuit and use of force taken by multiple devices, including by the dash and body-worn cameras of the two responding officers.

a shot at Ramirez and missed. Realizing that Watson was in his line of fire, Granado paused momentarily and then resumed shooting until Ramirez fell. The entire altercation—from stopping the vehicle chase to shooting Ramirez—took approximately eight seconds. Ramirez died from Granado’s shots.

STATEMENT OF THE CASE

A. Factual Background.

1. The dangerous high-speed chase.

At around 2:06 a.m. on September 3, 2021, Police Officer R. Watson radioed that he was engaged in a high-speed pursuit of a white Volkswagen Jetta after it did not yield to a traffic stop for speeding. App. 2a. Officer Granado joined the chase. App. 2a. The Officers pursued with lights and sirens activated.

At points, the chase exceeded 120 miles per hour. App. 37a. The vehicle drove into oncoming traffic multiple times, deactivated its headlights and taillights in an effort to evade detection, drove through residential areas at dangerous speeds, and even continued the chase after striking a curb and nearly totaling the vehicle. App. 37a.

2. “Armed and dangerous.”

Dispatch informed Watson and Granado that the vehicle had “previously fled from police and that its occupants should be considered ‘armed and dangerous.’” App. 2a, 25a, 37a, 33a.

3. The end of the high-speed chase – the next eight seconds.

At approximately 2:22 a.m., the chase stopped in a residential area, across the street from a “populated” gas station. App. 37a. Four occupants exited the vehicle and immediately fled on foot in different directions. App. 3a, 25a, 47a, 49a. Ramirez was the last of the four to get out of the car.

4. Ramirez emerged holding a gun.

Officer Watson exited his car, observing Ramirez emerge from the rear-left passenger door of the suspect vehicle. Ramirez was holding a gun in his left hand and cell phone in his right. App. 3a, 25a, 49a.

5. Ramirez refused to “get on the ground” and confronted Officer Watson.

Watson approached, yelling at Ramirez to “get on the ground!” *See* App. 37a.² Ramirez disregarded the order, and confronted Watson. App. 50a.

Watson grabbed Ramirez and he resisted. App. 4a, *see also*, App. 51a. Ramirez wrestled free from Watson’s grasp. App. 26a. Watson saw that Ramirez was holding a gun. Watson attempted to draw his own gun. App. 4a, 26a.

2. The District Court’s Order misattributes the order to get on the ground to Officer Granado. Body-worn camera audio confirms that it was Watson who ordered Ramirez to get on the ground.

6. Officer Granado saw Ramirez holding a gun.

Officer Granado observed Ramirez moving toward, and engaging in a physical altercation with, Officer Watson. App. 4a, 51a. Granado's body-worn camera footage shows the gun was in Ramirez's left hand. App. 26a, 52a, 53a.

Upon exiting his vehicle while simultaneously drawing his service weapon, Officer Granado immediately shouted "he's got a gun, he's got a gun!" App. 4a.

7. A split-second pause between the first and second shots.

Officer Granado fired his first shot, missing Ramirez. App. 4a, 37a, 52a. Granado paused shooting for a split-second to avoid hitting Officer Watson while Ramirez was momentarily behind Watson. App. 4a, 8a, 26a, 37a, 53a.³ Watson was pushing off and backing away from Ramirez upon becoming aware of the gun in Ramirez's hand. App. 37a.

Officer Granado yelled, "watch out," and rapidly fired five to six rounds as soon as Ramirez came back into view to the right of Officer Watson. App. 27a.

3. The video recordings show that the pause between Granado's first and second shot while Ramirez was out of view was approximately 1.5 seconds.

The gun was swinging in Ramirez's left hand as he ran behind Watson. *See e.g.*, App. 52a, App. 53a. Officer Granado perceived Ramirez to be swinging his pistol in the direction of the officers. App. 33a.⁴

8. Granado ceased firing when the threat was over.

Granado stopped firing as soon as Ramirez fell to the ground. App. 38a.

The entire altercation – from stopping the chase to shooting Ramirez – took about eight seconds. App. 3a, 27a, 38a.

9. Officer Watson confirmed that Ramirez had a gun.

Watson approached to observe Ramirez's body on the ground. Granado said, "he have a gun?" App. 4a, 41a. Watson said, "yeah, it's on the ground," and Granado responded, "he had it in his hand. He had it in his hand. Fuck."⁵

10. Officers attempted to save Ramirez.

The officers attempted to save Ramirez, performing CPR until medical personnel arrived at the scene. App.

4. The district court did not mention or rely on Officer Granado's perception that Ramirez was swinging the gun to point it at the officers when granting summary judgment.

5. The court of appeals did not acknowledge the full exchange, but only Granado's initial question.

38a. Ramirez later died of his wounds at a local hospital. App. 38a.

11. The investigations found that the use of force was reasonable.

This use of force incident was investigated by both the Lake Worth Police Department (“LWPD”) and the City of Fort Worth Police Department. All relevant materials, including the multiple videos and officer statements, were reviewed and gathered into a Critical Incident File. Both law enforcement entities cleared Officer Granado of all wrongdoing. A Tarrant County grand jury declined to indict Officer Granado. He continues to serve in law enforcement.

Both the Chief of Police and the Police Commander for the LWPD testified that upon review of all video and materials, Officer Granado acted in a professional, reasonable manner, his use of force was reasonable, and they both “would have done the same.”

B. Relevant Procedural History.

1. The District Court Grants Officer Granado’s Motion for Summary Judgment.

On October 17, 2022, Juanita Ramirez, Ramirez’s mother, sued the City of Lake Worth, Texas (“the City”) and Officer Granado in the United States District Court for the Northern District of Texas – Fort Worth Division, alleging that Officer Granado’s use of deadly force to apprehend the armed Ramirez violated the Fourth Amendment. Both defendants moved for dismissal. The

district court granted the City's Motion to Dismiss and entered final judgment for the City, but it denied Officer Granado's Motion to Dismiss. After a period of limited discovery, Officer Granado filed his Motion for Summary Judgment on Qualified Immunity.

On August 9, 2024, the Honorable Judge Mark Pittman entered a Memorandum Opinion and Order granting Officer Granado's Motion for Summary Judgment based on qualified immunity and entered final judgment.

Ramirez appealed the final judgment dismissing her claims against Officer Granado to the Fifth Circuit.

2. The Fifth Circuit Panel Reverses and Remands.

On December 10, 2025, a divided panel of the Fifth Circuit issued a *per curiam* decision, wherein the majority reversed and remanded the district court's decision to grant Officer Granado's Motion for Summary Judgment.

The panel majority did *not* find that Officer Granado's first shot was a Fourth Amendment violation, but that "a genuine dispute of material fact exists as to whether Ramirez continued to pose an immediate threat to the officers or others when Officer Granado fired six *more* rounds." The panel majority determined that summary judgment should be denied, because Officer Granado's justification for continuing to fire turned on two disputed facts: "(1) whether Officer Granado perceived that Ramirez was armed with a handgun, and (2) whether Ramirez, while fleeing, swung that handgun in the officers' direction." App. 9a. The panel majority denied qualified immunity, concluding that "[u]nder Plaintiff-Appellant's

version of the disputed facts,” the use of force “violates the Fourth Amendment under clearly established law.” App. 13a.

Judge Dennis entered a concurrence to respond to arguments and authority presented in the dissent. App. 14a.

Judge Oldham’s dissenting opinion set forth the “undisputed (and indisputable)” facts, including the material facts captured on video. App. 25a-27a. The dissent then stated, “[t]he majority somehow holds that Officer Granado is not entitled to qualified immunity. If you’ve ever read one excessive-force case in the post-*Monroe v. Pape* era, you know that is wrong.” App. 27a. The dissent set forth a litany of cases from this Court, the Fifth Circuit, and other circuits to show that under similar circumstances, or even circumstances where there was less of a threat, the officer’s use of force was not excessive and/or the officer was entitled to qualified immunity. App. 27a-31a. The dissent then explained how the majority and concurrence inverted qualified immunity in a manner that warrants summary reversal as this Court did in *Mullenix v. Luna*, 577 U.S. 7, 15 (2015) when the Fifth Circuit previously applied the same overbroad standard. App. 34a-35a.

3. A Narrow Majority Votes Against *En Banc* Rehearing.

Officer Granado sought *en banc* review. On February 20, 2026, the Fifth Circuit denied Granado’s Petition for Rehearing *En Banc* by a nine-to-eight vote. App. 45a.

The decision included two written dissents. The first, by Judge Ho, joined by Judges Jones and Smith, laments the effect of this decision, noting that “[i]nstability remains the state of the law in our circuit when it comes to excessive force,” and that this instability is “dangerous for the police officers and civilians of our circuit.” App. 46a. The second dissent by Judge Oldham, joined by Judges Jones, Smith, Duncan, and Engelhardt, simply asks that “[i]f qualified immunity must be denied when a man jumps out of a car holding a gun after a high-speed chase and a drive-by shooting, query how qualified immunity ever could be granted.” App. 47a.

REASONS FOR GRANTING THE PETITION

The Court’s view on the importance of qualified immunity has not wavered . . . The Supreme Court has been forced into the fray to prevent the total erosion of qualified immunity . . . At some point a pattern of Court decisions becomes a drumbeat, leaving one to wonder how long it will take for the Court’s message to break through. Perhaps the Court’s patience on this point is endless, because, golly, it has been so sorely tried.

Harris v. Pittman, 927 F.3d 266, 283 (4th Cir. 2019) (Wilkinson, J., dissenting).

The efforts to erode qualified immunity continue. The justifications for Judge Wilkinson’s concerns have only intensified over time. This case is yet another example of how lower courts routinely err in denying officers qualified immunity in excessive force cases by defining

the constitutional right at too high a level of generality, by failing to apply the proper qualified immunity standard, and/or by finding a “genuine” dispute of fact where none exists. The panel majority committed all three errors, further obscuring an already unsettled area of law and making it more difficult for officers in tense, uncertain, and rapidly evolving encounters to discern when deadly force is reasonable.

Judge Oldham concluded his dissent by stating that the panel majority’s decision warranted reversal by this Court, observing that “[f]or the police officers in our circuit who confront armed-and-dangerous felons fleeing drive-by shootings, who have mere seconds to make split-second life-and-death decisions in the middle of the night, and who hope to get home safely to their families and then *also* survive this court’s frame-by-frame NFL-style instant replay review: Today’s decision will make your already-hard jobs much harder.” App. 35a.

I. THE PANEL MAJORITY PERPETUATED A CIRCUIT SPLIT REGARDING THE ELEMENTS OF AN EXCESSIVE FORCE CLAIM AND IGNORED THIS COURT’S QUALIFIED IMMUNITY JURISPRUDENCE.

A. The Elements of an Excessive Force Claim are Not Clear.

The elements of an excessive force claim are not clear either within the Fifth Circuit or amongst the circuits.

1. The Fifth Circuit’s Versions of Excessive Force.

Less than two months after this Court’s decision in *Graham*⁶, the Fifth Circuit, sitting *en banc* in *Johnson v. Morel*⁷, articulated the elements of an excessive force claim. Since *Johnson*, the Fifth Circuit has modified the elements of excessive force many times, sometimes dropping the adverb “*clearly*” in reference to excessiveness of the force, and, sometimes adding “clearly” with reference to both the issues of the excessiveness of force and objective unreasonableness. The omission of the qualifier “clearly” is not a trivial stylistic preference. The adverb meaningfully constrains the inquiry by qualifying what constitutes “excessive” force under the Fourth Amendment. Removing that qualifier only amplifies the inherent difficulty of defining excessiveness in rapidly evolving Fourth Amendment encounters and creates further uncertainty regarding the governing standard.

Other Fifth Circuit panels have stated that “a plaintiff ‘must show: (1) an injury (2) which resulted from the use of force that was *clearly* excessive to the need and (3) the excessiveness of which was objectively unreasonable.’”⁸ The panel majority in this case thus departed from precedent by eliminating “clearly” from the second element on excessiveness.

6. *Graham v. Connor*, 490 U.S. 386 (1989).

7. *Johnson v. Morel*, 876 F.2d 477 (5th Cir. 1989) (*en banc*).

8. See also *Benavides v. Nunez*, 144 F.4th 751, 755 (5th Cir. 2025); *Ramirez v. Martinez*, 716 F.3d 369, 377 (5th Cir. 2013).

As recently as January 7, 2026, Fifth Circuit panels have articulated a third formulation, applying the qualifier “clearly” to both the second and third elements. *See Perdomo v. City of League City, Tex.*, 163 F.4th 921 (5th Cir. 2026). In *Perdomo*, the Fifth Circuit held that a plaintiff must establish “(1) an injury[,] (2) which resulted directly and only from a use of force that was *clearly* excessive, and (3) the excessiveness of which was *clearly* unreasonable.” *Id.* at 924-5 (emphasis added).⁹

The Fifth Circuit has also muddled the waters when describing the “objectively unreasonable” element, describing it as “objectively unreasonable” or “clearly unreasonable” depending on the members of the panel.¹⁰

9. The Fifth Circuit has articulated the excessive-force standard in terms of conduct that is “clearly” excessive and “clearly” unreasonable. This continued formulation underscores the fact that the panels of the Fifth Circuit remain divided over the very elements of an excessive-force claim. *See also Norman v. Ingle*, 151 F.4th 707 (5th Cir. 2025); *Estate of Parker v. Mississippi Dep’t of Public Safety*, 140 F.4th 226, 239 (5th Cir. 2025); *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009) (per curiam) (quoting *Tarver v. City of Edna*, 410 F.3d 745, 751 (5th Cir. 2005)); *Estevis v. Cantu*, 134 F.4th 793, 795 n.3 (5th Cir. 2025) (quoting *Rucker v. Marshall*, 119 F.4th 395, 403 (5th Cir. 2024) (quoting *Byrd v. Cornelius*, 52 F.4th 265, 270 (5th Cir. 2022)); *Martinez v. City of Rosenberg*, 123 F.4th 285, 290 (5th Cir. 2024) (citing *Buehler v. Dear*, 27 F.4th 969, 981 (5th Cir. 2022)); *Ramirez v. Killian*, 113 F.4th 415, 424 (5th Cir. 2024); *Smith v. Lee*, 73 F.4th 376 (5th Cir. 2023) (citing *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 382 (5th Cir. 2009)).

10. Compare *Perdomo* to *Ramirez v. Granado*, 163 F.4th 204, 208 (5th Cir. 2025)(emphasis added)(When describing the elements of a Fourth Amendment Excessive Force Claim, the panel majority in *Ramirez* states: “(1) an injury that (2) resulted

With choices available, the panel majority selected the least stringent version of elements, requiring the least from Ramirez, even though, days later, another panel of the Fifth Circuit selected the most stringent version of the elements. The governing law should not vary from panel to panel.

