NO. 25-_____

In the Supreme Court of the United States

PHILLIP REININK,
IN HIS INDIVIDUAL AND OFFICIAL CAPACITY,

Petitioner,

v.

SEAN HART, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

Michael T. Berger
Counsel of Record
ROSATI SCHULTZ JOPPICH & AMTSBUECHLER PC
27555 Executive Dr., Ste. 250
Farmington Hills, MI 48331
(248) 489-4100
mberger@rsjalaw.com

August 11, 2025 *Counsel for Petitioner*

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. In the Fourth Amendment reasonableness of a seizure context, whether a law enforcement officer's intended level of force is relevant to determining whether an officer's use-of-force should be analyzed under a deadly-use-of-force standard or a general use-of-force standard?

2. In analyzing an excessive force claim brought under 42 U.S.C. § 1983, whether an officer's mistaken use-of-force was higher than what he or she intended, entitles the officer to qualified immunity, so long as the mistake is reasonable under the circumstances?

PARTIES TO THE PROCEEDINGS[1]

Petitioner and Defendant-Appellee below

- Phillip Reinink, Officer, in his individual and official capacity

Respondents and Plaintiffs-Appellants below

- Sean Hart
- Tiffany Guzman

Respondents and Defendants-Appellees below

- City of Grand Rapids, Michigan
- Brad Bush, Officer, in his individual and official capacity
- Benjamin Johnson, Officer, in his individual and official capacity

---

[1] The plaintiffs in the trial court proceedings were Sean Hart and Tiffany Guzman. (2nd Amended Complaint – R. 49). The Defendants were the City of Grand Rapids (Michigan), Officer Phillip Reinink, Officer Brad Bush, and Officer Benjamin Johnson. (2nd Amended Complaint – R. 49). Following the Sixth Circuit issuing its decision, the only remaining parties are Hart and Officer Reinink. See *Hart v. Michigan*, 138 F.4th 409 (6th Cir. 2025).

LIST OF PROCEEDINGS

United States Court of Appeals for the Sixth Circuit

No. 23-1382

Published: 138 F.4th 409 (6th Cir. 2025)

Sean Hart; Tiffany Guzman, *Plaintiffs-Appellants,*
v. City of Grand Rapids, et al., *Defendants-Appellees.*

Judgment May 15, 2025

United States District Court (W.D. Mich.)

No. 1:20-cv-899

Sean Hart; Tiffany Guzman, *Plaintiffs,*
v. City of Grand Rapids, et al., *Defendants.*

Judgment: March 31, 2023

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS ii

LIST OF PROCEEDINGS iii

TABLE OF AUTHORITIES vii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

INTRODUCTION 3

STATEMENT OF THE CASE 5

A. Factual Overview 5

B. Procedural History 15

REASONS FOR GRANTING THE PETITION 20

I. The Courts Engage in Different Reasonableness Inquiries When Analyzing General Uses-of-Force Versus Uses of Deadly Force. This Court Should Grant Certiorari to Create a Test That Distinguishes a General Use-of-Force Versus Deadly Force. 21

II. This Court Has Not Had the Opportunity to Articulate What Amounts to an Officer's Reasonable Factual Mistake for the Purposes of Qualified Immunity When Analyzing a Use-of-Force Claim. This Court Should Conclude That an Officer's Factual Mistake Is Reasonable and Entitles Him to Qualified Immunity When

TABLE OF CONTENTS – Continued

Page

He or She Intended to Use One Use-of-Force, but Mistakenly Uses Another When the Mistake Is Reasonable Under the Circumstances. 27

CONCLUSION 33

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Opinion, U.S. Court of Appeals for the Sixth Circuit (May 15, 2025) 1a

Concurrence/Dissent Opinion Justice Larsen (May 15, 2025) 29a

Judgment, U.S. Court of Appeals for the Sixth Circuit (May 15, 2025) 34a

Opinion and Order, District Court for the Western District of Michigan (March 31, 2023) 36a

TABLE OF AUTHORITIES

Page

CASES

Ashford v. Raby,
951 F.3d 798 (6th Cir. 2020) 31

Brower v. Cnty. of Inyo,
489 U.S. 593 (1989) 3

City & Cnty. of San Francisco, Calif. v. Sheehan, 575 U.S. 600 (2015) 28

City of Tahlequah, Oklahoma v. Bond,
595 U.S. 9 (2021) 28

Davis v. Scherer,
468 U.S. 183 (1984) 28

Est. of Strickland v. Nevada Cnty.,
69 F.4th 614 (9th Cir. 2023),
cert. denied, 144 S. Ct. 559 (2024) 30

Graham v. Connor,
490 U.S. 386 (1989) 3, 21, 22

Hart v. Michigan,
138 F.4th 409 (6th Cir. 2025)..... 18, 19, 23

Heien v. North Carolina,
574 U.S. 54 (2014) 29

Henry v Purnell,
652 F.3d 524 (4th Cir. 2011) 30, 31

Hopson v. Alexander,
71 F.4th 692 (9th Cir. 2023)..... 25

Jones v. Buchanan,
325 F.3d 520 (4th Cir. 2003) 26

Koger v. Carson,
853 F. App'x 341 (11th Cir. 2021)..... 26

TABLE OF AUTHORITIES – Continued

Page

Matthews v. Jones,
35 F.3d 1046 (6th Cir. 1994) 24

Nelson v. City of Battle Creek, Michigan,
802 F. App'x 983 (6th Cir. 2020) 29, 30

Palma v. Johns,
27 F.4th 419 (6th Cir. 2022) 23

Pearson v. Callahan,
555 U.S. 223 (2009) 20, 27, 28

Ransom v. Grisafe,
790 F.3d 804 (8th Cir. 2015) 30

Reichle v. Howards,
566 U.S. 658 (2012) 29

Rivas-Villegas v. Cortesluna,
595 U.S. 1 (2021) 22, 27, 28

Robinette v. Barnes,
854 F.2d 909 (6th Cir. 1988) 23, 24, 25

Tennessee v. Garner,
471 U.S. 1 (1985) 22

Thomson v. Salt Lake Cnty.,
584 F.3d 1304 (10th Cir. 2009) 25

Watson v. Bryant,
532 F. App'x 453 (5th Cir. 2013) 24, 25

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV ..... i, 2, 3, 4, 16, 19, 21, ... 22, 24, 25, 27, 28, 30

TABLE OF AUTHORITIES – Continued

Page

STATUTES

28 U.S.C. § 1254 1
42 U.S.C. § 1983 ..... i, 2, 20
Mich. Comp. Laws. § 752.542 16
Model Penal Code § 3.11(2) 23

JUDICIAL RULES

Sup. Ct. R. 10 20

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Sixth Circuit – *Hart v. Michigan*, 138 F.4th 409 (6th Cir. 2025) – is included at App.1a. The concurrence /dissent of Judge Larsen is included at App.29a.

