

No. 25-362

In the Supreme Court of the United States

JAMES GRIFFITHS, INDIVIDUALLY AND AS
EMPLOYEE OF THE CUYAHOGA METROPOLITAN
HOUSING AUTHORITY,
Petitioner,

v.

RITA KEITH, INDIVIDUALLY AND AS THE NATURAL
PARENT OF ARTHUR KEITH AND AS ADMINISTRATOR OF
THE ESTATE OF ARTHUR KEITH, DECEASED,
Respondent.

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

BRIEF IN OPPOSITION

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INTRODUCTION

Respondent Rita Keith, as Administrator of the Estate of Arthur Keith, deceased, and Individually as the Natural Parent of Arthur Keith, deceased, respectfully requests that this Court deny Petitioner James Griffiths's Petition for a Writ of Certiorari ("Petition") which seeks review of the judgment of the United States Court of Appeals for the Sixth Circuit.

The Petition should be denied because it mischaracterizes the decision of the Sixth Circuit and the governing law. Further, Petitioner makes factual conclusions which are not supported by the record. In fact, the record presents a clear factual dispute, which the Sixth Circuit's opinion holds should be left to a jury to decide. Pet. App. 12a. If this Court were to grant the Petition, it would be making an impermissible factual conclusion which should be determined by a jury.

The first "Question Presented" rests on an improper factual conclusion and a contrived inter-circuit conflict that does not exist. The second "Question Presented" challenges the Sixth Circuit's application of settled precedent but misinterprets the opinion and this Court's case law. Ultimately, the issue regarding the existence of a constitutional violation rests on a question of fact, as decided by both the district court and Sixth Circuit, and does not present a question of law worthy of review by this Court. Therefore, this Court should deny the Petition.

STATEMENT OF THE CASE

Respondent hereby incorporates by reference the factual background in the Sixth Circuit's decision. Pet. App. 2a-5a. Respondent further notes her agreement with the Sixth Circuit in its determination that there exists a factual dispute which is best left to a jury to decide. Pet. App. 13a.

REASONS FOR DENYING THE PETITION

I. There Is A Factual Dispute As To Whether Keith Was Armed, But There Is No Inter-Circuit Conflict Over The Use Of Deadly Force On Armed Fleeing Suspects

Petitioner asserts that the Sixth Circuit's opinion "conflicts with existing Supreme Court precedent and the authoritative decisions of other U.S. Courts of Appeal." Pet. at 2. Petitioner cites to several cases to argue that there exists a conflict in opinions among the circuits. Pet. at 8–10. However, each case presents a distinct set of facts upon which the case turns. The circuits apply the same standards for qualified and statutory immunity and only differ in opinions when facts of the case warrant distinction. Here, there is a genuine dispute of material fact, and the lower court properly reserves this factual dispute to a jury. Pet. App. 13a. The dispute is over whether Keith was holding a gun when fleeing and when he was shot by Griffiths. Pet. App. 8a. This factual dispute is ultimately what the case turns on, and makes Petitioner's assertion that there is a legal issue worthy of review by this Court erroneous.

In its opinion, the Sixth Circuit repeatedly discussed the factual dispute and explained that “[a]lthough we recognize that there are some inconsistencies in Melton’s and Starr’s testimony, determinations of witnesses’ credibility are best left to the jury.” Pet. App. 12a. It goes on further to state that because there are inconsistencies in Melton’s and Starr’s testimony, and both are also different from Griffiths’s testimony, that “viewing the evidence in a light most favorable to Plaintiff, we conclude that there is a genuine dispute of material fact as to whether Griffiths’s use of force violated Keith’s Fourth Amendment Rights.” Pet. App. 13a.

Further, the cases cited by petitioner also do not show that there is an inter-circuit conflict, nor disagreement among the circuits on any question of law. Rather, the cases cited show the application of the same precedent, to distinguishable sets of facts. In each case, the courts apply the same settled law which governs the use of force and whether qualified or statutory immunity may apply.