2. The Variations Among the Circuits: Elements and Factors.

Significant variations of the elements and factors also exist within and amongst the circuits. With regard to the elements of an excessive force claim, the Fifth Circuit stands alone in its articulation of the three elements described above. Some circuits, like the First and Eighth, appear to simply require that “a seizure occurred and the seizure was unreasonable.” *See e.g., Hollamon v. Pennington Cnty.*, 170 F.4th 674, 677 (8th Cir. 2026); *Conlon v. Scaltreto*, 158 F.4th 211, 218 (1st Cir. 2025) (“[A] plaintiff must show, as an initial matter, that there was a seizure within the meaning of the Fourth Amendment and then that the seizure was unreasonable.”).

For the elements of an excessive force claim in the Seventh Circuit, “A plaintiff must show the officer’s use of force was objectively excessive from the perspective of a reasonable officer on the scene under the totality of the circumstances.” *Burton v. City of Zion*, 901 F.3d 772, 780 (7th Cir. 2018). The Seventh Circuit also employs different elements when the case involves deadly force: “We have distilled the inquiry into a useful test: the officer must

directly and only from the use of force that was **excessive to the need**, and (3) the use of force that was **objectively unreasonable**.”).

have ‘probable cause to believe that the armed suspect (1) poses a threat of serious physical harm, either to the officer or to others, or (2) committed a crime involving the infliction or threatened infliction of serious physical harm and is about to escape.’” *Pam v. City of Evansville*, 154 F.4th 523, 531–32 (7th Cir. 2025) (quoting *Manery v. Lee*, 124 F.4th 1073, 1079 (7th Cir. 2025) (internal quotations omitted) (quoting *Muhammed v. City of Chicago*, 316 F.3d 680, 683 (7th Cir. 2002)); see also *Hill v. Quigley*, 784 Fed. Appx. 16, 18 (2d Cir. 2019) (“when a plaintiff alleges deadly force in violation of the Fourth Amendment, the court must instruct the jury that the use of deadly force is ‘*unreasonable unless* the officer had probable cause to believe that the suspect posed a significant threat of death or serious physical injury to the officer or to others,’ rather than stating that an officer ‘may’ use deadly force ‘if’ the officer has such probable cause.” This additional jury instruction creates a new burden and presumption against the officer that is not present in other circuits.). Other circuits have abrogated the use of a separate set of elements for deadly force cases. See *Johnson v. City of Philadelphia*, 837 F.3d 343, 349 (3d Cir. 2016) (“*Scott* abrogates our use of special standards in deadly-force cases and reinstates “reasonableness” as the ultimate – and only – inquiry.”); *Acosta v. Hill*, 504 F.3d 1323, 1324 (9th Cir. 2007); *Noel v. Artson*, 641 F.3d 580, 587 (4th Cir. 2011) (rejecting argument for special charge on use of deadly force because “*all* claims that law enforcement officers have used excessive force . . . should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard”) (emphasis in original); *Penley v. Eslinger*, 605 F.3d 843, 849–50 (11th Cir. 2010).

Regarding the *Graham* factors, each circuit interprets them in its own way.¹¹ Some circuits have extended the list of the three original *Graham* factors and have met with disagreement from other circuits.

Disagreement among the circuits exists regarding the proper interpretation of the “objectively unreasonable” element of a Fourth Amendment excessive force claim. For example, the Ninth Circuit has expanded the reasonableness inquiry to ten factors including the controversial “mental illness” factor.¹² The Eighth Circuit has rejected the Ninth Circuit’s “mental illness” factor as it has found that an officer using force to throw a paranoid schizophrenic suspect, who refused to comply with orders following a report of a violent attack, to the floor was not objectively unreasonable and the officer was entitled to qualified immunity.¹³

The Third and Fourth Circuits consider seven factors in their “reasonableness” analysis.¹⁴ The Eleventh Circuit

11. *See infra* at p. 28 for a discussion of the original *Graham* factors.

12. *Herrera-Amaya v. Arizona*, No. CV-14-02278-TUC-RM, 2019 WL 2717092, at *5 (D. Ariz. June 28, 2019) (The District Court listed ten factors to consider when examining the “objectively unreasonable” element, beyond the three listed *Graham* factors); *Crawford v. City of Bakersfield*, 944 F.3d 1070, 1077–78 (9th Cir. 2019) (“our precedent establishes that if officers believe a suspect is mentally ill, they ‘should make a greater effort to take control of the situation through less intrusive means’”).

13. *Roberts v. City of Omaha*, 723 F.3d 966, 975 (8th Cir. 2013).

14. *Velius v. Twp. of Hamilton*, 754 F. Supp. 2d 689, 692 (D.N.J. 2010), *aff’d*, 466 F. App’x 133 (3d Cir. 2012); *Cansler v. Hanks*, 777 F. App’x 627, 632 (4th Cir. 2019).

has recently accepted a list of six factors that guide its determination of the “objectively unreasonable” element.¹⁵

There is a significant need for clarity. Police officers must grapple with various factors when they make the decision to use deadly force. Those factors can vary significantly among the circuits. This Court should bring order out of the chaos. Geography should not govern Constitutional law.

B. The Panel Majority’s Qualified Immunity Analysis Fails to Follow *Barnes v. Felix*, *Scott v. Harris*, and *Mullenix v. Luna*.

Officer Granado’s use of force was reasonable under the undisputed and indisputable facts. App. 25a-27a. The panel majority’s conclusion to deny qualified immunity is not supported by any of this Court’s precedents. It is, rather, contradicted by numerous decisions from this Court, the Fifth Circuit and other circuits as the dissent’s non-exhaustive string of decisions demonstrates. *See* App. 27a-31a.

1. The Panel Majority Ignored *Barnes*: It Failed to Consider the Totality of the Circumstances.

While the panel majority paid lip service to *Barnes* by identifying the correct rule i.e., that the reasonableness inquiry under *Graham* “requires analyzing the ‘totality of

15. *Castro-Reyes v. City of Opa-Locka*, 166 F.4th 886, 900 (11th Cir. 2026).

the circumstances,”¹⁶ it nevertheless failed to apply it, and instead confined its analysis of objective reasonableness to the final split-seconds of Officer Granado’s use of force.

Specifically, the panel majority improperly considered the constitutionality of Officer Granado’s first shot and second shots separately. With this approach, the panel majority evaluated the reasonableness of the use of force by considering just one frame as it performed an instant replay of the event.

The panel majority implicitly conceded that Officer Granado’s first shot was reasonable based on the undisputed facts that Ramirez was moving toward Officer Watson and engaging in a physical altercation with Officer Watson. But the opinion then concluded, using the wrong standard, that Officer Granado’s subsequent shots could be excessive to a reasonable jury. App. 8a.

The panel majority attempted to justify its parsing of Granado’s shots by taking out of context a quote from *Barnes* that “the situation at the precise time of the shooting will often be what matters most,” and by making reference to the generalized concept that an exercise of force can be reasonable one moment and unreasonable in the next, citing to two Fifth Circuit cases that bear no resemblance to the case at bar.¹⁷

16. App. 6a (quoting *Barnes v. Felix*, 605 U.S. 73 (2025) (quoting *Cnty. of Los Angeles v. Mendez*, 581 U.S. 420, 427-28 (2017))).

17. App. 8a (citing *Mason v. Lafayette City-Par. Consol. Gov’t*, 806 F.3d 268, 277 (5th Cir. 2015); *Roque v. Harvel*, 993 F.3d 325, 333 (5th Cir. 2021)).

Cases where courts legitimately segment the analysis involve circumstances inapplicable to this case, such as when two distinct *kinds* of force are used during an encounter (*see e.g., Lachance v. Town of Charlton*, 990 F.3d 14, 24 (1st Cir. 2021) (segmenting the analysis of the reasonableness of a shove from the analysis of kneeling on the suspect after restrained)) or when the use of deadly force on a suspect resumes after the suspect is clearly incapacitated (*see e.g., Estate of Smart by Smart v. City of Wichita*, 951 F.3d 1161, 1172-74, 1175-77 (10th Cir. 2020) (finding no clearly established law that shooting the decedent while he fled was unreasonable, but finding such law with respect to subsequently shooting him on the ground)).

Mason and *Roque*, the cases relied on by the panel majority, fall within the latter category where the suspect was clearly incapacitated by the initial use of force. Here, Ramirez was not incapacitated, and the threat persisted.

The panel majority identified *no* cases that segment the analysis under circumstances similar to this case, where the shooting paused for 1.5 seconds while the suspect was out of view behind a fellow officer, and then resumed as the suspect reappeared, still holding a gun, and clearly not incapacitated.

Courts must evaluate an officer's use of force based on the "totality of the circumstances." *Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985). That standard flows from the concept of "reasonableness," "the ultimate touchstone of the Fourth Amendment." *Lange v. California*, 594 U.S. 295, 301 (2021). There is no "magical on/off switch." *Scott v. Harris*, 550 U.S. 372, 382 (2007). "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.” *Graham*, 490 U.S. at 396–97. This Court has emphasized that, as a matter of public policy, qualified immunity affords “ample protection to all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986). The panel majority’s decision contravenes this principle.

Excessive force claims are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred. *Saucier v. Katz*, 533 U.S. 194, 207 (2001). “That inquiry is dispositive: When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim.” *Cnty. of Los Angeles, Calif. v. Mendez*, 581 U.S. 420, 428 (2017).

The panel majority went on to frame its inquiry not based on the objective facts and information Officer Granado had at the time, but on whether there were disputed material facts as to the correctness of Officer Granado’s “justification” that he perceived that Ramirez “was swinging his pistol in the direction of Officer Watson and [him]” as he ran. App. 9a. The panel majority asked whether Officer Granado “perceived” that Ramirez was armed with a handgun and whether Ramirez “swung that handgun in the officers’ direction.” App. 9a. This frame-by-frame approach is exactly what this Court rejected in *Barnes*.

The panel majority eviscerated *Barnes*' instruction that courts "must look too, in this and all excessive-force cases, at any relevant events coming before" the use of force in question. *Barnes*, 605 U.S. at 83.

The panel majority's error is highlighted in the concurrence's critique of the dissent. The concurrence criticizes that the dissent "invites the impression that Ramirez was the driver who precipitated the pursuit." App. 17a. The concurrence goes on to claim that "before the stop, nothing in the record indicates Ramirez himself was suspected of any specific crime." App. 17a. The panel majority does not consider the totality of the circumstances.

For example, it is undisputed that dispatch informed Officer Granado "that the suspect vehicle had previously fled from police and that its occupants should be considered 'armed and dangerous.'" App. 33a. It is undisputed that Officer Watson made physical contact with Ramirez and Watson quickly realized Ramirez was holding a gun. It is undisputed that Officer Granado shouted, "he's got a gun, he's got a gun!" App. 4a. It is undisputed that the whole interaction occurred so quickly that Officer Watson, who was trying to pull his service weapon, never "cleared leather." App. 4a. Objectively, Officer Granado feared for his life, that of Officer Watson and the public, as an armed Ramirez headed into the darkness of a residential neighborhood.

The panel majority's rejection of *Barnes* warrants review by this Court because the panel majority conducted a second-by-second, frame-by-frame analysis, concluding that in the first second Officer Granado was entitled to

qualified immunity but one and a half seconds later he was not.

2. The Panel Majority Ignored *Scott*: It Accepted an Implausible Inference Blatantly Contradicted by the Video.

The panel majority ignored this Court’s instruction in *Scott* that, when considering whether to grant or deny a motion for summary judgment based on qualified immunity in a case in which video is available, the court should not adopt a version of the facts which is blatantly contradicted by the video. Specifically, the panel majority improperly found a genuine issue of material fact regarding whether Officer Granado reasonably *perceived* that Ramirez had a gun, when the indisputable video evidence, including, importantly, the footage from Officer Granado’s own body-worn camera, shows the gun in Ramirez’s hand.

While fact finding typically remains within the province of the jury, it has always been the case that on summary judgment a court need not credit facts that are so incredible or implausible that no reasonable fact finder could believe them. *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 575 (1985); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In particular, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott*, 550 U.S. at 380.

The panel majority did not address the *indisputable* fact that, before Granado fired his weapon, the gun in Ramirez's left hand can clearly be seen in the video from Officer Granado's body-worn camera. *See* App. 26a; 52a; 53a. Indeed, the concurrence admits that the videos show that Ramirez held a gun in his left hand. App. 17a.

To deny summary judgment, the panel majority proposed an implausible inference that no reasonable factfinder could credit in the face of the video and other objective evidence: that Officer Granado asking Officer Watson "did he have a gun" as Officer Watson was observing Ramirez on the ground, "casts doubt" on whether Officer Granado perceived the gun, and that "[a] reasonable jury could find that this contemporaneous question sufficiently disputes Officer Granado's claim" that he saw the gun. App. 9a-10a.

To conjure support for this "doubt," the panel majority took a microscope and a scalpel to the recording of the officers' post-shooting exchange, considering only an out-of-context snippet of the exchange. However, according to the videos, when Watson approached Ramirez and observed him on the ground, Granado said, "he have a gun?" Watson said, "yeah, it's on the ground," and Granado responded, "he had it in his hand. He had it in his hand. Fuck." Officer Granado was informed that the suspects were armed and dangerous, saw Ramirez holding a gun, and shouted "he's got a gun, he's got a gun." Despite all these facts, the panel majority rejected Officer Granado's explanation that he made the statement "to confirm that what he perceived was accurate[.]" App. 9a.

The panel majority thus concluded that the parties “offer genuinely conflicting narratives as to what occurred and what was perceived,” and that the accuracy of these competing narratives cannot be resolved at summary judgment. The concurrence declared “[w]e may not declare which story is true.” App. 18a (citing *Saucier*, 533 U.S. at 216 (Ginsburg, J., concurring)). Thus, to reach this supposed impasse, the panel majority relied solely on unwarranted inferences, blatantly contradicted by the objective video evidence, contrary to *Scott*’s requirement that the reviewing court face the “added wrinkle” of “a videotape capturing the events in question.” *Scott*, 550 U.S. at 378. The Fifth Circuit improperly relied on the “visible fiction” of the plaintiff’s story instead of viewing the facts, as this Court requires, “in the light depicted by the videotape.” *Scott*, 550 U.S. at 380-81.

3. The Panel Majority Ignored *Mullenix*: It Inverted the Qualified Immunity Burden.

Once Officer Granado asserted qualified immunity, the burden shifted to Ramirez to identify clearly established law demonstrating that Officer Granado’s conduct had been declared unconstitutional under materially similar circumstances. *Mullenix* required Ramirez to carry that burden; the panel majority inverted the qualified immunity standard and improperly shifted that burden to Officer Granado.

C. The Panel Majority’s Approach Forces Officers “To Play Roulette with Their Own Existence.”

The panel majority deviated from this Court’s qualified immunity jurisprudence in a dangerous way.

By doing a frame-by-frame analysis and accepting an implausible inference contradicted by video evidence, the panel majority implicitly held that deadly force is permissible only when an officer is facing the muzzle of a gun.