The opinion of the U.S. District Court for the Western District of Michigan – *Hart v. City of Grand Rapids*, No. 1:20-CV-899, 2023 WL 12086816 (W.D. Mich. Mar. 31, 2023) – is included at App.36a.

JURISDICTION

This Court may review cases "[b]y writ of certiorari granted upon the petition of any party to any civil . . . case, before or after rendition of judgment or decree." 28 U.S.C. § 1254. "[A] petition for writ of certiorari to review a judgment in any case, civil or criminal, entered by . . . a United States court of appeals . . . is timely filed with the Clerk of this Court within 90 days after entry of the judgment." In this case, the Court of Appeals for the Sixth Circuit entered a Judgment on May 15, 2025, and the Petitioner, Officer Reinink, files this petition within 90 days of that entry. (6th Cir. Judgment – 6th Cir. R. 51-3). Therefore, this Court has jurisdiction to consider the petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment and 42 U.S.C. § 1983.

U.S. Const. amend. IV

> 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.

42 U.S.C. § 1983

> 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.

INTRODUCTION

As a general rule, this Court has held the Fourth Amendment's "reasonableness" inquiry in use-of-force cases is analyzed in light of the facts and circumstances confronting a reasonable law enforcement officer, without regard to the officer's underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989). However, Justice John Paul Stevens once wrote in a concurrence, "There may be a case that someday comes before this Court in which the concept of intent is useful in applying the Fourth Amendment." *Brower v. Cnty. of Inyo*, 489 U.S. 593, 601 (1989). The case presented in this petition is that case, and this Court should find that a police officer's intent in some circumstances, like those presented here, is a critical component in determining whether a seizure was reasonable and whether the officer is entitled to qualified immunity due to a factual mistake.

In the heat of a Citywide, chaotic protest following George Floyd's death, Respondent, Sean Hart, aggressively approached several Grand Rapids Police Officers, including the Petitioner, Phillip Reinink, after a plethora of aggressive interactions with several other officers. In response, Officer Reinink chose to use a completely (and undisputedly) reasonable deterrent in Hart's direction – powdered tear gas. Officer Reinink believed that his canister launcher had this powder (Muzzle Blast) loaded. Unfortunately, due to the

chaos ensuing around him, Officer Reinink's belief was incorrect. The launcher had been loaded with a type of tear gas that is dispersed via a projectile canister (Spede Heat). This happened because both the powdered and projectile teargas canisters look nearly identical, and because this was a chaotic, fast-paced, and unprecedented riot occurring within the City limits. Due to this reasonable mistake, a projectile (instead of powder) exited the launcher and traveled toward Hart, striking him, and causing him bruising and abrasions. The impact was so minor that Hart flipped the officers off and walked to his vehicle.

Despite his minor injuries, Hart contends he was subjected to excessive, deadly force because theoretically the canister could have killed him. The District Court granted summary judgment in Officer Reinink's favor by analyzing this case under a general, three-factored use-of-force analysis and finding that Officer Reinink did not violate the Fourth Amendment (i.e., that his use-of-force under the circumstances was reasonable). On appeal, two judges from a Sixth Circuit panel disagreed. They analyzed the case under a deadly use-of-force standard, which required the analysis of seven factors to determine whether a reasonable officer would believe that Hart posed a threat of serious physical harm or death to officers or others.

Officer Reinink requests that this Court grant his Petition for Certiorari. He suggests that this Court use this case to create a test that involves an analysis of an officer's intended use-of-force which the lower courts would use to differentiate between general use-of-force and deadly-force cases because those types of cases have different evidentiary burdens in determining the reasonableness of an officer's use-of-

force. Officer Reinink also believes that this case would be useful for the Court to explain that an officer mistakenly using force higher than what the officer intended, can entitle the officer to qualified immunity so long as the mistake is reasonable under the circumstances.

STATEMENT OF THE CASE

A. Factual Overview

Not long after George Floyd died in Minneapolis, Minnesota following his interaction with several police officers, a protest was widely advertised and scheduled to take place in downtown Grand Rapids, Michigan, on May 30, 2020. (Police Incident Report – R. 109-1, PageID. 611; Payne Dep – R. 109-19, PageID. 930). Due to spikes in violence during similar protests across the country, the Grand Rapids Police Department (GRPD) activated its Special Response Team (SRT) and prepared for the event by organizing specialty munitions into "crowd control" backpacks. The "crowd control" packs contained specialty munitions, such as Muzzle Blast and Spede Heat, which officers might need based on available information. (Ungrey Dep. – R. 109-12, PageID. 835; Garret Dep – R. 109-14, PageID. 859-862). Both Muzzle Blasts and Spede Heat contain the chemical agent orthochlorobenzalmalononitrile or "CS," (a form of tear gas) and are deployed from a 40 mm launcher. (JSMF – R. 108, PageID. 602-603; Reinink Dep., R 109-9, PageID. 759-760; Garrett Dep. R. 109-14, PageID 867; Wortz Dep. – R. 109-16, PageID. 897).

Spede Heat is delivered with the launcher pointed skyward at a 30- to 60-degree angle to the intended target zone up to 150 yards away. (JSMF – R. 108, PageID. 603). When fired, a canister in the Spede Heat container begins to disburse the gas. (Reinink Dep, R. 109-9, PageID. 760). Spede Heat is not designed to be directly fired at a person, and, if used incorrectly, can cause significant injury, including death. (*Id.*).

On the other hand, there is no projectile in a Muzzle Blast canister because the chemical powder merely comes out of the launcher's barrel. (Wortz Dep., – R. 109-16, PageID. 897). When Muzzle Blast is used, officers aim for the "target area," which is a person's chest or "center mass" (Reinink Dep. – R. 109-9, PageID. 760; Johnson Dep. – R. 109-10, PageID. 806; Ungrey Dep. – R. 109-12, PageID. 832; Wortz Dep. – R. 109-16, PageID. 897).