First, in *Garczynski v. Bradshaw*, the case rests on the undisputed fact that an armed suspect was threatening suicide. It was that fact which led to the court’s determination that the use of force was justified, not a disputed fact which would have been left to the jury. 573 F.3d 1158, 1161 (CA11 2009) Next, in *Wilson v. City of Bastrop*, it is undisputed that an armed suspect was running toward the officer who used force. 26 F.4th 709, 712 (CA5 2022) This specific and undisputed fact led the court to hold that force was justified. *Ibid.* Also, in *Anderson v. Russell*, the court definitively determined that Anderson was

reaching into his pocket, leading the officers to believe that he was reaching for a weapon. 247 F.3d 125, 128 (CA4 2001) Similarly, in *Palacios v. Fortuna*, the undisputed fact is that Palacios reached for and picked up a weapon. 61 F.4th 1248, 1255 (CA10 2023) In *Montoute v. Carr*, the force was justified because the undisputed facts showed that Montoute had previously fired the shotgun he was carrying and was walking toward the officer. 114 F.3d 181, 182 (CA11 1997) In *Cooper v. Sheehan*, it is undisputed that the gun was always pointed to the ground, and summary judgment was denied because the officers had no probable cause to feel threatened based solely on that undisputed fact. 735 F.3d 153, 156 (CA4 2013) In *Terrell v. Town of Woodworth*, the undisputed facts are that Terrell and the officers engaged in a physical struggle before the shooting, in which Terrell and one of the officers were struggling over the gun in Terrell's hand. 2024 U.S. App. LEXIS 3803 (CA5 Feb. 19, 2024) This undisputed course of events led the court to hold that the officers were justified in using force. *Ibid.* In *Hensley v. Price*, the Petition points out different circumstances where officers do or do not give warnings. The court in *Hensley* determines that while movement raises suspicions about intentions of a suspect, it does not warrant deadly force. 876 F.3d 573 (CA4 2017) Further, the court holds that a jury could have concluded that Hensley never pointed a weapon at the officers, and they were therefore not entitled to summary judgment on qualified immunity. *Ibid.* Because the court held that there was a factual dispute, the case proceeded to a jury. *Ibid.* Petitioner also cites *Jacobs v. Alam*, 915 F.3d 1028 (CA6 2019). In *Jacobs*, the court denied qualified immunity

because factual disputes existed regarding whether the decedent posed an immediate threat, exactly as in the opinion below. *Id.* at 1033.

Each of the cases above demonstrate holdings consistent with the appellate court's opinion below. The courts, while coming to different conclusions, apply the same law in determining how to approach each set of facts, and whether to make their conclusions based on the facts presented, or let a jury determine the outcome. The Sixth Circuit applied that same analysis to the facts of this case and made it explicitly clear that there is a genuine dispute of material fact throughout the opinion. Pet. App. 2a-15a. The Sixth Circuit's opinion recognized that the case turns on a question of fact and did not make determinations of law by assuming the role of the factfinder, which is reserved for a jury. Pet. App. 7a. Further, the opinion correctly avoided making factual conclusions which are shown by the record to be in dispute, and left the ultimate question for the jury, by reversing the district court's opinion, and remanding the case back to the district court. Pet. App. 15a.

This Court should therefore deny the Petition because the existence of different outcomes in cases with different facts does not present a conflict for review. S. Ct. R. 10(a). Only if the decision below was directly in opposition to another decision "on the same important matter," would this warrant certiorari. *Ibid.* The decisions of the courts of appeals are all based on an analysis of law that was correctly applied by the Sixth Circuit. Therefore, this Court should not grant the Petition based on an incorrect assertion that there exists an inter-circuit conflict. Rather,

Petitioner assumes facts which are not supported by the record in a desperate attempt to create a question of law for review by this Court.

II. The Lower Court's Analysis Regarding Qualified Immunity Properly Focused On Whether There Was A Genuine Dispute Of Material Fact

Petitioner argues that the Sixth Circuit cited only a “general rule in defining a clearly established right” and that its opinion failed to “identify any case where an officer acting under similar circumstances was held to have violated the Fourth Amendment.” Pet. at i. Petitioner misinterprets the rule and the Sixth Circuit’s opinion. The rule more accurately shows that existing precedent need not be “directly on point,” and requires only that the existing precedent “must have placed the statutory or constitutional question beyond debate.” *White v. Pauly*, 580 U.S. 73, 79 (2017). Petitioner asserts that the Sixth Circuit’s opinion only cited to a general rule in its analysis. Pet. 11. However, the Sixth Circuit went further from the general rule defining the clearly established right as more than simply a right not to be shot. Pet. App. 13. The opinion further established that there is a genuine issue of material fact that should be left to a jury to determine. Pet. App. 8a. Specifically, the Sixth Circuit correctly stated that “where a dispute of material fact exists pertaining to whether the suspect was pointing a gun at someone, we deny qualified immunity and permit the case to proceed to a jury.” *Ibid*. Because the facts are in question, the Sixth Circuit correctly makes an assertion that, if viewed in the light most favorable to the non-movant, in this

case the Respondent, then the right would be clearly established. Pet. App. 14a. However, it does not decide on this as a legal conclusion but holds that the claim should proceed to trial for a jury to determine. *Id.* Petitioner's fault lies in making this conclusion for the lower court, without recognizing that the court itself determined that it is a question which is best left to a jury to decide. *Id.*