Here, the panel majority incorrectly denied qualified immunity, in part, based on finding a factual dispute over Officer Granado's *perception* that Ramirez was swinging his gun in the direction of the officers at the moment Officer Granado fired his weapon. App. 10a. It is indisputable that the video shows that the gun was in motion in Ramirez's left hand while he struggled to evade arrest and run. *See* App. 26a, 50a, 52a, 53a.

Regardless, whether Ramirez was swinging the gun to point at the officers is not a question of fact that is *material*. *See* App. 33a-34a ("These facts are completely irrelevant to me – and to the qualified immunity question.") (Oldham, J., dissenting).¹⁸ That is, whether or not, at that split-second, the gun could have been pointed at the officers is of no legal consequence, because a reasonable officer could have believed that the threat existed, regardless. As Officer Granado testified, an armed assailant can point and fire a gun in a fraction of a second.

Neither plaintiff nor the panel majority identified controlling precedent which clearly establishes that, Officer Granado was required to wait until he is facing the barrel of a gun. To the contrary, officers do not have to wait until the suspect's gun is pointing directly at them before they can use deadly force. *Salazar-Limon v. City of Hous.*,

18. *See supra* at n.4.

826 F.3d 272, 279 n.6 (5th Cir. 2016), *as revised* (June 16, 2016).¹⁹ Illustrative case law, including many cases listed by the dissent, shows that a reasonable officer under these circumstances could reasonably believe Ramirez posed a threat of serious harm to himself or others, regardless of the direction the gun was swinging. *See* App. 27a-31a (dissent, listing cases); *see also Ballard v. Burton*, 444 F.3d 391, 402-3 (5th Cir. 2006); *Ramirez v. Knoulton*, 542 F.3d 124, 130-31 (5th Cir. 2008) (officer entitled to qualified immunity even when the suspect “did not raise his weapon, discharge the weapon, or even point it at the officers.”); *Elliott v. Leavitt*, 99 F.3d 640, 643 (4th Cir. 1996) (“The Fourth Amendment does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists.”); *Orr v. Copeland*, 844 F.3d 484, 494 (5th Cir. 2016) (“This court has repeatedly found that it is objectively reasonable for an officer to use deadly force even if he merely *believes* – albeit reasonably – that the suspect is reaching for a weapon.”) (emphasis in original); *Argueta v. Jaradi*, 94 F.4th 475, 476 (5th Cir. 2024) (“This case is about whether an officer is entitled to qualified immunity for shooting a fleeing suspect in the back without warning when that suspect concealed his arm from view such that the officer thought that he *might* be armed . . . the panel majority answered ‘yes’”) (Elrod, J., joined by Stewart, Graves, Higginson, and Douglas, JJ., dissenting from denial of rehearing *en banc*) (emphasis in original), *cert. denied*, 145 S. Ct. 435 (2024).

19. The panel majority attempted to qualify this principal, implying that it only applies in cases where the suspect reaches for a place where a gun may be hidden. App. 11a. It stands to reason, however, that if deadly force is warranted when a suspect *reaches for* a gun, qualified immunity protects Officer Granado, here, where Ramirez was already gripping the gun and it was in motion.

Not only does the panel majority's reasoning conflict with this Court's precedent, but its approach to qualified immunity forces officers "to play roulette with their own existence." *Harris v. Pittman*, 927 F.3d at 286 (Wilkinson, J., dissenting).

D. The Panel Majority Makes a Mockery of *Graham*'s "Severity of the Crime" Factor

The panel majority identified "a few considerations that inform the need for force: (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of officers or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight." App. 6a-7a (citing *Graham*, 490 U.S. at 396 (quoting *Bell v. Wolfish*, 441 U.S. 520, 559 (1979))).

In *Graham*, this Court did not elaborate extensively on how the first factor – the severity of the crime at issue – should be analyzed. The implication, however, is that the governmental interest in apprehending a suspect increases with the seriousness of the suspected offense, which in turn can justify a greater degree of force. This factor, like the others, is framed within a broader totality-of-the-circumstances inquiry, evaluated from "the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 397.

The panel majority relegated its analysis of the first *Graham* factor to a footnote and bent over backwards to imply that this factor weighed against the reasonableness of Officer Granado's use of force. App. 7a, n.2. It improperly

considered multiple facts separately and in a vacuum, instead of under the totality of the circumstances.

The panel majority rejected Officer Granado's contention that since Ramirez had been involved in a high-speed pursuit, had been identified by dispatch as "armed and dangerous," and had resisted arrest while armed with a gun, Officer Granado reasonably perceived that a high degree of dangerous criminal activity was afoot. App. 7a. The panel majority conceded that Ramirez emerged from the fleeing vehicle after the high-speed pursuit and that dispatch informed the officers that the vehicle had previously fled from police and that its occupants should be considered "armed and dangerous." It found, however, that this was not enough for Granado to suspect Ramirez *individually*, stating that "*nothing* in the record suggests that Ramirez was individually suspected of criminal conduct before the stop." App. 7a (emphasis added).

The panel majority would have officers in tense rapidly evolving circumstances, such as these, operate with what amounts to the 20/20 vision of hindsight and quickly assess which of the four fleeing suspects is the driver, who is presumably the only *real* suspected criminal.

The panel majority would also have officers ignore the totality of the circumstances, and consider Ramirez to have been a hostage, or at least an innocent, unwilling participant, in the dangerous, high-speed chase, simply because Ramirez did not emerge from the *driver's* door when he continued to evade on foot holding a gun.

The panel majority incredibly concluded that "'armed and dangerous' is not itself indicative of any criminal

offense,” and its consideration should be relegated to the second *Graham* factor alone, as opposed to both the first and third factors. To the contrary, a reasonable officer could certainly believe that criminal activity had occurred under these circumstances.

The panel majority went on to conclude that even though Ramirez continued evading arrest on foot, this cannot “alone” justify deadly force. Moreover, the panel majority did not consider the facts that Officer Granado saw Ramirez in a brief physical altercation with Officer Watson and that he was evading arrest *while holding a gun*. Ramirez also failed to obey Officer Watson’s command to “get on the ground.” By considering particular facts separately and in a vacuum, and refusing to consider material facts a reasonable officer in Granado’s position would necessarily have had in mind, the panel majority completely disregarded the duty to conduct a totality-of-the-circumstances inquiry required by this Court’s precedent when adjudicating the first *Graham* factor.

The panel majority requires officers to presume that after a high-speed chase, reasonable suspicion of involvement in a crime is nonexistent for any occupant other than the driver. The panel majority forces officers under these circumstances to truly play roulette with their lives.

II. NO CLEARLY ESTABLISHED LAW GAVE OFFICER GRANADO FAIR NOTICE.

The panel majority’s approach to qualified immunity: (1) asked the wrong question, and in so doing, improperly shifted the burden regarding qualified immunity from

Ramirez to Officer Granado; (2) defined the issue at too high a level of generality; and (3) referred to only two Fifth Circuit opinions ignoring contrary authority from this Court.

A. The Panel Majority Asked the Wrong Question.

The panel majority asked the wrong question: “whether Plaintiff-Appellant’s version of the disputed facts constitutes a violation of clearly established law.” App. 13a. The correct inquiry should have been “whether it was clearly established that the Fourth Amendment prohibited [Officer Granado’s] conduct in the ‘situation [he] confronted’: whether to shoot a [fleeing and armed] felon, set on avoiding capture through vehicular flight [and later, by fleeing on foot], when persons in the immediate area are at risk from that flight.” *Mullenix*, 577 U.S. at 13. Qualified immunity exists precisely to prevent officers’ split-second life-and-death decisions from being improperly subjected to the 20/20 vision of hindsight.

B. The Panel Majority Defined the Issue at Too High a Level of Generality.

The inquiry regarding clearly established law must be undertaken in light of the specific context of the case and not as a broad proposition.²⁰ The panel majority’s analysis disobeyed this Court’s repeated admonition not to define clearly established law at a high level of generality. The result of the panel majority’s disobedience is to make meaningless another of this Court’s repeated statements

20. *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004); *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011); *Mullenix*, 577 U.S. at 12.

i.e., that qualified immunity is meant to protect “all but the plainly incompetent and those who knowing violate the law.”²¹

C. The Panel Majority Relied Exclusively on Two Fifth Circuit Opinions and Ignored Contrary Authority from this Court.

1. Neither *Lytle*²² nor *Baker*²³ Gave Fair Notice to Officer Granado.

The panel majority relied on *Lytle* and *Baker* as the source of clearly established law. Neither case clearly established the law with respect to the conduct of Officer Granado. *Lytle* involved a materially different factual scenario: a brief vehicle pursuit reaching speeds of approximately 65 miles per hour where the suspect was not alleged to be armed with a dangerous weapon or otherwise presented an ongoing threat. Officer Granado’s situation, by contrast, involved a prolonged high-speed chase in which the vehicle occupants were believed to be armed and dangerous, and the pursuit had reached speeds of approximately 120 miles per hour. *Baker* involved both materially distinguishable facts and a different procedural posture. Significantly, *Baker* failed to articulate any putative rule which would have given Officer Granado fair notice that his conduct, in response to the circumstances he faced, would violate the Fourth Amendment. An objectively reasonable officer reviewing

21. *Mullenix*, 577 U.S. at 12.

22. *Lytle v. Bexar County, Texas*, 560 F.3d 404 (5th Cir. 2009).

23. *Baker v. Putnal*, 75 F.3d 190 (5th Cir. 1996).

Lytle and *Baker* would not have fair notice that Officer Granado’s conduct immediately following a lengthy, high-speed pursuit violated the Fourth Amendment.

2. The Panel Majority Ignored Contrary Authority from this Court.

The formulation of the issue in *Lytle* was expressly repudiated by this Court in both *Brosseau v. Haugen* and *Mullenix v. Luna*. In concluding that Officer Granado was not entitled to qualified immunity, the panel majority relied on the exact formulation which this Court rejected in *Mullenix*: the proposition that an officer may not “use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others.” *Mullenix*, 577 U.S. at 12; App. 13a. Ramirez was required to bear the burden of demonstrating that existing precedent had placed the constitutional question beyond debate. *Ashcroft*, 563 U.S. at 741. In his dissent, Judge Oldham explained that neither Ramirez nor the panel majority identified a single case in which an officer acting under similar circumstances was held to have violated the Fourth Amendment. App. 31a.

3. Who Clearly Establishes the Law?

The panel majority’s inability to identify clearly established law raises a broader and recurring question that only this Court can resolve: Can any court, other than this Court, clearly establish the law for purposes of qualified immunity and, if so, under what circumstances can it be done? This question is particularly important when considering that a court of appeals opinion “does not represent settled law; it represents developing law.” Amy

Coney Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 Geo. Wash. L. Rev. 317, 334 (2004-2005). And even if there is a robust consensus among the circuits, it is not “settled in the way a Supreme Court settles the law.” *Id.*

In *Pearson v. Callahan*, this Court recognized that officers “are entitled to rely on existing lower court cases without facing personal liability for their actions,” including decisions from other circuits and State Supreme Courts. *Pearson v. Callahan*, 555 U.S. 223, 244 (2009). At the same time, however, this Court has explained that disagreement among lower courts “does not automatically render the law unclear” *where this Court’s own precedents are controlling and sufficiently outline the contours of a right*. *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 378 (2009). Yet *Safford* also recognized that when numerous lower courts interpret precedent inconsistently and even generate “well-reasoned majority and dissenting opinions,” that very division may itself imply that the law was not sufficiently clear to place the constitutional question beyond debate. *Id.* at 379.

Where there exists a circuit split or even an intra-circuit split, query how the law can be “clearly established.” As Chief Justice Rehnquist observed, “[i]f judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy.” *Wilson v. Layne*, 526 U.S. 603, 618 (1999). It cannot be that “[a] policeman’s lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause and being mulcted in damages if he does.” *Pierson v. Ray*, 386 U.S. 547, 555 (1967). When the law is still undeveloped,

how can officers be “expected to predict the future course of constitutional law[?]” *Wilson*, 526 U.S. at 617.

This case squarely presents the issue of whether any court other than the Supreme Court can clearly establish the law for purposes of qualified immunity, and if so, whether the panel majority correctly identified the clearly established law applicable to this case. The panel majority relied exclusively on Fifth Circuit authority to define clearly established law, including one case that used a formulation that has been rejected, or at least narrowed, by this Court’s prior decisions. The resulting conflict between this Court’s qualified immunity jurisprudence and the panel majority’s application of it makes this case an appropriate vehicle for clarifying both what constitutes clearly established law and who possesses the authority to establish it.

III. PROTECTING QUALIFIED IMMUNITY.

Qualified immunity is the rare legal doctrine that has captured the imagination of the everyday American and entered mainstream public discourse. Perhaps no recent legal doctrine has spawned more public support or outrage than qualified immunity. It is a doctrine that ordinary Americans, not just jurists, question. Given the difficult balance it attempts to strike, it is no wonder qualified immunity remains a controversial topic, since, “[o]n one hand, government officials sometimes suffer no personal liability even when they violate constitutional rights. But at the same time, the threat of punishing an officer for violating previously unknown rights could chill legitimate governmental action.” *See* Aaron L. Nielson & Christopher J. Walker, *A Qualified Defense of Qualified Immunity*, 93 Notre Dame L. Rev. 1853 (2018).

A. Qualified Immunity as a Constitutional Immunity.

The qualified immunity debate often turns on whether officers enjoyed common-law tort immunities in 1871, when Congress enacted 42 U.S.C. § 1983.²⁴ Judge Oldham challenges the premises of that debate and proposes framing the qualified-immunity debate on whether officers enjoyed “constitutional immunities” as of 1791, when the Bill of Rights was ratified. *See* Hon. Andrew S. Oldham, *Official Immunity at the Founding*, 46 Harv. J.L. & Pub. Pol’y 105 (2023). Judge Oldham argues that a proper understanding of official immunity “must be rooted in the *constitutional* right at issue,” and not just on “tort law to the exclusion of constitutional law.” *Id.* at 133 (emphasis in original).

In considering the “archetypal qualified immunity case: a Fourth Amendment plaintiff’s claim against an officer who allegedly executed an ‘unreasonable’ search or seizure,” Judge Oldham points out that the word “unreasonable” in 1791 meant “against the reason of the common law.” *Id.* at 105. Since that common law contained “a host of immunities for officers charged with searching and seizing,” Judge Oldham asserts that it is possible that a Fourth Amendment claim at the Founding “required plaintiffs to show that an officer’s search or seizure was not only wrongful, but so wrongful that the plaintiff could overcome the officer’s common-law immunities.” *Id.* at 105-6 (emphasis in original).

24. *See generally* William Baude, *Is Qualified Immunity Unlawful?* 106 Cal. L. Rev. 45 (2018); Scott A. Keller, *Qualified and Absolute Immunity at Common Law*, 73 Stan. L. Rev. 1337 (2021); Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797 (2018).

Judge Oldham explains that because the substantive right protected by the Fourth Amendment “imports” the common law into the right, the concept of unreasonableness took into account officers’ pre-existing immunities. *Id.* at 127-28. The debate surrounding qualified immunity may move toward a resolution if this Court were to recognize that qualified immunity was imported into the Fourth Amendment when, in 1791, the Bill of Rights was ratified.