Both the Spede Heat and Muzzle Blast cartridges look very similar and have similar markings. (Ungrey Dep. – R. 109-12, PageID. 837). The canisters are the same size, color, and weight, with the difference between the two munitions not readily discernible from the outside when dealing with a fast-paced situation. (Photographs – R. 109-5, PageID. 647). They look so alike that they could easily be mixed up in the dark. (Garrett Dep. – R. 109-14, PageID. 865; Jt. Photographs – R. 109-5, PageID. 647). GRPD Officers were trained to look for and identify the differences in the canisters so that they used the correct one in the correct situation. (Officer Reinink- R. 109-9, PageID. 764). Typically, an officer should have a witness to assist in ensuring that the correct munition is used. (Officer Reinink- R. 109-9, PageID. 764, 766).

On the day of the protest, it began peacefully, continued for several hours in this manner, and was initially confined to the downtown area. (Payne Dep – R. 109-19, PageID. 930-931; Reinink Dep – R. 109-9, PageID. 767; Veldman Dep – R. 109-17, PageID. 910). But the downtown area quickly devolved into an unprecedented and chaotic scene of civil unrest, disorder, and rioting. Multiple reports of structure fires, break-ins, and extensive vandalism occurred throughout the night in various parts of downtown Grand Rapids.

By 8:30 pm, the GRPD headquarters was under siege — a mob of protestors surrounded the building and attempted a hostile takeover. (Police Incident Report – R. 615, PageID. 611-622; Ungrey Dep – R. 109-12, PageID. 835). GRPD officers were forced inside the building to prevent the protestors from storming it. (*Id*). When the takeover failed, protestors barricaded entrance doors shut with a belt to lock officers inside. GRPD had deployed almost its entire force that night, including off-duty officers and officers who had been working since 4 a.m. that morning. GRPD was forced to call in additional assistance from several outside agencies to gain control of the unprecedented situation, including 20 officers from a neighboring community's police department, 10 County Sheriff's deputies, and many Michigan State Police (MSP) officers. (*Id.*, *see also*, Payne Dep – R. 109-19, PageID. 931).

GRPD activated a "mobile react team." The react team, led by Sgt. (now Lieutenant) Brad Bush and comprised of four SRT officers including Officer Reinink, was tasked with attempting to aid other officers, to disperse the crowds, and get them away

from the department. (*Id.*, *see also*, Use of Force Reports – R. 109-2, PageID. 628; Bush Dep – R. 109-11, PageID. 817; Reinink Dep, – R. 109-9, PageID. 767). The officers were required to exit from the garage, as the main door was barricaded by the protestors. Before the use of tear gas, GRPD issued announcements over a loud PA system declaring an unlawful assembly at approximately 9:16 pm, ordering immediate dispersal of the crowds, providing location of escape routes, and warning that use of force, including chemical agent, may be used for failure to disperse. (Police Incident Report – R. 109-1, PageID. 618-619; Dispatch Transcript – R. 109-3, PageID. 631-639; Dispersal Announcement – R. 109-4, PageID. 641; Payne Dep – R. 109-19, PageID. 947).

The crowd quickly outnumbered GRPD and became increasingly violent and disorderly. The Secretary of State building, located within the same complex as the police department, was subject to extensive vandalism and property damage, including what appeared to be the detonation of an improvised explosive device (IED) inside the building. (Police Incident Report – R. 109-1, PageID. 611; Ungrey Dep. – R. 109-12, PageID. 834-835).

In an effort to protect police headquarters and the Secretary of State building, Field Force line compromised of GRPD patrol personnel, GRPD SRT officers, the MSP bike squad, and other units formed in various intersections outside GRPD headquarters. Between 9:15 pm and 9:20 pm, it appeared that officers were able to move the crowds away from GRPD headquarters. (Police Incident Report – R. 109-1; Use of Force Reports – R. 109-2; Bush Dep – R. 109-11, PageID. 818; Reinink Dep. – R. 109-9, PageID. 768-

769). However, the protestors were throwing items at the officers, including bottles, bricks, red smoke flares, and fireworks. (Police Incident Report – R. 109-1; Reinink Dep. – R. 109-9, PageID. 768-769). As this occurred, a police vehicle continued to make announcements to disperse. (Police Incident Report – R. 109-1, PageID. 615). A Field Force line of MSP officers held off over a hundred protestors at an intersection just west of headquarters and an intersection directly south of headquarters. By 9:39 pm, all officers were given the order to don gas masks. The deployment of a chemical agent (e.g., tear gas) occurred at 9:48 pm. (Dispatch Transcript – R. 109-3, PageID. 636-637).

The Field Force line continued pushing protestors eastbound and successfully gained control of the City's Fulton/Division intersection. But this push gave protestors access to a large construction dumpster located directly south of Monument Park on Fulton, who began gathering and passing out bricks to other protestors. These protestors began throwing bricks and other various items from the dumpster at police, including rocks, glass bottles, bricks, wooden sticks, cement, plastic bottles, flaming objects, plastic garbage cans, metal garbage cans, and fireworks. Several objects struck the officers' shields and a police vehicle. (See, generally, Use of Force Reports – R. 109-2; Bush Dep – R. 109-11, PageID. 818; Reinink Dep – R. 109-9, PageID. 768-769; Video Kyle Veldman – R. 114-1, generally).

In the moments before the incident with Hart, the Field Force line once again pushed protestors eastbound through a Park. This Field Force line successfully established itself along the west side of the City's Fulton/Sheldon intersection, blocking both

east and westbound lanes of Fulton Street and extending north up to the corner of the Grand Rapids Children's Museum. (*Id.*)

Around 11:40 pm, a black Chevrolet Suburban, driven by Hart, traveling southbound on Sheldon Ave NE pulled up at an angle in the crosswalk on the northeast corner of Sheldon Ave NE and E. Fulton Street, loudly playing music with the passenger's side window rolled down. (Police Incident Report – R. 109-1; Guzman Dep – R. 109-8, PageID. 736; Reinink Dep. – R. 109-9, PageID. 767-768). Just prior, several other vehicles were able to navigate the intersection without stopping. (Video Kyle Veldman – R. 114-1). Hart honked the Suburban's horn 3 times. The passenger, Tiffany Guzman, rested her right arm outside her open window. (*Id.*). At the same time, GRPD officers continued making loud dispersal announcements over the PA system. (Bush Dep – R. 109-11, PageID. 825-826; Videos – R. 114-1, generally)

Hart did not drive through, instead he was "just watching" the crowd for approximately one-to-two minutes. (Hart Dep – R. 109-7, PageID. 687, 690, 695, 699; Veldman Dep – R. 109-17, PageID. 907; Spoelman Dep – R. 109-18, PageID. 918). Despite nothing impeding his ability to keep driving through the intersection, Hart remained in the intersection blocking the field force line's view of the protestors in the City's Veteran's Memorial Park. (Police Incident Report, PageID. 109-1; Johnson Dep – R. 109-10, PageID. 803; Reinink Dep – R. 109-9, PageID. 769). Rioters trickled out of the park and gathered on the driver's side of the Suburban, dancing and singing along to the song "Fuck tha Police," which Hart had deliberately chosen to blast from the vehicle's stereo.