B. Statutory Stare Decisis as a Basis for Protecting Qualified Immunity.

In spite of the attacks on qualified immunity, this Court’s embrace of the doctrine has so far been “*emphatic, frequent, longstanding, and nonideological.*” See Nielson & Walker, *A Qualified Defense of Qualified Immunity*, 93 Notre Dame L. Rev. at 1858. The response by Professors Nielson and Walker to the attacks on qualified immunity begins with the premise that, when it comes to qualified immunity, the question is largely statutory in character. They argue that stare decisis should apply with special force, and in particular, *statutory* stare decisis should apply, which they argue is even more potent than constitutional stare decisis. *Id.* at 1855-56. Justice Amy Coney Barrett has referred to it as “super-strong” statutory stare decisis because it “gains this special force from the principle of legislative supremacy – the belief that Congress, rather than [this Court], bears primary responsibility for shaping policy through statutory law.” Amy Coney Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 Geo. Wash. L. Rev. at 317. It is not only this Court, but also courts of appeals, that apply statutory stare decisis as a general practice of restraint on judicial policymaking. *Id.* at 351.

Professors Nielson and Walker also cite to this Court’s decision in *Kimble v. Marvel Entertainment* for stating that when it comes to nonconstitutional holdings, those who think that this Court got the issue wrong “can take their objections across the street, and Congress can correct any mistake it sees.” *Id.* at 1856 (citing *Kimble v. Marvel Entertainment*, 576 U.S. 446, 456 (2015)). Because of statutory stare decisis, Nielson and Walker point out, “courts ordinarily do not revisit statutory issues that have been decided absent some ‘special justification’ beyond mere wrongness.” *Id.*

In *Pierson*, this Court established that qualified immunity applies to § 1983 claims. This Court recognized “under § 1983 a ‘good faith and probable cause’ defense coextensive with their defense to false arrest actions at common law.” *Id.* at 1857, fn. 22. If this Court is unwilling to end the debate over qualified immunity using Judge Oldham’s proposal, then perhaps it could end the debate by applying the doctrine of statutory stare decisis to *Pierson* and its progeny.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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1a

**APPENDIX A — UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT,
PUBLISHED OPINION, DECEMBER 10, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-10755

JUANITA RAMIREZ, PERSONALLY AND AS THE
PERSONAL REPRESENTATIVE OF THE ESTATE
OF ESTEVAN RAMIREZ,

Plaintiff-Appellant,

versus

JONATHAN GRANADO,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CV-930

Before DENNIS, OLDHAM, and DOUGLAS, *Circuit Judges.*

*Appendix A*PER CURIAM:^{*}

Plaintiff-Appellant Juanita Ramirez brought an excessive-force claim against Lake Worth Police Department (“LWPD”) Officer Jonathan Granado after he shot and killed her son, Estevan Ramirez, as he fled from pursuing officers. The district court granted summary judgment to Officer Granado, concluding his use of deadly force was reasonable and, as a result, that qualified immunity shielded his actions from suit and liability. For the reasons that follow, we REVERSE and REMAND for further proceedings.

I

On September 3, 2021, at approximately 2:06 AM, Officer Granado, on duty in his marked police vehicle, heard fellow LWPD Officer R. Watson report over the police radio that he was engaged in a high-speed pursuit of a white Volkswagen Jetta whose driver failed to yield to a traffic stop for speeding. Officer Granado responded by joining the pursuit as a backup unit. At Officer Watson’s request, LWPD dispatch ran the suspect vehicle’s license plate and informed both officers that the fleeing vehicle was “not stolen” but that it previously evaded pursuit by a different police agency and that the “occupants are considered armed and dangerous.” Importantly, however,

^{*} At the request of our dissenting colleague, this opinion is designated for publication. *See* 5TH CIR. R. 47.5.2 (“An opinion will be published unless each member of the panel deciding the case determines that its publication is neither required nor justified under the criteria for publication.”). The panel majority would decline to publish.

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and contrary to Officer Granado's later assertions, the transcripts of the dispatch and radio communications contain no indication that either officer received information suggesting that the vehicle or its occupants were involved in any "drive-by shootings."¹

At 2:18 AM, Officer Granado located the ongoing pursuit and began following Officer Watson as the secondary chase unit. A few minutes later, the suspect vehicle made a sharp turn, struck a curb, and sustained significant damage. The suspect vehicle continued on for a short distance before coming to a stop at 2:22 AM. Officer Watson stopped his patrol car near the disabled vehicle. When the suspect vehicle came to a stop, four unidentified individuals (including Ramirez) exited and fled in different directions. Officer Watson, who had also exited his patrol car, observed Ramirez emerging from the rear-left passenger door of the suspect vehicle. As Ramirez emerged from the vehicle, he held a handgun in his left hand and a cell phone in his right, though it is disputed when law enforcement learned that fact. After taking only a few steps, Ramirez dropped the cell phone and briefly paused to retrieve it. Officer Watson saw Ramirez "trying to flee" but "did not see a gun" at that point.

The following events unfolded over the span of approximately eight seconds. As Officer Watson

1. To the extent Officer Granado's allegations are disputed by Plaintiff-Appellant, we must view the evidence in the light most favorable to Plaintiff-Appellant and draw all factual inferences in her favor. *Tolan v. Cotton*, 572 U.S. 650, 657, 134 S. Ct. 1861, 188 L. Ed. 2d 895 (2014) (per curiam).

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approached Ramirez from the opposite side of his police cruiser, he “touched” or “grabbed” Ramirez and, for the first time, saw that Ramirez was holding a handgun “in a downward motion.” Upon observing the handgun, Officer Watson “pushed off of” or “back[ed] away” from Ramirez to create distance as he attempted to unholster his own weapon. At the same time, Officer Granado stopped his patrol car to the right of Officer Watson’s, exited it while drawing his service weapon, and shouted “he’s got a gun, he’s got a gun!” Officer Granado fired a single shot in the direction of Officer Watson and Ramirez—a shot that Officer Watson later recalled passed “right by [him].” Ramirez then “r[an] away” from Officer Watson “in a southwest direction” and “continued to flee away from him across the street” and into a nearby intersection.

The officers’ accounts diverge as to what happened next. Officer Granado later claimed that Ramirez “was swinging his pistol in the direction of Officer Watson and [him] as he fled. Officer Watson, however, stated that “Ramirez never pointed the gun toward me or while he was running away[.]” As Ramirez continued to flee from the officers, Officer Granado fired his service weapon at Ramirez six more times without warning. Four of his bullets struck the back of Ramirez’s head and shoulders. Ramirez collapsed face-first on the street in the direction he had been running. Officer Watson, who had attempted to unholster his weapon, never “cleared leather” before the gunfire ended. Seconds later, Officer Granado asked Officer Watson, “did he have a gun?” Ramirez died at the scene.

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Plaintiff-Appellant Juanita Ramirez, individually and on behalf of Estevan Ramirez 's estate, brought an excessive-force claim against Officer Granado under 42 U.S.C. § 1983. Officer Granado moved for summary judgment on the basis of qualified immunity. The district court granted Officer Granado's motion, concluding his use of deadly force was objectively reasonable under the circumstances and, as a result, he was entitled to qualified immunity. The district court entered final judgment dismissing Plaintiff-Appellant's suit with prejudice. This timely appeal followed.

II

We review a district court's grant of summary judgment based on qualified immunity de novo. *Crane v. City of Arlington, Tex.*, 50 F.4th 453, 461 (5th Cir. 2022) (citing *Aguirre v. City of San Antonio*, 995 F.3d 395, 405 (5th Cir. 2021)). "When a defendant official moves for summary judgment on the basis of qualified immunity, 'the burden then shifts to the plaintiff, who must rebut the defense by establishing a genuine fact issue as to whether the official's allegedly wrongful conduct violated clearly established law.'" *Id.* (quoting *Aguirre*, 995 F.3d at 406). "All facts must be viewed in the light most favorable to the nonmovant and all justifiable inferences must be drawn in his favor." *Id.* (citing *Darden v. City of Fort Worth*, 880 F.3d 722, 727 (5th Cir. 2018)).

*Appendix A***III**

We conclude Plaintiff-Appellant has established genuine disputes of material fact that preclude the grant of summary judgment on qualified immunity.

A

Whether an officer is entitled to qualified immunity involves two inquiries: (1) “whether the officer’s conduct violated a federal right,” and (2) “whether that right was clearly established at the time of the violation.” *Id.* at 463 (citing *Tolan*, 572 U.S. at 655-56). “Under the first step, to state a violation of the Fourth Amendment prohibition on excessive force,” the plaintiff must show: “(1) an injury that (2) resulted directly and only from the use of force that was excessive to the need, and (3) the use of force that was objectively unreasonable.” *Bush v. Strain*, 513 F.3d 492, 500-01 (5th Cir. 2008).

“[T]he ‘reasonableness’ inquiry . . . is an objective one,” *Graham v. Connor*, 490 U.S. 386, 397, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989), and “requires analyzing the ‘totality of the circumstances.’” *Barnes v. Felix*, 605 U.S. 73, 145 S. Ct. 1353, 1358, 221 L. Ed. 2d 751 (2025) (quoting *Cnty. of Los Angeles v. Mendez*, 581 U.S. 420, 427-28, 137 S. Ct. 1539, 198 L. Ed. 2d 52 (2017)). While objective reasonableness is “not capable of a precise definition or mechanical application,” the Supreme Court in *Graham v. Connor* outlined a few considerations that inform the need for force: (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of officers or others, and (3) whether the suspect

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was actively resisting arrest or attempting to evade arrest by flight. 490 U.S. at 396 (quoting *Bell v. Wolfish*, 441 U.S. 520, 559, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)).

Importantly, the “threat-of-harm factor typically predominates the analysis when deadly force has been deployed[.]” *See Crane*, 50 F.4th at 463.² Officer Granado

2. On the first *Graham* factor—the severity of the crime at issue—Officer Granado contends that Ramirez was involved in a high-speed pursuit, had been identified by dispatch as “armed and dangerous,” and resisted arrest while armed with a handgun. It is undisputed that LUPD dispatch informed both officers that the suspect vehicle had previously fled from police and that its occupants should be considered “armed and dangerous.” But nothing in the record suggests that Ramirez was individually suspected of criminal conduct before the stop. Officer Granado observed Ramirez exit from the rear-left passenger door of the suspect vehicle, demonstrating that he was not the driver and therefore not responsible for the high-speed pursuit. *See* TEX. TRANSP. CODE § 545.421(a). Moreover, the characterization of the occupants as “armed and dangerous” is not itself indicative of any criminal offense and bears more directly on the second *Graham* factor—whether the suspect poses an immediate threat—rather than the severity of any crime. *See Smith v. Lee*, 73 F.4th 376, 385 (5th Cir. 2023). The only offense Officer Granado could reasonably attribute to Ramirez based on his observations was evading arrest on foot, which is relevant to the third *Graham* factor. Evading arrest, however, cannot alone justify the use of deadly force absent an objectively reasonable belief that the suspect poses an immediate threat of serious harm to officers or others. *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (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.”). Accordingly, our analysis turns primarily to the second *Graham* factor, which we recognize as the predominant factor in this inquiry. *See Crane*, 50 F.4th at 463.

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asserts that, when he stopped his police cruiser, he “saw that [Ramirez] had a pistol in his hand,” and “believed [Ramirez] was going to shoot and kill Officer Watson and [him].” It is undisputed Officer Granado observed Ramirez move toward Officer Watson, who briefly made physical contact with Ramirez in what Officer Watson later described as a fleeting altercation. But this speaks to the *first* unsuccessful shot Officer Granado fired in the direction of Ramirez. Officer Granado admits that, after this first shot, he “stopped firing so as not to hit Officer Watson [who] was momentarily between me and [Ramirez].”

The issue here, then, is whether a genuine dispute of material fact exists as to whether Ramirez continued to pose an immediate threat to the officers or others when Officer Granado fired six *more* rounds as Ramirez ran away down the street without warning. *See Mason v. Lafayette City-Par. Consol. Gov’t*, 806 F.3d 268, 277 (5th Cir. 2015) (reversing grant of summary judgment on qualified immunity after distinguishing between initial and subsequent shots in excessive force analysis); *Roque v. Harvel*, 993 F.3d 325, 333 (5th Cir. 2021). After all, “an exercise of force that is reasonable at one moment can become unreasonable in the next if the justification for the use of force has ceased.” *Id.* (quoting *Lytle v. Bexar Cnty., Tex.*, 560 F.3d 404, 413 (5th Cir. 2009)); *Barnes*, 145 S. Ct. at 1358 (“[T]he situation at the precise time of the shooting will often be what matters most; it is, after all, the officer’s choice in that moment that is under review.”). Although Officer Granado does not dispute that Ramirez was fleeing at the time of the subsequent shots, he seeks

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to justify his continued use of deadly force by claiming that Ramirez “was swinging his pistol in the direction of Officer Watson and [him]” as he ran.

That justification turns on two disputed material facts: (1) whether Officer Granado perceived that Ramirez was armed with a handgun, and (2) whether Ramirez, while fleeing, swung that handgun in the officers’ direction. As to the first, Officer Granado was generally aware that police dispatch had advised that the suspects in the vehicle should be considered “armed and dangerous.” And as Officer Granado exited his patrol car “with adrenaline pumping, lights flashing, confusion of the scene, the fog of danger, and fog of night,”³ he claims that he “saw that [Ramirez] had a pistol in his hand,” prompting him to shout: “he’s got a gun, he’s got a gun!” Officer Watson—who was standing next to Ramirez—first noticed Ramirez holding a handgun at that same moment. Yet, viewing the evidence in the light most favorable to Plaintiff-Appellant, Officer Granado’s own words immediately after the shooting cast doubt on his asserted perception. Moments after firing the fatal shots, he turned to Officer Watson and asked: “did he have a gun?”⁴ A reasonable jury could find

3. See Oral Arg. 22:38-22:44.

4. Officer Granado claims he made this statement merely “to confirm that what he perceived was accurate” The sincerity of this explanation is not one that we may resolve on summary judgment. See *Deville v. Marcantel*, 567 F.3d 156, 165 (5th Cir. 2009) (“Summary judgment is not appropriate when ‘questions about the credibility of key witnesses loom . . . large’ and the evidence could permit the trier-of-fact to treat their testimony with ‘skeptical scrutiny.’” (quoting *Thomas v. Great Atl. & Pac. Tea Co.*, 233 F.3d

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that this contemporaneous question sufficiently disputes Officer Granado's claim that he saw Ramirez armed before and during the shooting.