(Guzman Dep – R. 109-8, PageID. 736; Hart Dep – R. 109-7, PageID. 684, 699, 709; *see also* Video Kyle Veldman – R. 114-1).

The officers were concerned that the Suburban was attempting to draw attention to it while the rioters continued to assail the police line and destroy property. (Police Incident Report – R. 109-1, PageID. 615; Johnson Dep – R. 109-10, PageID. 803). Eye-witnesses in the crowd believed the Suburban was participating in the riot because it was blaring that song, which was played by several individuals throughout the night. (Spoelman Dep – R. 109-18, PageID. 921; Veldman Dep – R. 109-17, PageID. 911). While Sgt. Bush, Officer Reinink, and Officer Johnson heard the music, only Officer Johnson could make out the words. (Bush Dep – R. 109-11, PageID. 817-818; Johnson Dep – R. 109-10, PageID. 803; Reinink Dep – R. 109-9, PageID. 768, 795). Bricks were thrown at officers, landing near the Suburban. (Video Kyle Veldman – R. 114-1). Officers believed the Suburban was a participant or associated with the rioters due to it staying in the area for a prolonged period, and were also concerned with the "high potential" that the Suburban would drive into the officer line. (Johnson Dep 109-10, PageID. 803; Bush Dep – R. 109-11, PageID. 817-818).

Officers, other than Officer Reinink, approached the vehicle. The officers requested individuals back away and informed Hart to move the vehicle. While Officer Reinink could hear the verbal exchange between officers and Hart, he could not make out anything being said. (Reinink Dep. – R. 109-9, PageID. 795) At one point, other officers used OC spray (i.e., pepper spray) and other tools to try to disperse the crowd.

(Spoelman Dep – R. 109-18, PageID. 918; Video Kyle Veldman – R. 114-1). Officer Johnson had a 40mm launcher, which was raised in the high-ready position and pointed toward the Suburban, which apparently "infuriated" Hart. (Hart Dep – R. 109-7, PageID. 689; Trigg Dep – R. 109-13, PageID. 852). The Suburban eventually left the intersection and drove away from the officer line.

A minute later, Hart inexplicably returned to the scene by parking along Fulton Street facing west between Sheldon and Park Place NE, about 100 feet from the officer line. (Police Incident Report – R. 109-1; Hart Dep – R. 109-7, PageID. 690; Guzman Dep – R. 109-8, PageID. 738; Bush Dep – R. 109-11, PageID. 820). Hart immediately exited his vehicle and began walking straight towards the officer line with a purposeful gait because he was "mad." (Police Incident Report – R. 109-1; Bush Dep – R. 109-11, PageID. 824; Hart Dep – R. 109-7, PageID. 690-691; Reinink Dep – R. 109-9, PageID. 775). His actions were getting the crowd excited, as demonstrated by protesters crowding back into the street near Hart's vehicle. They cheered and hollered, "Yeah, he's coming back!", "You the man!", and "Beat his ass!" (Veldman Dep – R. 109-17, PageID. 911; Video Kyle Veldman – R. 114-1)

Hart approached the police line with his left hand in his front pants pocket, cigarette in his other hand. (Spoelman Dep – R. 109-18, PageID. 919; Video Kyle Veldman – R. 114-1). As he stepped into the crosswalk and continued walking past it, Sgt. Bush stepped forward towards Hart, holding an MK-9 Stream OC Aerosol Fogger in his right hand. (Police Incident Report – R. 109-1, PageID. 615; Video Kyle Veldman – R. 114-1). Sgt. Bush raised his right arm and pointed

towards the east with his index finger. (*Id.*). Hart quickly removed his left hand from his pocket and pointed it either at Lt. Bush or the officer line. The officers believed that he was possibly advancing on them to assault them. (Bush Dep – R. 109-11, PageID. 824; Reinink Dep – R. 109-9, PageID. 775).

Giving loud verbal commands, Lt. Bush again raised his right arm and pointed towards the east with his index finger. But Hart ignored Lt. Bush, as he continued to point and yell louder than Lt. Bush's voice. (Police Incident Report – R. 109-1; Bush Dep – R. 109-11, PageID. 821; Reinink Dep – R. 109-9, PageID. 776-777). Lt. Bush briefly sprayed Hart with the OC spray and then stepped backwards. (Police Incident Report – R. 109-1; Bush Dep – R. 109-11, PageID. 821-822; Reinink Dep – R. 109-9, PageID. 789; Hart Dep – R. 109-7, PageID. 691; Video Kyle Veldman – R. 114-1). Hart initially turned away after putting his arm up to block the OC spray, and the crowd resumed throwing things at the officers. (Wortz Dep – R. 109-16, PageID. 902; Video Kyle Veldman – R. 114-1).

Hart remained standing as he turned his back to the officer line for about two seconds. He took a drag of a cigarette in his right hand and then quickly turned back towards the officers in what Officer Reinink and others perceived as an aggressive manner. (Hart Dep. – R. 109-7, PageID. 691-692; Johnson Dep – R. 109-10, PageID. 805; Reinink Dep – R. 109-9, PageID. 777-778). Video footage captured by a bystander confirms that when the pepper spray first hit Hart, he turned around, facing away from the direction of the police and instead facing the crowd. (Video Kyle Veldman – R. 114-1, at 19:05-19:06). The video clips capturing

this moment all consistently indicate that Hart lifted his head and took a drag on the cigarette he was holding in his right hand, then turned back toward the police line. (Barnett Body Camera Video – R. 114-1, at 03:45:29-03:45:31; Lynema Body Camera Video – R. 114-1, at 03:45:26-3:45:30; Veldman Video – R. 114-1, at 19:06-19:09). Hart himself testified that he "turned back" because he was "mad." (Hart Dep – R. 109-7, PageID. 714). He indicated that he "turned . . . like to see what else" (*Id*. at 166). Hart was "mad" and was "thinking about doing something that probably would have ended bad." (Hart Dep – R. 109-7, PageID. 692, 714; Video Wood TV8 Interview – R. 114-1).