Next, contradictory evidence undermines Officer Granado's claim that Ramirez threatened the officers or swung anything in their direction as he fled. First, Officer Granado's own body-camera footage does not depict Ramirez "swinging his pistol in the direction" of either officer. Second, Officer Watson, who was closest to Ramirez, unequivocally stated that "Ramirez never pointed the gun toward me or while he was running away[.]" Third, the findings of Ramirez's autopsy are inconsistent with Officer Granado's account. The medical examiner concluded that each of the four bullets that struck Ramirez—including the fatal shot to the *back* of his head—traveled through his body from "back to front."⁵

326, 331 (5th Cir. 2000))). In any event, we must view the summary judgment evidence in the light most favorable to Plaintiff-Appellant and draw all reasonable inferences in her favor. *Darden*, 880 F.3d at 727. Accepting Officer Granado's explanation as true at this juncture would turn that standard on its head.

5. Officer Granado argues that Ramirez's autopsy report "actually indicates wounds in the rear right side [of his head], which is consistent with the video evidence and with Officer Granado's perception that Ramirez would have been swinging the gun toward him and Officer Watson." He cites to an investigative report by the Fort Worth Police Department ("FWPD") that describes the head-wound's trajectory as "right to left." That same report, however, notes "[a]n entrance gunshot wound to the back of the head on the right side, behind the ear[.]" The autopsy report likewise describes the path of that bullet as traveling from "right to left, back to front[.]" Viewing the evidence in the light most favorable to Plaintiff-

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The trajectories of these bullets contradict the claim that Ramirez turned his torso, head, or weapon toward the officers as he fled. *See Baker v. Putnal*, 75 F.3d 190, 198 (5th Cir. 1996) (“The nature of the wounds indicate that [the suspect], was not facing [the officer] when he was shot . . . rais[ing] a serious question as to the reasonableness of his conduct, more of a question of fact than a court may dispose of on summary judgment.”).

In response, Officer Granado relies on the general principle that an officer need not wait “until a defendant turns towards them, with weapon in hand, before applying deadly force to ensure their safety.” *See, e.g., Salazar-Limon v. City of Hous.*, 826 F.3d 272, 279 n.6 (5th Cir. 2016), *as revised* (June 16, 2016). But this principle applies to cases in which a suspect reaches into areas where a gun could be hidden out of an officer’s line of sight or makes other types of furtive gestures such as suddenly reaching into their waistband. *See, e.g., Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 385 (5th Cir. 2009); *Reese v. Anderson*, 926 F.2d 494, 501 (5th Cir. 1991); *Young v. City of Killeen, Tex.*, 775 F.2d 1349, 1352-53 (5th Cir. 1985). Here, Officer Granado never lost sight of Ramirez as he fled, and it is firmly disputed whether Ramirez made any

Appellant, that Ramirez was shot in the rear right side of his head and body is consistent with the summary judgment evidence that he fled in a southwest direction—and it is not undisputed fact that Ramirez had swung his handgun in the direction of Officers Watson and Granado. Indeed, the autopsy report tends to show that Ramirez did not turn toward the officers as he ran down the street. Had he done so, it is unlikely that he would have been shot in the back of his head and shoulders by Officer Granado.

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threatening gestures that reasonably evince a risk to officers or others, or that Officer Granado knew Ramirez was armed at all.⁶

At bottom, Plaintiff-Appellant and Officer Granado offer genuinely conflicting narratives as to what occurred and what was perceived on the night of September 3, 2021. The accuracy of these competing narratives is precisely the kind of question that cannot be resolved at summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (“Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge[.]”). And “[o]f course, if an excessive force claim turns on which of two conflicting stories best captures what happened on the street, *Graham* will not permit summary judgment in favor of the defendant official.” *Saucier v. Katz*, 533 U.S. 194, 216, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001) (GINSBURG, J., concurring). “[I]t will be for a jury, and not judges, to resolve the[se] competing factual narratives . . . as to [Plaintiff-Appellant’s] excessive-force claim.” *Cole v. Carson*, 935 F.3d 444, 447 (5th Cir. 2019) (en bane), *as*

6. Officer Granado disputes Plaintiff-Appellant’s contention that Ramirez was “simply attempting to flee.” Officer Granado argues that Ramirez “pick[ed] up his gun after having dropped it,” which “is fundamentally inconsistent with ‘simply fleeing’ the scene.” But the FWPD investigative report disputes that Ramirez ever dropped his handgun: “[Ramirez] emerged [from the suspect vehicle] holding a black handgun . . . in his left hand and a cell phone in his right hand,” and “[a]fter just a few steps, he *dropped the cell phone* and stopped to pick it up.”

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revised (Aug. 21, 2019). Plaintiff-Appellant has established genuine disputes of material fact regarding whether Officer Granado unreasonably employed deadly force against Ramirez in violation of the Fourth Amendment.

B

The remaining issue is whether Plaintiff-Appellant's version of the disputed facts constitutes a violation of clearly established law. As we explained in *Lytle*, “[i]t has long been clearly established that, absent any other justification for the use of force, it is unreasonable for a police officer to use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others.” 560 F.3d at 417; *see also Baker*, 75 F.3d at 198. Under Plaintiff-Appellant’s version of the disputed facts, Officer Granado did not know Ramirez was armed, observed Ramirez flee from the officers with his back turned, and never saw Ramirez turn toward the officers during his flight. His use of deadly force in this context violates the Fourth Amendment under clearly established law.

IV

For the foregoing reasons, we REVERSE the judgment of the district court and REMAND for further proceedings not inconsistent with this opinion.

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JAMES L. DENNIS, *Circuit Judge*, concurring:

I concur in the majority opinion without reservation. I write separately to address the dissent. Despite its protestations that the majority is wrong to hold that a jury, not judges, must resolve the genuine disputes of material fact here, the dissent ignores the abundant evidence establishing those disputes. And the authority it musters? A mile-wide string of citations, with scarcely an inch deep of relevance. The dissent's error thus runs on two tracks: (A) disregarding or resolving factual disputes that belong to a jury, and (B) wrenching caselaw so far from its moorings as to strip it of all meaning.

A

At summary judgment, the question is not whether a judge can craft a tidy narrative from selected fragments of the record; it is whether a reasonable jury, crediting the nonmovant's evidence and drawing all reasonable inferences in her favor, could find for her. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The dissent's account falters on three fronts: it (1) resolves competing inferences — a job that belongs to a jury; (2) treats assertions untethered to the record as undisputed fact; and (3) omits context that materially bears on objective reasonableness.

First, the dissent makes choices among competing inferences that a jury must resolve. The dissent says that “during the chase,” Officer Granado learned that the vehicle's occupants “had been involved in drive-by

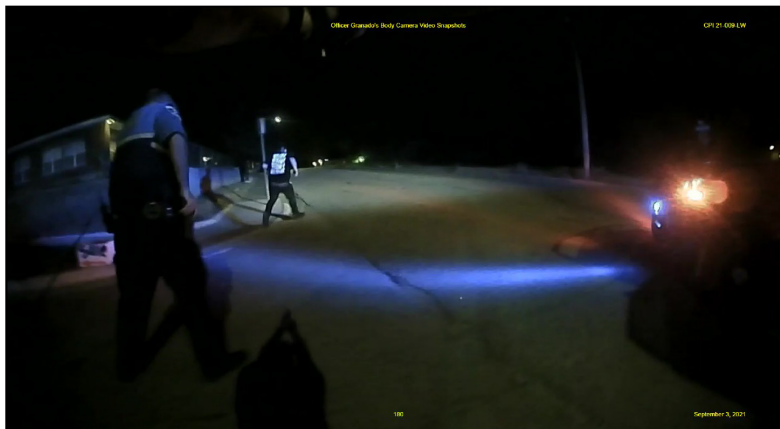
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shootings.” *Post*, at 21. The first time this detail appears in the record is in Officer Granado’s post-shooting written statement: “During the pursuit, I heard *Officer Watson state on the radio* that per White Settlement PD, the suspect vehicle had been involved in drive by shootings” ROA.554 (emphasis added). But the dispatch and radio transcripts in the record contain no such statement, nor do Officer Watson’s report or recorded interview speak to such a critical detail. ROA.576-77; ROA.582; ROA.931 (“Watson Interview”) at 6:00-6:13; ROA.1013. Officer Watson pursued the vehicle only because of the driver’s speeding violation. Whether Officers Watson or Granado had any information to suspect Ramirez, as a passenger, of a crime is a question for the jury at trial. The dissent also leans heavily on the compressed timeline, emphasizing that about eight seconds elapsed between Officer Granado’s shout—“he’s got a gun!”—and Officer Granado’s final shot to Ramirez’s back as he ran away. *Post*, at 23. But the fact that events unfolded quickly is not dispositive, for we must still view the evidence in the light most favorable to the plaintiff. *See Tolan v. Cotton*, 572 U.S. 650, 657-58, 134 S. Ct. 1861, 188 L. Ed. 2d 895 (2014) (per curiam). And here, immediately after Officer Granado’s gunfire ceased, Officer Granado asked Officer Watson, “did he have a gun?” Granado Body Camera (“GBC”) at 14:55-14:56. A jury could hear that unguarded question and disbelieve that Officer Granado actually saw Ramirez holding a gun before and while shooting him in the back.

The dissent also implicitly accepts as true Officer Granado’s post-shooting justification for his use of

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deadly force: that, as Ramirez fled, he “was swinging his pistol in the direction of Officer Watson and [Officer Granado].” ROA.502 ¶¶ 14-17. The record disputes this. Officer Watson—the officer closest to Ramirez—flatly stated “Ramirez never pointed the gun toward me or while he was running away,” and the video evidence does not depict Ramirez “swinging” or pointing his handgun toward either officer. ROA.594; ROA.529; GBC at 14:42-14:44. The autopsy likewise found that four bullets struck Ramirez and that each traveled through Ramirez’s body from back to front, including a fatal shot to the back of his head. ROA.975-76, 979. Finally, the still image reproduced below—taken from Officer Granado’s body-worn camera at the moment he began firing the fatal shots shows both officers behind Ramirez. GBC at 14:42-14:44. At the left of the frame, Officer Watson stands with his service weapon still holstered. Officer Granado is to the right of and behind Officer Watson, and Ramirez is shown fleeing with his back to both officers. This is the critical frame the dissent’s cherry-picked selection omits:



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Second, many of the dissent’s assertions are unsupported by the record. For example, the dissent’s suggestion that Ramirez fled “with his finger on the trigger,” *post*, at 22, finds no footing in the record. Neither investigative nor police reports make this claim, and the videos do not support it; they show only that Ramirez held a handgun in his left hand. ROA.524; ROA.554; ROA.588; ROA.885; GBC at 14:42-14:44.

Third, the dissent omits context that materially bears on reasonableness. The dissent says Ramirez was “involved in a high-speed, 120-mph car chase,” *post*, at 21, but that invites the impression that Ramirez was the driver who precipitated the pursuit. He was not. Ramirez was a passenger who exited from the suspect vehicle’s rear-left passenger door. Watson Dash Camera-Wide (“WDCW”) at 16:16-16:20; Watson Interview at 10:40-10:50. And before the stop, nothing in the record indicates Ramirez himself was suspected of any specific crime. The dissent also notes that the chase ended in a “residential neighborhood,” *post*, at 21, but the intersection where the shooting occurred—Horne Street and Houghton Avenue—was bordered by a gas station, a commercial building, a vacant lot, and one residence. The gas station and residence were located behind both officers and opposite the direction of Ramirez’s flight and Officer Granado’s shots. The environment the officers actually faced, and the direction Ramirez was running—with his back turned—is less developed, context jurors may weigh in assessing objective reasonableness of Officer Granado’s use of deadly force. *See* GBC at 14:35-14:44.

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The dissent's excerpted narrative, then, rests on disputed facts and omitted context that a jury could find decisive. We may not declare which story is true. Instead, we enforce the principle that when "an excessive force claim turns on which of two conflicting stories best captures what happened on the street," we will not "permit summary judgment in favor of the defendant official." *Saucier v. Katz*, 533 U.S. 194, 216, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001) (GINSBURG, J., concurring). Applying that teaching here, the majority rightly reverses.

B

That leaves the dissent's citations, which serve as a reminder that one can stack citations to the ceiling, but a tower of distinguishable cases is still no foundation. All of the dissent's citations fall into two categories not relevant here: first, cases involving deadly force in response to a suspect's overt threatening acts directed at officers; and second, cases where deadly force followed a suspect's sudden furtive reach toward a hidden area outside of the officer's line of sight that reasonably suggested the suspect was retrieving a weapon.

Unlike the present dispute, most of the cases the dissent invokes turn on overt threatening acts by suspects directed toward officers prior to their use of deadly force, *e.g.*, raising a hammer as if to throw it at officers *City of Tahlequah*, advancing toward officers while holding a knife *Kisela*; *Sheehan*; *Dimock*, pointing firearms at officers during standoffs *White*; *Maser*; *Arnold*, setting a house ablaze with officers inside and charging at them

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with a club *Waterhouse*, threatening officers with an axe or machete *Shaw; Flores*, or a refusal to disarm despite explicit commands to do so by officers *Garcia; Boyd*).¹

1. *City of Tahlequah, Okla. v. Bond*, 595 U.S. 9, 11, 142 S. Ct. 9, 211 L. Ed. 2d 170 (2021) (per curiam) (“[The suspect] grasped the handle of the hammer with both hands, as if preparing to swing a baseball bat, and pulled it up to shoulder level. . . . He then raised the hammer higher back behind his head and took a stance as if he was about to throw the hammer or charge at the officers. . . .”); *Kisela v. Hughes*, 584 U.S. 100, 105, 138 S. Ct. 1148, 200 L. Ed. 2d 449 (2018) (per curiam) (suspect holding a large knife “moved to within a few feet of [the officer]; and she failed to acknowledge at least two commands to drop the knife”); *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 605-06, 135 S. Ct. 1765, 191 L. Ed. 2d 856 (2015) (armed mentally ill suspect, who “had just threatened to kill” the officers, twice confronted officers with a knife; after retreat failed and pepper spray was ineffective, she charged again and was shot); *Dimock, Tr. for Heirs of Dimock-Heisler v. City of Brooklyn Ctr.*, 124 F.4th 544, 549 (8th Cir. 2024) (suspect who had threatened individual with a knife and hammer resisting arrest, grabbed knife, and ran toward officer); *White v. Pauly*, 580 U.S. 73, 76, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017) (per curiam) (“[One suspect] stepped part way out of the back door and fired two shotgun blasts while screaming loudly. A few seconds after those shots, [another suspect] opened the front window and pointed a handgun in Officer White’s direction.”); *Maser v. City of Coralville*, 139 F.4th 1004, 1006-07 (8th Cir. 2025) (barricaded suspect who had “threaten[ed] to commit suicide, had shot a hole through the ceiling of his house that morning, was on a three-day long drinking binge,” emerged from his garage holding a gun and “raised [it] in an extended position away from his body at about chest level,” and officers “perceived [the suspect] was pointing the rifle toward other officers at this moment”); *Arnold v. City of Olathe*, 35 F.4th 778, 787 (10th Cir. 2022) (“Howard was waiving a .45 caliber handgun in the general direction of the officers. . . . [S]he pointed the gun toward the officers with her finger on the trigger”); *Waterhouse v. Direzza*, 129 F.4th 1212, 1221-25 (10th

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Others emphasize similar conduct where the suspect possessed harmless replicas of weapons the officers believed were real *Strickland*; *Napouk*.² Those cases stand for a narrow and unremarkable proposition that when a suspect aims a weapon at officers or closes distance while brandishing it despite repeated commands to disarm, the Fourth Amendment ordinarily does not prohibit deadly force. The dissent attempts to apply that principle to this very different factual record that lacks the predicates

Cir. 2025) (use of deadly force reasonable where a “destructive and violent” barricaded suspect refused to surrender for two hours, then “lit the house on fire while officers were inside” and rushed toward officers with a club); *Shaw v. City of Selma*, 884 F.3d 1093, 1097-98 (11th Cir. 2018) (mentally ill suspect armed with an axe shot by officer after he “turned, and began moving slowly towards” the officer and after failing to comply with twenty-six separate commands to drop the axe); *Flores v. Henderson*, 101 F.4th 1185, 1192 (10th Cir. 2024) (“Within seconds, [the suspect] rushed from the bedroom and moved toward the officers with a machete in hand.”); *Garcia v. Blevins*, 957 F.3d 596, 599 (5th Cir. 2020); *Boyd v. Baeppler*, 215 F.3d 594, 598 (6th Cir. 2000) (“[A]n armed man who had reportedly fired shots, potentially endangering others in the area . . . did not stop, as ordered, nor did he drop the gun which had been observed in his hand by a disinterested witness and by four different police officers at close range.”).