Throughout the protest, Officer Reinink had used a 40 mm launcher to disperse Muzzle Blast in order to change the protestor's behavior. (Police Incident Report – R. 109-1, PageID. 611). However, he was carrying different types of munition on his person, due to the chaotic nature of the night. (Police Incident Report – R. 109-1, PageID. 611). As Hart approached the officers, Officer Reinink and another officer walked forward, with Officer Reinink intending to use Muzzle Blast to get Hart to leave the area. (Reinink Dep – R. 109-9, PageID. 778). Officer Reinink leveled the 40 mm launcher and fired a munition in the direction of Hart's right shoulder, consistent with Muzzle Blast procedure. (Police Incident Report – R. 109-1; Hart Dep – R. 109-7, PageID. 672; Guzman Dep – R. 109-8, PageID. 738; Johnson Dep – R. 109-10, PageID. 806; Veldman Dep – R. 109-17, PageID. 913). Because the canisters look nearly identical, Officer Reinink had actually fired Spede Heat in Hart's direction, instead of Muzzle Blast. (Police Incident Report – R. 109-1;

Reinink Dep – R. 109-9, PageID. 772, 780, Photographs – R. 109-5, PageID. 647).

Video evidence demonstrates that the munition appeared to careen off Hart's shoulder, but Hart remained on his feet. (Veldman Video – R. 114-1). Hart believed he was hit by a beanbag. (Hart Dep – R. 109-7, PageID. 714). Afterward, he turned around, flicked his lit cigarette, flipped off the officers, and walked back to his vehicle. (Police Incident Report – R. 109-1; Hart Dep – R. 109-7, PageID. 692; Guzman Dep – R. 109-8, PageID. 738). Once he was back in his vehicle, Hart drove the Suburban toward the officers, revved his engine, and eventually drove off. (Police Incident Report – R. 109-1). Hart never suggested he was injured, nor did he request medical attention. Hart only realized the canister was not a bean bag after watching a video of the incident on the local news. (Hart Dep – R. 109-7, PageID. 714).

Hart eventually went to the emergency room for shoulder pain, as well as eye and nose irritation. (Hart Dep – R. 109-7, PageID. 694). The canister only caused him some bruising and a small abrasion on his left shoulder. (Photographs R. 109-5; Hart Dep – R. 109-7, PageID 672-673; Photographs of Hart's Injuries – R. 110-8). Hart experienced no permanent physical injuries (Hart Dep – R. 109-7, PageID. 674).

B. Procedural History

Hart and Guzman, the above-mentioned passenger in Hart's vehicle, filed suit on September 18, 2020. (Complaint – R. 1). Eventually, the complaint was amended such that Hart brought, in relevant part, an excessive force claim against Officer Reinink. (2nd Amended Complaint – R. 49). Following discovery,

Officer Reinink moved for summary judgment in his favor. (Reinink's Brief in Support of Motion for Summary Judgment – R. 112).

On March 31, 2023, the District Court issued an opinion and order granting summary judgment in the Defendants' favor as to the Plaintiffs' federal claims and chose not to exercise supplemental jurisdiction over the state law claims. (Opinion and Order – R. 132). The District Court explained, "Reinink asserts that his mistake was objectively reasonable and/or protected by qualified immunity" due to the Muzzle Blast and Spede Heat being the "same size, color and weight, with difference between the two munitions 'not readily discernible from the outside when dealing with a fast-paced situation.'" (Opinion & Order – R. 132, PageID1559). It found "Hart ha[d] presented no evidence to contradict Officer Reinink's claimed mistake." (Opinion & Order – R. 132, PageID. 1560). The District Court, after "balancing the use of force with the level of threat," found that "Officer Reinink's conduct did not violate the Fourth Amendment, and that he is entitled to qualified immunity." (Opinion and Order – R. 132, PageID 1564). It explained that each use-of-force factor weighed in Officer Reinink's favor because: (1) Hart presumably violated numerous criminal statutes, including Mich. Comp. Laws. § 752.542 (incitement to riot); (2) Hart posed an immediate threat to the officers by ignoring their commands, being undeterred by pepper spray, and approaching the officers; and (3) Hart continually resisted commands by failing to obey orders to leave. (Opinion & Order – R. 132, PageID. 1562-1563). The District Court also held that "While Officer Reinink mistakenly launched the wrong munition, his split-

second judgment was not objectively unreasonable." (Opinion and Order – R. 132, PageID 1564). For those reasons, the District Court granted summary judgment as to the excessive force claim against Officer Reinink. (Opinion and Order – R. 132, PageID. 1568). It also dismissed Hart's and Guzman's claims against the other defendants in this case.

Hart and Guzman appealed to the Sixth Circuit. (Notice of Appeal – R. 134, PageID. 1571). On appeal, Hart argued that Officer Reinink used lethal force against him when Officer Reinink mistakenly launched a Spede Heat canister at him. (Appellant's Brief – 6th Cir. R. 22, PageID. 28-29). In response, the City compared this situation to a case where an officer shot a beanbag – a non-lethal weapon – at a plaintiff and distinguished it, arguing that the level of force used by Officer Reinink was reasonable. (Reinink Appellee Brief – 6th Cir. R. 39 – PageID. 32-34).

At oral argument, Plaintiffs' counsel again reiterated the argument that the manner in which the Spede Heat was used was potentially lethal.[1] During the Appellee's argument, Judge Ronald Gillman inquired of Officer Reinink's counsel about whether it was clearly established whether an officer could use potentially deadly-force against an individual who was unarmed and not a threat. (*Id.* at 33:00-33:15). Counsel, in response, argued that the purpose of using the munition (which Reinink believed was Muzzle Blast) was intended "get [Hart] to leave." (*Id*. at 33:30-33:35). On rebuttal, Plaintiffs' counsel acknowledged (though disputed) Officer Reinink's position, and the

---

[1] Sixth Circuit Oral Argument at https://tinyurl.com/5euatuzc. (last accessed July 25, 2026, 6:15-6:19)

District Court's finding, that he made a mistake about whether he was using Spede Heat or Muzzle Blast, and, despite that, urged the Court to make a finding that Officer Reinink's actions amounted to the use of lethal force. (*Id*. at 40:20-41:41).

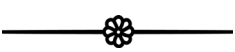
Judge Jane Branstetter Stranch wrote the majority opinion, with which Judge Gilman joined. *See Hart v. Michigan*, 138 F.4th 409 (6th Cir. 2025). Judge Joan Larsen wrote an opinion that concurred with the dismissal of Guzman as a plaintiff and the dismissal of the City and two other officers as defendants. *Id*. Judge Larsen dissented in relation to Judge Stranch's and Gilman's opinion permitting Hart to pursue his excessive force claim against Officer Reinink. *Id*.