2. *Est. of Strickland v. Nevada Cnty.*, 69 F.4th 614, 618, 623 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 559, 217 L. Ed. 2d 297 (2024) (use of deadly force reasonable where a mentally ill suspect, armed with a plastic replica gun mistaken by officers as a real gun, “lowered the barrel toward” the officers); *Napouk v. Las Vegas Metro. Police Dep’t*, 123 F.4th 906, 913-16 (9th Cir. 2024) (use of deadly force reasonable where suspect repeatedly refused commands to disarm and advanced towards officers while armed with a “toy sword wrapped in duct tape” that objectively looked like a machete to officers).

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driving those outcomes. Under Plaintiff-Appellant’s view of the disputed facts, Ramirez never pointed his weapon at either officer, was actively fleeing with his back turned away from the officers when he was slain, and the record reflects that neither officer commanded Ramirez to stop or disarm.

Another large tranche of the dissent’s laundry list rests on the “furtive reach” paradigm where a suspect refuses commands, makes overt threats, or moves toward officers while suddenly reaching or moving toward a hidden area outside of the officer’s line of sight, *e.g.*, waistband (*Salazar-Limon*; *Bayukova*; *Argueta*; *Taylor*), vehicle floorboard (*Young*; *Reese*, or console (*Manns*; *Benton*).³ Variants involve sudden gestures made by suspects following shoot-outs or armed standoffs

3. *Salazar-Limon v. City of Houston*, 826 F.3d 272, 275 (5th Cir. 2016), *as revised* June 16, 2016) (resisted arrest and failed to comply with commands); *Batyukova v. Doege*, 994 F.3d 717, 723 (5th Cir. 2021) (suspect shouted to officer “you’re going to f**king die tonight”); *Argueta v. Jaradi*, 86 F.4th 1084, 1092 (5th Cir. 2023) (“Argueta’s clutching his right arm to his side as he fled police confrontation was a furtive gesture akin to reaching for a waistband.”); *Est. of Taylor v. Salt Lake City*, 16 F.4th 744, 750 (10th Cir. 2021) (suspect explicitly mimicked drawing a weapon from his waistband); *Alcala v. Ortega*, 128 F.4th 1298, 1308 (10th Cir. 2025) (same); *Young v. City of Killeen*, 775 F.2d 1349, 1351 (5th Cir. 1985); *Reese v. Anderson*, 926 F.2d 494, 496 (5th Cir. 1991); *Manis v. Lawson*, 585 F.3d 839, 842 (5th Cir. 2009) (suspect ignored commands to show hands and was shot after “repeatedly reach[ing] underneath the front seat” and “appeared to retrieve some object and began to straighten up”); *Benton v. Layton*, 139 F.4th 281, 287 (4th Cir. 2025) (same).

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(*Franklin; Harris*).⁴ Those decisions are animated by an officer’s momentary loss of visual contact with the suspect’s hands, and the movement reasonably suggested the suspect was retrieving a weapon, particularly where suspects had already demonstrated deadly intent. That is why those opinions repeatedly speak in terms of “split-second” judgments about concealed threats. Again, not our facts in the present case. Officer Granado’s use of deadly force against Ramirez—who never pointed, brandished,⁵ or fired his weapon—occurred during Ramirez’s flight as a wide-open target across a broad street and intersection without warning. Neither officer lost sight of Ramirez, the body-camera shows no sudden reach, and the back-to-front

4. *Caraway v. City of Pineville*, 111 F.4th 369, 377 (4th Cir. 2024) (suspect “pointed his gun at the officers in the moments before the shooting”); *Franklin v. Popovich*, 111 F.4th 1188, 1192 (11th Cir. 2024) (suspect raised hands “as though he was aiming a gun” after having “exchanged gunfire with the police and possibly shot one of the officers”); *Harris-Billups ex rel. Harris v. Anderson*, 61 F.4th 1298, 1301 (11th Cir. 2023) (suspect shot after “open[ing] fire on the officers” and again after moving his arms towards his torso).

5. For the same reason, *Wilson v. City of Bastrop*, 26 F.4th 709 (5th Cir. 2022), is inapposite. There, officers responded to reports of an armed confrontation at an apartment complex involving a specific vehicle. *Id.* at 711. A lone officer stopped that vehicle near an elementary school as a school bus and other bystanders were present. *Id.* at 711-12, 714. A passenger exited holding a semiautomatic pistol with an extended magazine, ignored repeated commands to drop the weapon, and ran toward the school, triggering a two-minute armed chase. *Id.* at 711-12. While fleeing, he pointed the gun back toward the pursuing officer and then ran toward another officer. *Id.* at 712. After shots caused the suspect to stumble and drop the weapon, he picked it up and continued toward a nearby neighborhood with onlookers, where officers again fired, killing him. *Id.* at 712, 714.

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wound paths through Ramirez’s body are inconsistent with him having turned-and-aimed. Importing furtive-reach logic into these facts collapses a distinction those cases carefully preserve: unseen hand movements toward concealed areas versus continuous visual contact with a suspect intent only on running away.⁶

In the end, the dissent’s mountain of citations cannot bear the weight it places on them. Most involve the plainest kind of immediate, overt threats to officers; the rest turn on concealed or furtive movements. None comes to grips with the facts a jury could find here. And when pressed on these gaps, the dissent shrugs and says that it need not cite any supporting precedent. *Post*, at 26-27. That speaks for itself.

Contrary to the dissent’s characterization, today’s disposition merely recognizes that when the record contains genuine conflicts about what an officer actually *knew*⁷ and what the suspect actually *did* in the

6. The dissent’s suggestion that “*actual?*), *holding a gun* while fleeing,” *post*, at 27, is itself a furtive gesture justifying the use of deadly force finds no footing in our binding precedent. See *Allen v. Hays*, 65 F.4th 736, 744 (5th Cir. 2023) (“[A]n officer cannot escape liability any time he claims he saw a gun. The question is whether the officer’s belief that he saw a gun was sufficiently reasonable to justify the use of deadly force in light of all the surrounding circumstances.”).

7. Objective reasonableness means that an officer’s *subjective intent* does not matter; it does not mean that a court may ignore

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seconds before the fatal shots—conflicts borne out by contemporaneous statements, investigative reports, video footage, and physical evidence—we may not resolve them on summary judgment. That is not 20/20 hindsight. It is fidelity to the summary-judgment standard and to the jury’s constitutional role. Accordingly, the majority opinion properly reverses the district court’s grant of summary judgment to Officer Granado and remands under well-established principles.

disputes over what the officer perceived or what information he possessed when he used deadly force. *See, e.g., Garza v. Briones*, 943 F.3d 740, 745-46 (5th Cir. 2019). After all, “what matters is what [Officer Granado] knew when [he] shot [Ramirez].” *Cole v. Carson*, 935 F.3d 444, 456 (5th Cir. 2019) (en banc) (first citing *White*, 580 U.S. at 76-77; and then citing *Kingsley v. Hendrickson*, 576 U.S. 389, 397, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015)), *as revised* (Aug. 21, 2019); *Kingsley*, 576 U.S. at 397 (“[W]e have stressed that a court must judge the reasonableness of the force used from the perspective and with the knowledge of the defendant officer.”).

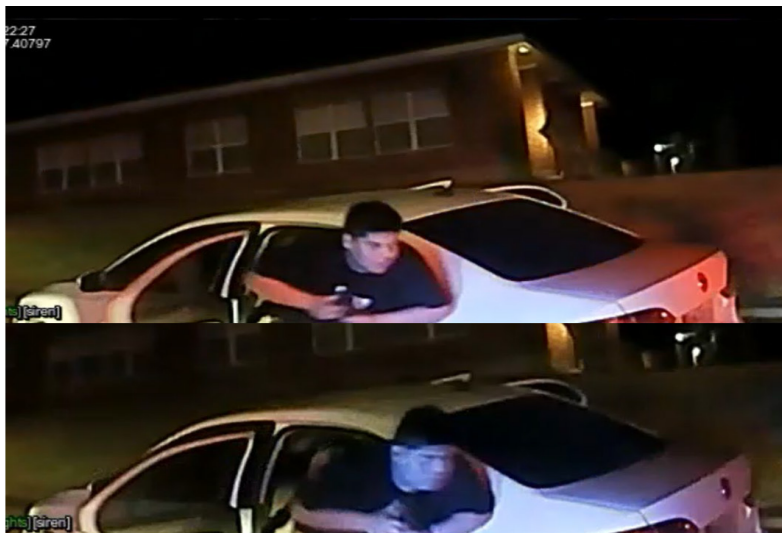
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ANDREW S. OLDHAM, *Circuit Judge*, dissenting:

Here are the undisputed (and indisputable) facts that the majority ignores or incomprehensibly denies. All material facts are captured on video:

- Estevan Ramirez was involved in a high-speed, 120-mph car chase.
- During the chase, Defendant Officer Granado learned that the vehicle occupants had been involved in drive-by shootings, and that they were armed and dangerous.
- The high-speed chase ended in a residential neighborhood.
- Ramirez jumped out of the car **holding a gun**.



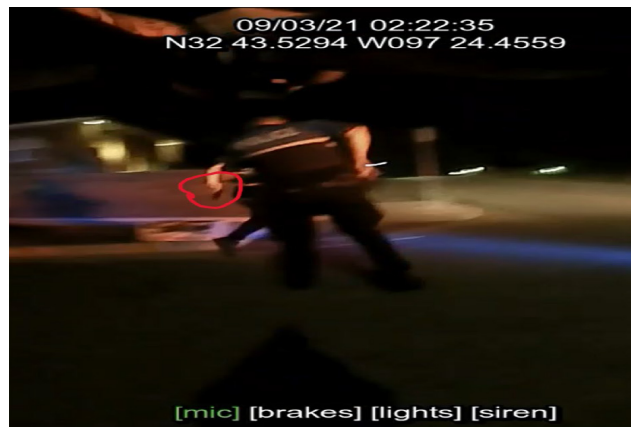
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- Ramirez's cell phone fell out of his hand, and he stooped to retrieve it while maintaining his grip on the gun.



- Officer Granado yelled “he has a gun! He has a gun!”
- Officer Granado’s colleague was mere feet away from Ramirez when Ramirez held the gun with his finger on the trigger.



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- Officer Granado shot Ramirez.
- From the moment Officer Granado emerged from his vehicle and shouted “he has a gun! He has a gun!” to the moment Officer Granado fired his service weapon, the entire episode was merely eight seconds.

The majority somehow holds that Officer Granado is not entitled to qualified immunity. If you’ve ever read one excessive-force case in the post-*Monroe v. Pape* era, you know that is wrong. See, e.g., *City of Tahlequah v. Bond*, 595 U.S. 9, 11-14, 142 S. Ct. 9, 211 L. Ed. 2d 170 (2021) (per curiam) (officers entitled to qualified immunity for shooting man holding a hammer); *Kisela v. Hughes*, 584 U.S. 100, 105-06, 138 S. Ct. 1148, 200 L. Ed. 2d 449 (2018) (per curiam) (officers entitled to qualified immunity for shooting woman holding a kitchen knife); *White v. Pauly*, 580 U.S. 73, 78, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017) (per curiam) (officer entitled to qualified immunity for shooting man through window after man pointed a gun at an officer); *Hunter v. Cole*, 580 U.S. 994, 994, 137 S. Ct. 497, 196 L. Ed. 2d 397 (2016) (order) (vacating Fifth Circuit opinion denying qualified immunity in which officer shot teenager who was holding a gun to his head); *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 605-06, 617, 135 S. Ct. 1765, 191 L. Ed. 2d 856 (2015) (officers entitled to qualified immunity for shooting a woman with a mental illness holding a kitchen knife); *Barnes v. Felix*, No. 22-20519, 152 F.4th 669, 2025 WL 2674139 (5th Cir. Sept. 18, 2025) (officer entitled to qualified immunity for shooting driver after jumping onto doorframe of driver’s

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moving car); *Argueta v. Jaradi*, 86 F.4th 1084, 1087, 1094 (5th Cir. 2023) (officer entitled to qualified immunity for shooting man holding a gun), *cert. denied*, 145 S. Ct. 435, 220 L. Ed. 2d 186 (2024); *Batyukova v. Doege*, 994 F.3d 717, 723, 729 (5th Cir. 2021) (officer entitled to qualified immunity for shooting *unarmed* suspect who walked toward officer and reached for waistband); *Garcia v. Blevins*, 957 F.3d 596, 602 (5th Cir. 2020) (officer entitled to qualified immunity for shooting man who refused to drop his gun); *Salazar-Limon v. City of Houston*, 826 F.3d 272, 275, 279 (5th Cir. 2016) (officer entitled to qualified immunity for shooting *unarmed man* who allegedly made a furtive gesture toward his waistband); *Thomas v. Baldwin*, 595 F. App'x 378, 383 (5th Cir. 2014) (officer entitled to qualified immunity for shooting *unarmed* man who raised clenched hand as if holding a weapon); *Clayton v. Columbia Cas. Co.*, 547 F. App'x 645, 653 (5th Cir. 2013) (per curiam) (officer entitled to qualified immunity for shooting man holding a knife); *Manis v. Lawson*, 585 F.3d 839, 844 (5th Cir. 2009) (officer entitled to qualified immunity for shooting *unarmed man* who allegedly reached for something under the front seat of his vehicle); *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 384-85 (5th Cir. 2009) (officer entitled to qualified immunity for shooting *unarmed man* who allegedly reached for something inside a boot); *Ramirez v. Knoulton*, 542 F.3d 124, 130-31 (5th Cir. 2008) (officer entitled to qualified immunity where armed suicidal man's behavior while holding a handgun "could reasonably be interpreted as defiant and threatening"); *Reese v. Anderson*, 926 F.2d 494, 500-01 (5th Cir. 1991) (officer entitled to qualified immunity for shooting *unarmed man* who made *no* furtive gestures and merely reached down to turn off ignition in