The majority opinion began its analysis of the use-of-force claim against Officer Reinink by asserting that it began "with whether Officer Reinink's use of Spede-Heat munition constituted deadly force" and noted that Officer Reinink's position was that he used "'the wrong non-lethal munition' in tumultuous circumstances." *Id.* at 420. The majority diverged from the District Court's opinion and found that Officer Reinink's intent was irrelevant to the analysis of whether his use-of-force was reasonable. *Id*. at 420. It concluded that the deadly force standard for analyzing excessive force cases was appropriate because what matters in that analysis is "the nature of the force, not the weapon." *Id*. The majority then concluded that when "an officer uses <u>*deadly*</u> force, that force is unreasonable unless 'the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others,'" and outlined seven factors that the Sixth Circuit considers in determining whether an officer's use-of-deadly force

was reasonable. *Id.* After analyzing those factors, the majority concluded that Officer Reinink was not justified in using deadly force. *Id.* at 423. The majority also stated Officer Reinink was "plainly incompetent" because he failed to follow departmental protocols, despite the unprecedented riot he was confronted with and that this weighed in favor of the conclusion that he violated the Fourth Amendment. *Id.* at 421.

The majority further held that Officer Reinink was not entitled to qualified immunity because "it was clearly established in May 2020 that the deployment of deadly force against an unarmed individual who posed no immediate threat to officers, such as Hart, was constitutionally impermissible. *Id.* at 424. The majority's opinion did not analyze Officer Reinink's argument that he was entitled to qualified immunity due to a reasonable mistake of fact – only whether his actions violated clearly established law.

On the other hand, the dissent concluded that there were no cases cited by Plaintiffs that were factually analogous to the situation posed in this case. *Id.* at 427-428. Judge Larsen would have "affirm[ed] the grant of qualified immunity to Officer Reinink." *Id.*



REASONS FOR GRANTING THE PETITION

This Court has the discretion to grant a petition for Writ of Certiorari and will only do so for a compelling reason. U.S. Sup. Ct. Rule 10. Typically, this Court considers the following as compelling reasons for granting certiorari:

> a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; . . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power

U.S. Sup. Ct. R. 10(a).

In this case, Hart seeks relief through 42 U.S.C. § 1983, which creates liability for any person who acts under the color of law and deprives an individual of his rights, privileges, and immunities secured by the Constitution. In such cases, the Courts assess whether a governmental official is entitled to qualified immunity. *Pearson v. Callahan*, 555 U.S. 223, 237 (2009). This is a two-pronged inquiry asking whether: (1) the facts show that the official violated the plaintiff's constitutional right and (2) the right was clearly established, and the conduct of the defendant clearly violated the established constitutional right. *Id.* at 229.

This case involves Hart alleging that Officer Reinink unreasonably seized him, in violation of the

Fourth Amendment, by using deadly force to seize him. This Court should grant Officer Reinink's petition and conclude: (1) that an officer's intent in using force is relevant to determining whether to analyze an excessive force claim under the general use-of-force standard or under a use-of-deadly force standard, and (2) that when an officer mistakenly uses force higher than what the officer intended, that mistake can entitle the officer to qualified immunity so long as the mistake is reasonable under the circumstances.

I. The Courts Engage in Different Reasonableness Inquiries When Analyzing General Uses-of-Force Versus Uses of Deadly Force. This Court Should Grant Certiorari to Create a Test That Distinguishes a General Use-of-Force Versus Deadly Force.

For good reason, the standard for reasonableness of an officer's use-of-force is different when an officer uses a non-lethal type of force versus when an officer uses deadly force. However, this Court has not set forth a test for what qualifies as non-lethal force and what is deadly force. This Court should adopt a test distinguishing between the two levels of force (a test is proposed below), because the Sixth Circuit erred by analyzing this case as a deadly-force case. Creating a test for all the lower courts to follow will prevent this error by the Sixth Circuit and other Courts in the future.

Whether a seizure was reasonable under the Fourth Amendment is a careful balance of the nature and quality of the intrusion on the individual's interests against the countervailing governmental interests at stake. *Graham*, 490 U.S. at 396. The reasonableness of an officer's actions must be judged from the perspective

of a reasonable officer at the scene, instead of with the 20/20 vision of hindsight. *Id.* at 396. That is, an officer does not violate the Fourth Amendment merely because his or her use-of-force seems unnecessary from the peace of a judge's chambers because officers are often forced to make split-second judgments in tense, uncertain, and rapidly evolving situations. *Id.* at 396.

Generally, whether an officer has used excessive force depends on "the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021). However, the analysis changes when an officer uses deadly force. For an officer to use deadly force, the officer should have probable cause to believe that the suspect posed a threat of serious physical harm to either the officer or to others. *Tennessee v. Garner*, 471 U.S. 1, 11 (1985). The Sixth Circuit has articulated seven factors that may be used in analyzing whether an officer had probable cause to believe a suspect posed a threat of serious physical harm to either the officer or to others: (1) why the officer was called to the scene; (2) whether the officer knew or reasonably believed that the person was armed; (3) whether the person verbally or physically threatened the officer or disobeyed the officer; (4) how far the officer was from the person; (5) the duration of the entire encounter; (6) whether the officer knew of any ongoing mental or physical health conditions that may have affected the person's response to the officer; and (7) whether the officer could have diffused the situation with less forceful tactics. *Palma v. Johns*, 27

F.4th 419, 432 (6th Cir. 2022). These factors are not used in general use-of-force cases.

Despite these different analyses, there is no rule or test that provides the Courts guidance as to what amounts to deadly force and what does not. In fact, the Sixth Circuit's opinion in this case creates a conflict in that Circuit as to what amounts to deadly force and what does not. In this case, the Sixth Circuit concluded that a deadly force analysis was appropriate because deploying Spede Heat can be deadly. *Hart*, 138 F.4th at 420. Interestingly, the Sixth Circuit had previously rejected this concept.

In *Robinette v. Barnes*, 854 F.2d 909, 910 (6th Cir. 1988) the Sixth Circuit was faced with a similar conundrum, where an officer seized a suspect with a police dog. The police dog bit the suspect in the neck and the suspect died shortly after, but the Sixth Circuit held that this was not deadly force. *Id.* The Sixth Circuit defined deadly force as,

> Force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.