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vehicle); *Young v. City of Killeen*, 775 F.2d 1349, 1351-53 (5th Cir. 1985) (officer entitled to qualified immunity for shooting *unarmed man* who allegedly reached toward floorboard of his vehicle); *Bannon v. Godin*, 99 F.4th 63, 85-86 (1st Cir. 2024) (officers entitled to qualified immunity where suspect reached for gun in passenger seat following high-speed chase), *cert. denied*, 145 S. Ct. 1048, 220 L. Ed. 2d 380 (2025), *reh'g denied*, 145 S. Ct. 1347, 221 L. Ed. 2d 431 (2025); *Benton v. Layton*, 139 F.4th 281, 288-92 (4th Cir. 2025) (officers entitled to qualified immunity where driver reached for gun after high-speed chase); *Caraway v. City of Pineville*, 111 F.4th 369, 383-84 (4th Cir. 2024) (officers entitled to qualified immunity where suspect reached for gun in his jacket pocket); *Boyd v. Baeppler*, 215 F.3d 594, 601-02 (6th Cir. 2000) (officer entitled to qualified immunity where suspect fled holding a pistol and disregarded police warnings to stop); *Klum v. City of Davenport*, 145 F.4th 907, 912-13 (8th Cir. 2025) (officer entitled to qualified immunity where suspect fled with a gun to his own head and disregarded officers' commands to stop); *Dimock ex rel. Dimock-Heisler v. City of Brooklyn Ctr.*, 124 F.4th 544, 553-55 (8th Cir. 2024) (officers entitled to qualified immunity for shooting suspect holding a knife); *Arnold v. McClinton*, 112 F.4th 598, 604 (8th Cir. 2024) (officer entitled to qualified immunity for shooting fleeing murder suspect); *Goffin v. Ashcraft*, 977 F.3d 687, 689 (8th Cir. 2020) (officer entitled to qualified immunity for shooting fleeing suspect even though pat-down revealed no weapons); *Kong ex rel. Kong v. City of Burnsville*, 960 F.3d 985, 990-93 (8th Cir. 2020) (officers entitled to qualified immunity for firing 23 shots at man holding a knife); *Napouk v. L.V. Metro. Police Dep't*, 123 F.4th 906, 914, 922-23 (9th Cir. 2024) (officers entitled

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to qualified immunity after shooting suspect holding a toy that resembled a knife); *Cruz v. City of Deming*, 138 F.4th 1257, 1264, 1271-72 (10th Cir. 2025) (officers entitled to qualified immunity when armed man began to point gun toward officers); *Alcala v. Ortega*, 128 F.4th 1298, 1303-04, 1313 (10th Cir. 2025) (officer entitled to qualified immunity where *unarmed man* pretended to brandish a gun); *Waterhouse v. Direzza*, 129 F.4th 1212, 1219, 1222-25 (10th Cir. 2025) (officer entitled to qualified immunity for shooting suspect he believed was armed with a club); *Flores v. Henderson*, 101 F.4th 1185, 1190, 1197-99 (10th Cir. 2024) (officer entitled to qualified immunity for shooting suspect armed with a machete); *Arnold v. City of Olathe*, 35 F.4th 778, 792-94 (10th Cir. 2022) (officers entitled to qualified immunity where armed suspect suddenly brandished gun toward officers after hours-long standoff); *Est. of Taylor v. Salt Lake City*, 16 F.4th 744, 775-77 (10th Cir. 2021) (officer entitled to qualified immunity where *unarmed man* pretended to draw firearm from waistband); *Franklin v. Popovich*, 111 F.4th 1188, 1196-97 (11th Cir. 2024) (officer entitled to qualified immunity for shooting *unarmed and prone* suspect who moved as if to draw a gun); *Harris-Billups ex rel. Harris v. Anderson*, 61 F.4th 1298, 1305 (11th Cir. 2023) (officer entitled to qualified immunity for shooting prone suspect who reached for gun after fleeing from officers); *Powell v. Snook*, 25 F.4th 912, 923-25 (11th Cir. 2022) (officer entitled to qualified immunity where innocent homeowner began to raise handgun after officers arrived at the wrong house); *Shaw v. City of Selma*, 884 F.3d 1093, 1097-1101 (11th Cir. 2018) (officer entitled to qualified immunity for shooting man holding all axe); *Montoute v. Carr*, 114 F.3d 181, 185-86 (11th Cir. 1997) (officer entitled to qualified immunity

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for shooting suspect when suspect fled with a sawed-off shotgun and ignored command to stop); *cf. Wilson v. City of Bastrop*, 26 F.4th 709, 711-13 (5th Cir. 2022) (officers did not violate Fourth Amendment by shooting man holding a gun who fled from police in a residential area); *Maser v. City of Coralville*, 139 F.4th 1004, 1009-10 (8th Cir. 2025) (officer did not violate Fourth Amendment by shooting suspect who refused to comply with commands and raised a gun “outward from his body” and “advanced in the general direction of officers”); *Est. of Strickland v. Nevada Cnty.*, 69 F.4th 614, 622-23 (9th Cir. 2023) (plaintiff failed to state an excessive force claim under the Fourth Amendment when officer shot suspect waving a toy that resembled a gun), *cert. denied*, 144 S. Ct. 559, 217 L. Ed. 2d 297 (2024).

*

Judge Dennis’s concurring opinion warrants three brief responses.

First, the concurrence appears to think that *Officer Granado* must point to some authority to justify shooting Ramirez. *See ante*, at 15 (DENNIS, J., concurring) (arguing my string citation includes “distinguishable” cases). This is wrong coming and going. It is *the majority, the concurrence, and Ramirez’s job* to point to a case that squarely governs this one. It is not mine, and it is certainly not Officer Granado’s. The absence of an on-point case means that qualified immunity applies—not that the majority is free to do justice as it sees fit. *See Laviage v. Fite*, 47 F.4th 402, 408 (5th Cir. 2022) (“[Qualified immunity shields officers unless existing precedent squarely governs

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the specific facts at issue, such that the question has been placed beyond debate.” (quotations omitted)). I offered a string cite only to illustrate just how wildly off base the majority opinion is, and to show that courts routinely grant qualified immunity in circumstances that are far less dangerous than those presented here. And even if it was my job to cite a case, which it is not, I cited *two* that are materially indistinguishable—and the concurrence all but ignores them.*

* See *Wilson v. City of Bastrop*, 26 F.4th 709 (5th Cir. 2022), and *Argueta v. Jaradi*, 86 F.4th 1084 (5th Cir. 2023), *cert. denied*, 145 S. Ct. 435, 220 L. Ed. 2d 186 (2024). In *Wilson*, an officer responded to a report that a vehicle’s occupants were involved in an armed confrontation. 26 F.4th at 711. One passenger emerged from the vehicle holding a gun. *Ibid.* The passenger fled, maintaining his grip on his weapon the whole time. *Ibid.* The officers gave chase and eventually shot and killed him. *Id.* at 712. We concluded that the use of deadly force was justified. *Id.* at 713-16. Whether the passenger “point[ed] a gun” at the pursuing officer’s car was “immaterial to the constitutional issue.” 26 F.4th at 714.

Argueta is similar. Officers conducted a traffic stop on Argueta’s car. 86 F.4th at 1087. Argueta exited the car and “ran toward a vacant lot across the street,” pressing his “right arm and hand” against his body. *Ibid.* The officer couldn’t see if Argueta had a gun, but he feared that he “could not, if necessary, react with his handgun in time to stop an attack” if Argueta turned around. *Ibid.* The officer shot Argueta “five seconds after” he exited his vehicle. *Ibid.* The officer gave “no warning” before shooting him. *Id.* at 1093. But concealing his arm “amounted to a furtive gesture” sufficient to make the officer reasonably believe Argueta “posed an immediate danger,” so our court granted qualified immunity. *Id.* at 1093-94. It’s incomprehensible to say, as the concurrence does, that *actually holding a gun* while fleeing is somehow less of a “furtive gesture” than holding one’s arm close to the body while fleeing. *Ante*, at 17 & n.3 (DENNIS, J., concurring).

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Second, having reimagined the law, the concurrence then reimagines the relevant facts. Start with the concurrence’s focus on Officer Granado’s written statement. *Ante*, at 12-13 (DENNIS, J., concurring). The concurrence claims the record undermines Officer Granado’s statement because “the dispatch and radio transcripts” contain no proof “*Officer Watson*” told him Ramirez’s vehicle “had been involved in drive-by shootings.” *Ibid.* That is an astonishingly irrelevant quibble: Even if Officer Watson didn’t tell him that, LWPD dispatch certainly “informed [him] that the suspect vehicle had *previously fled from police* and that its occupants should be considered ‘*armed and dangerous.*’” *Ante*, at 5 n.2 (majority opinion) (emphasis added); ROA.554-55; ROA.576-77; ROA.582; ROA.931 (Officer Watson Interview) at 6:00-6:13; ROA.1013. It could not possibly matter less whether *Officer Watson* told him the occupants had been involved in drive-by shootings. All that matters is that Officer Granado learned the fact; Officer Granado testified that he learned the fact before the shooting; and there is not a single scintilla of evidence to suggest Officer Granado was lying. The concurrence’s fixation on this facile “discrepancy” is bewildering.

Other assertions in the concurrence are flatly untrue. I have never “implicitly accept[ed] as true” Officer Granado’s claim that Ramirez was “swinging his pistol” at Officers Granado and Watson. *Ante*, at 13 (DENNIS, J., concurring) (quotation omitted). Nor did I misconstrue the summary-judgment standard by “omit[ting]” that Ramirez was a passenger in the vehicle or that a “gas station,” business, or “vacant lot” were located on adjoining streets. *Id.* at 14-15. These facts are completely irrelevant to me—and to

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the qualified immunity question. *See Argueta*, 86 F.4th at 1087-89, 93 (whether Argueta “raised the gun” at officers as he fled toward “a vacant lot” was “immaterial”); *Wilson*, 26 F.4th at 715-16 (officers lawfully used deadly force when they shot passenger who fled with a weapon).

Third and finally, I do have one compliment for the concurrence: It says the quiet part out loud. The concurrence says that this case turns on “what an officer actually *knew*.” *Ante*, at 19 (DENNIS, J., concurring). Again: wrong. “[G]enuine conflicts about what an officer actually *knew* and what the suspect actually *did* in the seconds before the fatal shots” are *irrelevant* if no clearly established law forbids the officer’s conduct under either version of the facts. *Ibid*. And the majority and concurrence point to zero cases that would justify denying qualified immunity under these “disputed” facts—other than citing the “general principle that deadly force requires a sufficient threat.” *Mullenix v. Luna*, 577 U.S. 7, 14, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (*per curiam*); *see ante*, at 10 (majority opinion) (“[I]t has long been clearly established that, absent any other justification for the use of force, it is unreasonable for a police officer to use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others.” (quotation omitted)).

We’ve made this mistake before. Our court has previously denied qualified immunity by second-guessing whether the facts an officer “actually kn[e]w” created a “sufficient threat of harm to the officer or others” to justify deadly force. *See Luna v. Mullenix*, 773 F.3d 712, 720-25

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(5th Cir. 2014), *rev'd summarily*, 577 U.S. 7, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (per curiam). That inversion of the qualified immunity standard warranted summary reversal then. And I respectfully submit it also does now.

*

For the police officers in our circuit who confront armed-and-dangerous felons fleeing drive-by shootings, who have mere seconds to make split-second life-and-death decisions in the middle of the night, and who hope to get home safely to their families and then *also* survive this court's frame-by-frame NFL-style instant replay review: Today's decision will make your already-hard jobs much harder.

I respectfully dissent.

**APPENDIX B — UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF TEXAS, MEMORANDUM OPINION
& ORDER, AUGUST 9, 2024**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

No. 4:22-cv-0930-P

JUANITA RAMIREZ,

Plaintiff,

v.

JONATHAN GRANADO,

Defendant.

MEMORANDUM OPINION & ORDER

Before the Court is defendant Jonathan Granado's Motion for Summary Judgment, contending that he is entitled to the affirmative defense of qualified immunity. ECF No. 32. For the reasons set forth below, the Court **GRANTS** the motion.

BACKGROUND

This case arises from the shooting death of Estevan Ramirez. On September 3, 2021, Officer Jonathan Granado was taking the night shift at the Lake Worth Police Department headquarters. Around 2:00 a.m., Officer

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Watson, a fellow officer on patrol, radioed in to request back-up for a high-speed chase. Granado immediately left the department to join the chase.

En route, Watson radioed to Granado that the vehicle's occupants had been involved in more than one drive-by shooting, and that they were considered armed and dangerous. At some points, the chase through the western Fort Worth area exceeded 120 miles per hour. The vehicle drove into oncoming traffic multiple times, deactivated its headlights and taillights in an effort to evade detection, drove through residential areas at dangerous speeds, and even continued the chase after striking a curb and nearly totaling the vehicle.

The chase stopped in a residential area in White Settlement, across the street from a populated gas station. When the vehicle came to a stop, four of its occupants exited and immediately fled on foot in separate directions. Granado next observed Ramirez exit the vehicle with a pistol in his hand. Granado ordered Ramirez to the ground, and Ramirez did not comply. Granado then observed Ramirez drop his gun and immediately pick it back up.

Granado then drew his service weapon and shouted to the other officers that "[Ramirez] has a gun!" Ramirez moved toward Officer Watson and the two began a physical altercation. As Ramirez approached Watson, Granado fired his first shot, but stopped when Ramirez attempted to break Watson's hold—to prevent accidentally hitting Watson. Watson then pushed Ramirez away and attempted to draw his own service pistol. Granado rapidly fired

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multiple rounds, hitting Ramirez, and stopped again as soon as he perceived Ramirez was disabled. The entire altercation—from stopping the chase to shooting Ramirez—took about eight seconds. Officers attempted CPR on Ramirez until medical personnel arrived at the scene. Ramirez later died of his gunshot wounds at a local hospital.

Plaintiff sued, alleging that Granado and the Lake Worth Police Department unconstitutionally employed deadly force while attempting to apprehend Ramirez, in violation of 42 U.S.C. § 1983. Granado filed the instant motion for summary judgment asserting the affirmative defense of qualified immunity.

LEGAL STANDARD

Summary judgment is appropriate when “there is no genuine dispute as to any material fact” and the moving party “is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). A dispute is “genuine” if the evidence presented would allow a reasonable jury to return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 242-43, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A fact is “material” if it would affect the case’s outcome. *Id.* at 248. Generally, the “substantive law will identify which facts are material,” and “[f]actual disputes that are irrelevant or unnecessary will not be counted.” *Id.*

When determining whether summary judgment is appropriate, the Court views the evidence in the light most favorable to the nonmovant. *See First Am. Title Ins.*

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Co. v. Cont'l Cas. Co., 709 F.3d 1170, 1173 (5th Cir. 2013). In conducting its evaluation, the Court may rely on any admissible evidence of record, but it need only consider those materials cited by the parties. FED. R. CIV. P. 56(c) (1)-(3). And the Court need not mine the record to find evidence to support the non-movant; the burden falls on the movant to simply show a lack of evidence supporting the nonmovant's case. *See Malacara v. Garber*, 353 F.3d 393, 404-05 (5th Cir. 2003).