Id. at 912 (citing Model Penal Code § 3.11(2)). The Sixth Circuit used that definition to create a two

factor analysis for whether use-of-force amounts to deadly force: (1) the intent of the officer to inflict death or serious bodily harm, and (2) the probability, known to the officer but regardless of the officer's intent, that the law enforcement tool, when employed to facilitate an arrest, creates a substantial risk of causing death or serious bodily harm. *Id*. In applying those factors, the Sixth Circuit concluded that using the police dog did not amount to deadly force because the use of a police dog to apprehend a felony suspect does not carry with it a substantial risk of causing death or serious bodily harm, despite the fact that the dog killed the suspect. *Id*.

The Sixth Circuit reaffirmed those principles in *Matthews v. Jones*, 35 F.3d 1046, 1052 (6th Cir. 1994), again finding that the use of a police dog did not amount to deadly force when there was no evidence that the officer intended to create a substantial risk of death or serious bodily harm. The Fifth Circuit has similarly used an officer's intent in assessing whether a seizure amounted to deadly force, stating in *Watson v. Bryant*, 532 F. App'x 453, 457 (5th Cir. 2013), "In the absence of evidence showing that Bryant intended to use deadly force, we must conclude that the negligent shooting here did not itself violate Watson's Fourth Amendment rights." The Eight Circuit considered whether an officer used unreasonable force when the officer who approached a vehicle with his gun drawn, but slipped and fell, discharging the gun, causing the driver to be struck by a bullet. It found that due to the officer accidentally discharging his weapon (instead of intentionally), the "relevant inquiry was not whether [the officer's] act of firing his gun was 'objectively reasonable,' but whether, under the

totality of the circumstances, his act of drawing his gun was 'objectively reasonable.'" *Id.* The Tenth Circuit has recognized a similar definition of deadly force as the Sixth Circuit but has left open the question of whether there is a subjective component in assessing whether the force is deadly force, in the qualified immunity context. *Thomson v. Salt Lake Cnty.*, 584 F.3d 1304, 1315 n 3 (10th Cir. 2009).

The Court should grant Certiorari to clear up the conflict in the Sixth Circuit precedent as to what amounts to deadly force and to provide the other Circuits guidance as to what amounts to deadly force. The Court should conclude that whether use-of-force is analyzed under the general or deadly force analysis is a three-factor test: (1) whether the item, animal, weapon, or tool is typically used to inflict deadly force (an objective inquiry); (2) whether the officer who used that item, animal, weapon, or tool intended to cause the plaintiff death or serious bodily harm close to death (a subjective inquiry); and (3) whether the use-of-force caused the plaintiff death or serious bodily harm close to death. If each of these factors weighs in favor of a deadly force finding, then an officer's use-of-force should be analyzed under the deadly force standard. If not, the case should be analyzed under the general three-factor totality of the circumstances analysis. This proposed analysis follows the logic set forth by the Sixth Circuit in *Robinette*. However, it adds another factor that several circuits consider in their excessive force cases: the severity of the injury. *Hopson v. Alexander*, 71 F.4th 692, 698 (9th Cir. 2023) (indicating that the nature and quality of an individual's Fourth Amendment rights against unreasonable seizures is a totality of the circumstances analysis

which includes the analysis of the severity of injuries); *Jones v. Buchanan*, 325 F.3d 520, 527–28 (4th Cir. 2003) (same); *Koger v. Carson*, 853 F. App'x 341, 345 (11th Cir. 2021) (same). Indeed, it only makes sense that if a person suffered minor injuries as a result of force-used that there is a good case that the force-used did not amount to deadly force. On the other hand, if a police officer uses non-lethal force like pepper spray on a person whom he or she did not know was deathly allergic to pepper spray, it makes little sense to analyze such a situation under a deadly force standard, given that the pepper spray was never intended and could not have reasonably been expected to cause death.

In applying the above type of analysis, the Circuit Court erred when it found Officer Reinink used deadly force on Hart. The tool he used – Spede Heat – is not intended to be used as deadly force. It is a tear gas canister that is intended to use the gas to disperse people from an area, particularly in a protest situation. Officer Reinink indisputably did not intend to use Spede Heat, much less in a potentially lethal manner. He intended to use Muzzle Blast, which was housed in a canister nearly identical to the Spede Heat and Muzzle Blast being a powder does not cause death or serious bodily harm. Finally, Hart only suffered an abrasion and bruising on his left shoulder, which is a far cry from serious bodily injury or death. Simply put, it made very little sense that the Circuit Court would use a deadly force analysis for this case. Therefore, this Court should grant certiorari to create a logical test, like the one recommended above, for all the Circuits to apply in assessing whether force amounts to deadly force. This Court should also find that the Dis-

trict Court correctly found that Officer Reinink used reasonable force when this case is analyzed using the typical three-factor general use-of-force totality of the circumstances analysis. At the very least, the District Court and Judge Larsen were correct that this incident does not violate clearly established Fourth Amendment law.

II. This Court Has Not Had the Opportunity to Articulate What Amounts to an Officer's Reasonable Factual Mistake for the Purposes of Qualified Immunity When Analyzing a Use-of-Force Claim. This Court Should Conclude That an Officer's Factual Mistake Is Reasonable and Entitles Him to Qualified Immunity When He or She Intended to Use One Use-of-Force, but Mistakenly Uses Another When the Mistake Is Reasonable Under the Circumstances.

On a separate note, this Court has explained that officers are entitled to qualified immunity when their error is a mistake of fact. However, this Court has not identified what amounts to a mistake of fact that is entitled to qualified immunity in the use-of-force context, let alone in the specific context like this case where an officer intended to use one type of force and mistakenly used a different type.

As this court knows, qualified immunity is an immunity from suit. *Pearson*, 555 U.S. at 237. It considers whether an official's conduct violates a clearly established constitutional right of which a reasonable person would have known. *Rivas-Villegas*, 595 U.S. at 5. For an official's conduct to violate clearly established law, the right at issue must have been examined in the specific context of the case before a court – not just

a broad general proposition. *Id.* While there need not be case law directly on point governing the issues before a court, there must be existing precedent that places the constitutional question beyond debate. *Id.* That is, "[a] right is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.'" *Id.* Specificity is extremely important in Fourth Amendment cases, where oftentimes it is difficult for an officer to determine how the relevant legal doctrine applies in the factual situations the officer is confronted with. *Id.* This Court implied in *Rivas-Villegas* that even Circuit Court precedent may not be sufficient to place every officer on notice that his or her actions violate clearly established constitutional rights. *Id.* at 6.

Put in more plain terms, qualified immunity provides officials protection "regardless of whether the governmental official's error is 'a mistake of law, a mistake of fact, or mistake based on mixed questions of law and fact.'" *Pearson*, 555 U.S. at 231. Thus, the doctrine protects all but the plainly incompetent or those who knowingly violate the law and, even so, the law's contours must be so well defined that it is clear to a reasonable officer in the situation that he or she is confronted with, that his or her conduct was unlawful. *City of Tahlequah, Oklahoma v. Bond*, 595 U.S. 9, 12 (2021). However, even if an officer acts contrary to his or her training, that does not in itself negate qualified immunity, so long as a reasonable officer could have believed the conduct was justified. *City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 616 (2015); *see also Davis v. Scherer*, 468 U.S. 183, 194 (1984) (Officials sued for constitutional violations do not lose their qualified immunity merely because their

conduct violates some statutory or administrative provision"). When analyzing whether an officer's factual mistake is entitled to qualified immunity, he or she is entitled to qualified immunity if the mistake is one that a reasonable person would make. *Heien v. North Carolina*, 574 U.S. 54, 61 (2014). A key tell in determining whether an officer should be entitled to qualified immunity is whether judges disagree on a particular issue, that is because "[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." *Reichle v. Howards*, 566 U.S. 658, 669–70 (2012).

On a general level, in relation to a reasonable mistake, this Court hypothesized in *Heien*, 574 U.S. at 57, that an officer could "stop a motorist for traveling alone in a high-occupancy vehicle lane, only to discovery upon approaching the car that two children are slumped over asleep in the back seat" because this would be a reasonable mistake. In the same case, this Court recognized that an officer would be protected if he or she mistakenly arrested someone who matched the description of a suspect. *Id.* at 61.

It does not appear that this Court has analyzed qualified immunity for a factual mistake in the use-of-force context, but the Circuit Courts have. For example, in the Sixth Circuit, officers were entitled to qualified immunity when they shot a minor in a neighborhood when he pulled an airsoft bb gun out of his waistband, which did not have the orange barrel tip that typically characterizes toy guns. *Nelson v. City of Battle Creek, Michigan*, 802 F. App'x 983, 984 (6th Cir. 2020). The Sixth Circuit found that the right to be free from such use of force in that specific context

was not sufficiently defined that every officer in the defendants' shoes would know the minor's rights were violated. *Id.* at 990. The Ninth Circuit ruled the same in a case remarkably similar to *Nelson*, where it noted that officers are entitled to qualified immunity if their actions result from a reasonable mistake of fact. *Est. of Strickland v. Nevada Cnty.*, 69 F.4th 614, 621 (9th Cir. 2023), *cert. denied,* 144 S. Ct. 559 (2024). Or take the Eight Circuit's opinion in *Ransom v. Grisafe*, 790 F.3d 804, 811 (8th Cir. 2015), where that Court concluded that officers were justified in using deadly force when responding to a report of gunshots because they reasonably, but mistakenly, believed that a van backfire was a gunshot.

What this Court and the Circuits have not dealt with is whether an officer violates the Fourth Amendment by using one use-of-force tool in the heat of a high-stress protest, thinking it is something completely different. More specifically, when the two items, which look nearly identical, provide different degrees of force upon a subject. The only case the Sixth Circuit relied on in the below proceedings was a Fourth Circuit case *Henry v Purnell*, 652 F.3d 524 (4th Cir. 2011), where an officer alleged that he shot a suspect and claimed he made the honest mistake of grabbing his Glock rather than a Taser. *Id.* at 532. However, that case was remarkably different because the officer in *Henry* typically holstered the Taser on his right and his Glock on his left, the Glock weighed twice as much, and the Glock had no thumb safety switch, whereas the Taser did. *Id*. In other words, the Sixth Circuit relied on a case that is not factually similar (i.e., the two weapons were noticeably distinguishable in *Henry*, while they were not in this case), in finding that

Officer Reinink was not entitled to qualified immunity for a reasonable mistake. Indeed, nothing about *Henry*, a case from a different circuit, would have placed Officer Reinink on notice the night of the protests that mistakenly using the wrong munition – which looks and feels nearly identical – would violate Hart's clearly established rights.[2]

This case involving Officer Reinink and Hart is the perfect case for this Court to articulate to the lower courts what amounts to a reasonable factual mistake when analyzing whether an officer is entitled to qualified immunity in a use-of-force case. In this case, Officer Reinink intended to use a Muzzle Blast munition that would have disbursed a powder toward Hart and, undisputedly, would have been reasonable force in the midst of a riot where Hart was approaching a police line in a way that a reasonable officer would perceive as intending to further incite a riot. Despite his intent to use undisputedly reasonably force, Officer Reinink mistakenly used munition of Spede Heat (thinking it was Muzzle Blast), which happened to be the same size, same color, and same weight. That is, it had no discernable difference in this high intensity situation. His mistaken belief is further proven by the fact that he deployed the munition from a distance and angle that is consistent with deploying Muzzle Blast, not Spede Heat.

This Court should grant certiorari so that it can explain to the lower courts that this is the exact type

---

[2] The majority opinion relied on *Henry* despite the Sixth Circuit acknowledging that out-of-circuit precedent does not clearly establish a constitutional right. *Ashford v. Raby*, 951 F.3d 798, 804 (6th Cir. 2020).

of mistake of fact that entitles an officer to qualified immunity in a use-of-force case. Furthermore, the Court should conclude that Officer Reinink is entitled to qualified immunity because there is no case law governing this particular situation which would put a reasonable officer in his shoes on notice that failing to take extra precautions or failing to comply with every internal police procedure or policy governing the use of Muzzle Blast and Spede Heat, while in the midst of a city-wide riot, amounts to an unreasonable factual mistake. Indeed, as noted above, this Court has rejected the notion that training, policy, or procedure negates qualified immunity, so long as the officer's mistake was reasonable under the circumstances. This Court should agree with the District Court when it held, "[w]hile Officer Reinink mistakenly launched the wrong munition, his split-second judgment was not objectively unreasonable." (Opinion and Order – R. 132, PageID 1564).

CONCLUSION

For the reasons set forth above, Officer Reinink requests that this Court grant his Petition for Certiorari in full. This Court should use this case to answer the questions: (1) what test should be used to differentiate between general use-of-force and deadly-force, and (2) whether an officer is entitled to qualified immunity when the officer mistakenly using force higher than what the officer intended, so long as the mistake is reasonable under the circumstances.

Respectfully submitted,

Michael T. Berger
Counsel of Record
ROSATI SCHULTZ JOPPICH & AMTSBUECHLER PC
27555 Executive Dr., Ste. 250
Farmington Hills, MI 48331
(248) 489-4100
mberger@rsjalaw.com

Counsel for Petitioner

August 11, 2025