ANALYSIS

To establish a claim for the excessive use of force, a plaintiff must show: (1) an injury; (2) which resulted directly and only from the use of force that was clearly excessive; and (3) that the excessiveness of the force was clearly unreasonable. *Orr v. Copeland*, 844 F.3d 484, 492 (5th Cir. 2016).

But government officials performing discretionary functions— functions requiring independent judgment apart from a ministerial task—are generally shielded from suit if their conduct does not violate clearly established statutory or constitutional rights. *Ramirez v. Guadarrama*, 3 F.4th 129, 133 (5th Cir. 2021). “The protection of qualified immunity applies regardless of whether the government official’s error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.” *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009). When a defendant invokes qualified immunity, the burden rests on the plaintiff to demonstrate that qualified immunity is inapplicable. *Ramirez*, 3 F.4th at 133.

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To defeat an assertion of qualified immunity, a plaintiff must show: (1) the violation of a constitutional or statutory right; and (2) that the right in question was clearly established at the time of the alleged violation. *Id.*; *Pearson*, 555 U.S. at 236. The district court may address either prong first. *Id.* To be clearly established, “[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987). For purposes of qualified immunity, the reasonableness of the official’s conduct and the clarity of the right in question are merged into one question. *Ramirez*, 3 F.4th at 133-34.

Because the dispositive inquiry is whether Granado’s use of deadly force at the scene was justified, the Court will focus on the second prong first.

Generally, an officer’s use of deadly force is constitutionally reasonable “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others.” *Crane v. City of Arlington*, 50 F.4th 453, 463 (5th Cir. 2022) (citing *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985)). Accordingly, “if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Garner*, 471 U.S. at 11-12.

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Plaintiff's argument rests on the contention that Granado's body-camera footage shows him firing the disabling rounds at Ramirez *at the moment* Ramirez turned away and appeared to flee. ECF No. 40 at 16. This, coupled with Granado's exasperated statement: "did he have a gun?" immediately following the shooting, is what Plaintiff contends creates a genuine issue of material fact as to the reasonableness of Granado's action, hinging on whether Granado actually knew Ramirez had a weapon. *Id.*

But the Court must judge the reasonableness of an officer's actions "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Ballard v. Burton*, 444 F.3d 391, 402 (5th Cir. 2006). And to only judge the split second of the shooting manipulates the facts out of context. Plaintiff contends that Ramirez was not physically pointing the gun at officers when Granado shot him, but that overlooks the fact that Ramirez had just dropped and *picked up* his gun *during a physical struggle* to break free from another officer (i.e. avoid apprehension). ECF No. 34 at 31. This after a dangerous high-speed chase with armed-and-dangerous suspects who officers had probable cause to believe were responsible for multiple drive-by shootings. *Id.* at 39. To the extent Plaintiff relies on Granado's statement: "did he have a gun?" immediately following the shooting, that assertion is belied by the weight of summary judgment evidence contrarily showing that officers already confirmed that Ramirez had a gun as soon as he stepped out of the vehicle.

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Thus, a reasonable officer at the scene would have had probable cause to believe that the suspects in the vehicle were involved in crimes “pos[ing] a threat of serious physical harm, either to the officer or others.” *Crane*, 50 F.4th at 463. In this light, where a suspect re-engages an officer’s attempts at apprehension by picking up his firearm while physically breaking free from another officer, “deadly force may be used if necessary to prevent escape.” *Garner*, 471 U.S. at 11-12.

CONCLUSION

Because Granado’s use of deadly force was constitutionally reasonable under the circumstances of Ramirez’s apprehension, Granado is entitled to qualified immunity. Accordingly, Granado’s motion for summary judgment (ECF No. 32), is **GRANTED**. This case is **DISMISSED with prejudice**.

SO ORDERED on this **9th day of August 2024**.

/s/ Mark T. Pittman

Mark T. Pittman

UNITED STATES DISTRICT JUDGE

**APPENDIX C — UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
TEXAS, FINAL JUDGMENT, AUGUST 9, 2024**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

No. 4:22-cv-0930-P

JUANITA RAMIREZ,

Plaintiff,

v.

JONATHAN GRANADO,

Defendant.

FINAL JUDGMENT

This judgment is issued as required by Federal Rule of Civil Procedure 58. In accordance with this Court's Memorandum Opinion and Order granting Defendant's Motion for Summary Judgment, dated this same day, this case is **DISMISSED with prejudice**. Each party shall bear its own respective costs and attorney's fees.

The Clerk shall transmit a true copy of this Judgment to the parties.

SO ORDERED on this **9th day of August 2024**.

/s/ Mark T. Pittman

Mark T. Pittman

UNITED STATES DISTRICT JUDGE

**APPENDIX D — UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT, ORDER
DENYING PETITION FOR REHEARING
EN BANC, FEBRUARY 20, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-10755

JUANITA RAMIREZ, PERSONALLY AND AS THE
PERSONAL REPRESENTATIVE OF THE ESTATE
OF ESTEVAN RAMIREZ,

Plaintiff-Appellant,

versus

JONATHAN GRANADO,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CV-930

ON PETITION FOR REHEARING EN BANC

Before DENNIS, OLDHAM, and DOUGLAS, *Circuit Judges*

PER CURIAM:

Treating the petition for rehearing en banc as a
petition for panel rehearing (5TH CIR. R.40 I.O.P.), the
petition for panel rehearing is DENIED. The petition for

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rehearing en banc is DENIED because, at the request of one of its members, the court was polled, and a majority did not vote in favor of rehearing (FED. R. APP. P.40 and 5TH CIR. R.40).

In the en banc poll, eight judges voted in favor of rehearing (JUDGES JONES, SMITH, RICHMAN, HO, DUNCAN, ENGELHARDT, OLDHAM, and WILSON), and nine voted against rehearing (CHIEF JUDGE ELROD, AND JUDGES STEWART, SOUTHWICK, HAYNES, GRAVES, HIGGINSON, WILLETT, DOUGLAS, and RAMIREZ).

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JAMES C. HO, *Circuit Judge*, joined by JONES and SMITH, *Circuit Judges*, dissenting from the denial of rehearing en banc:

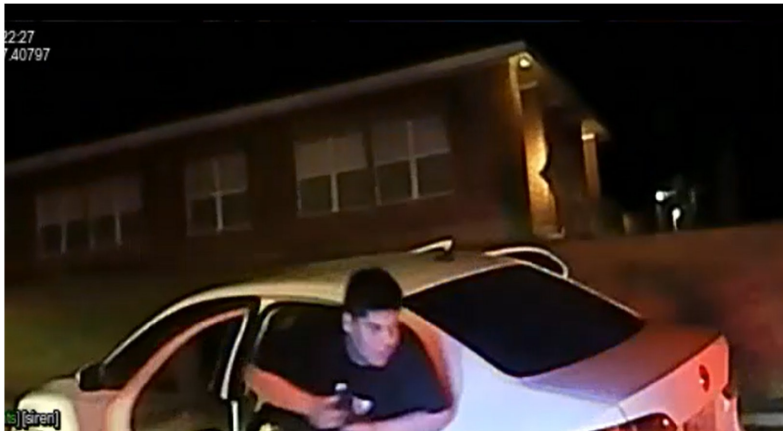
The Fourth Amendment does not prohibit the use of force—it prohibits only the unreasonably excessive use of force. I voted for rehearing en banc because I’m troubled by the decision to put police officers on trial for using reasonable force in a good faith effort to keep innocent people safe.

Instability remains the state of the law in our circuit when it comes to excessive force. This instability is not just regrettable as a matter of law— it’s dangerous for the police officers and civilians of our circuit. “I fear that officers in our circuit will stop taking on these difficult and dangerous duties, if they have to worry about which panel of our court they will draw in the event tragedy strikes. I fear that officers will decline to put their careers and families on the line because they’re unable to predict the outcome of our en banc votes. I fear that officers will choose to stand by and watch, rather than to protect and to serve, if the rules of engagement are unclear and unknowable.” *Ramirez v. Guadarrama*, 2 F.4th 506, 511 (5th Cir. 2021) (Ho, J., concurring in the denial of rehearing en banc).

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ANDREW S. OLDHAM, *Circuit Judge*, joined by JONES, SMITH, DUNCAN, and ENGELHARDT, *Circuit Judges*, dissenting:

Our court apparently determined that this qualified-immunity appeal is too fact-bound to warrant en banc rehearing. If qualified immunity must be denied when a man jumps out of a car holding a gun after a high-speed chase and a drive-by shooting, query how qualified immunity ever could be granted. I respectfully dissent.



**APPENDIX E — UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT, JUDGMENT
AS MANDATE, DECEMBER 10, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-10755

JUANITA RAMIREZ, PERSONALLY AND AS THE
PERSONAL REPRESENTATIVE OF THE ESTATE
OF ESTEVAN RAMIREZ,

Plaintiff-Appellant,

versus

JONATHAN GRANADO,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CV-930

JUDGMENT

Before DENNIS, OLDHAM, and DOUGLAS, *Circuit Judges*.

This cause was considered on the record on appeal
and was argued by counsel.

IT IS ORDERED and ADJUDGED that the
judgment of the District Court is REVERSED, and the
cause is REMANDED to the District Court for further
proceedings in accordance with the opinion of this Court.

**APPENDIX F — SELECTED SCREENSHOTS
FROM THE OFFICERS' BODY WORN CAMERAS**



View from Officer Watson's bodycam: Watson heads toward Ramirez who is crouching behind his vehicle, another suspect is on the left running away down the sidewalk. [timestamp: 02:22:32]

50a

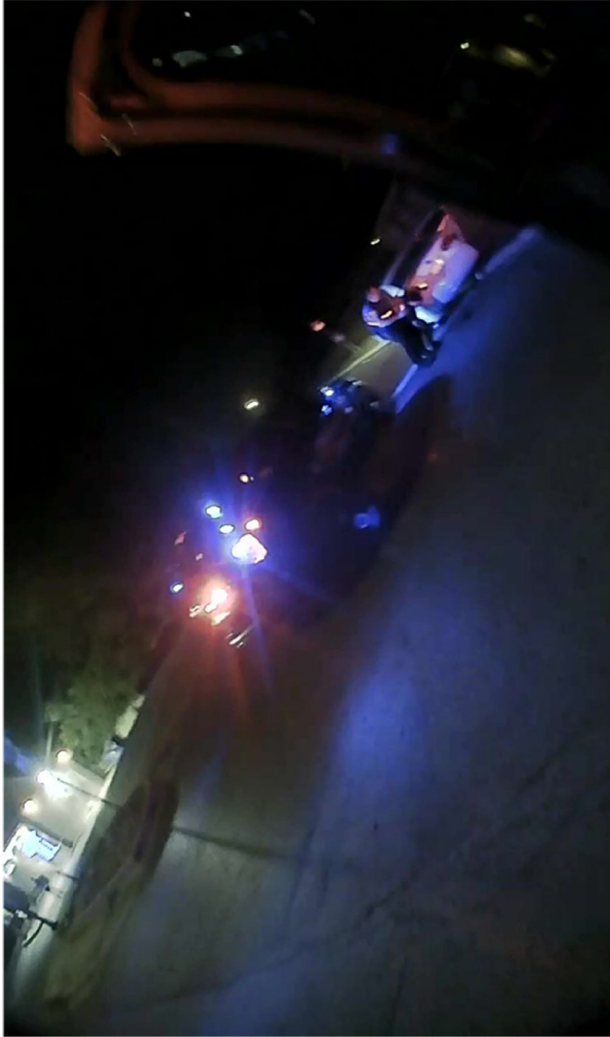
Appendix F



View from Officer Watson's bodycam: Officer Watson approaches Ramirez, while Ramirez is crouched, with the gun in his left hand. [timestamp: 02:22:32]

51a

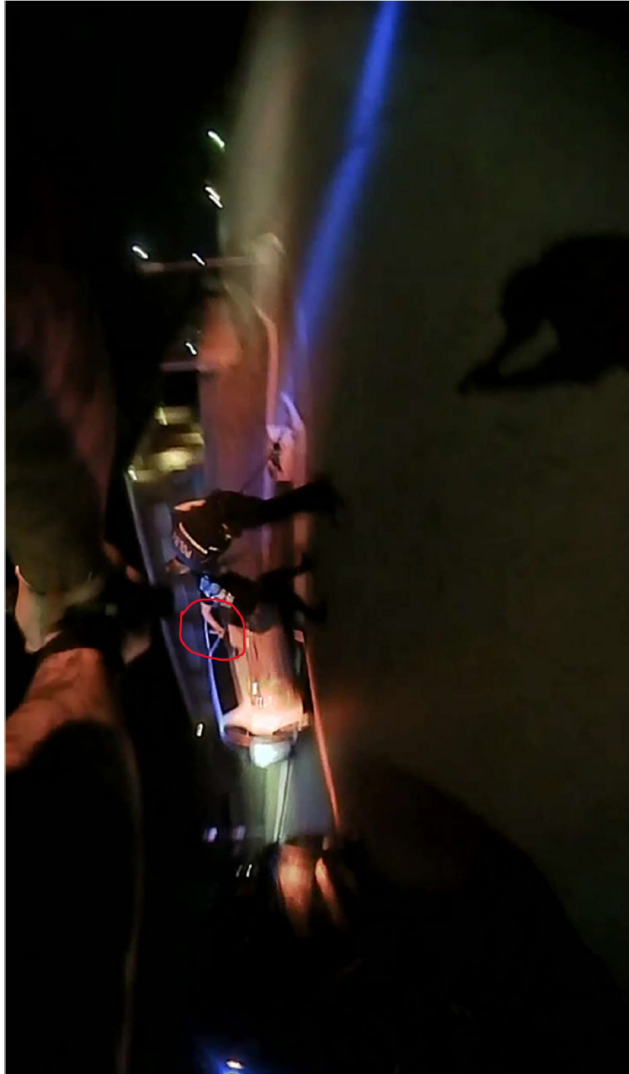
Appendix F



View from Officer Granado's bodycam as Granado emerges from his vehicle. Ramirez and Watson are in a physical altercation to the right, while a bystander standing outside the gas station is to the left. [timestamp: 02:22:33]

52a

Appendix F



View from Officer Granado's bodycam as Granado takes the first shot at Ramirez. The gun is visible in Ramirez's left hand. [timestamp: 02:22:34]

53a

Appendix F



View from Officer Granado's bodycam immediately after the first shot, as Ramirez disappears behind Watson. The last part of Ramirez which is visible is the gun in his left hand. [timestamp: 02:22:35]