The contention of Petitioner that the Sixth Circuit's opinion violates existing precedent is also incorrect. The approach taken by the Sixth Circuit is appropriate based on the rule defined and allows for the claim to proceed to a jury based on unresolved factual disputes, which the court correctly states are to be decided by a jury. Pet. App. 14a. The Sixth Circuit's opinion discusses the qualified immunity issue referring to the two prongs of the issue: whether there was a constitutional violation and whether there was a clearly established right. Pet. App. 5a. It correctly states that, "[i]mportantly, at this stage, we do not need to conclusively decide these questions" but that the court solely "need[s] to determine if Keith presented sufficient evidence to create a genuine dispute of material fact." Pet. App. 7a. There was not a need for the Sixth Circuit to make a conclusion of whether the right was clearly established, but only whether Respondent presented sufficient evidence to show that a genuine dispute of material fact may affect the outcome. Pet. App. 7a.

Even still, the Sixth Circuit went further in its analysis than simply defining the issue as a right not to be shot. Pet. App. 13a. It correctly described the factual dispute at issue and holds that "in the light

most favorable to plaintiff, her claim survives Griffiths's qualified immunity defense and should proceed to trial." Pet. App. 14a. The cases cited to in the Petition also demonstrate that a court's recognition of a factual dispute is not ultimately a legal conclusion. Where material facts are in dispute, a court may not resolve the ultimate legal question of immunity, and the underlying disputed material facts must be weighed and decided by a jury. Pet. App. 8A. Once the Sixth Circuit determined there was a genuine issue of material fact, it correctly held that the case should proceed to a jury. Pet. App. 8a. The question of fact did not ultimately decide whether the force was justified, solely that "a reasonable juror *could find* that Griffiths violated Keith's constitutional rights." Pet. App. 13a. (emphasis added).

The Sixth Circuit discussed the factual dispute and determined, based on viewing the facts in the light most favorable to Respondent, that "Griffiths violated Keith's clearly established right to be free from deadly force, as a reasonable officer in Griffiths's shoes would have been on notice that 'his specific conduct was unlawful.' See *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021)." Pet. App. 14a.

Petitioner incorrectly argues that the Sixth Circuit is too general based on cases the Petition cites as similar. These cases are all distinguishable. In *Ashcroft v. al-Kidd*, for example, this Court granted certiorari because there was an issue of first impression before the court, which was the pretext of a warrant. 563 U.S. 731 (2011) The Sixth Circuit, however, cites directly to use of force cases such as

Rivas-Villegas, 595 U.S. at 6. Similarly, in *City and County of San Francisco v. Sheehan*, 575 U.S. 600 (2015), this Court defined simply the right to be free from unreasonable searches and seizures, without discussing any precedent on the type of search, reopening Sheehan’s door. This case also involves a seizure, but the Sixth Circuit goes beyond just the Fourth Amendment, to specific excessive force, and even shooting cases. Pet. App. 13a-14a.

The cases cited in the Petition take the same approach. In *Kisela v. Hughes*, the court looked specifically to the undisputed fact that the plaintiff was holding a knife near another person to determine whether the use of force was appropriate. 584 U.S. 100, 101 (2018) In *White*, officers arrived late to an active shooting and encountered an armed individual pointing a firearm. 580 U.S. 74–76. In *Mullenix v. Luna*, the suspect was intoxicated, fleeing in a vehicle, had threatened officers, and posed an immediate danger to others. 577 U.S. 7, 8–10 (2015) Finally, in *N.S. through Lee v. Kansas City Bd. of Police*, the case turned on the fact that the decedent was facing the officers and was raising his hands to his waist. 35 F.4th 1111, 1114 (CA8 2022) Similarly, *Sheehan, Ashcroft, City of Escondido v. Emmons*, 586 U.S. 38 (2019), and *Rivas*, involved distinct facts.

Each of the above cases turned on materially different facts which were not in dispute involving an imminent threat that the officers perceived at the moment force was used. Here, the Sixth Circuit correctly avoided an incomplete application of clearly established law or materially distinguishable precedent. The analysis was based in excessive-force

and shooting cases and evaluated those authorities in relation to the disputed facts.

Petitioner's reliance on additional Sixth Circuit decisions is also unfounded. In cases such as *Hicks v. Scott*, 958 F.3d 421, 426 (CA6 2020), *Thomas v. City of Columbus*, 854 F.3d 361, 362 (CA6 2017), *Thornton v. City of Columbus*, 727 F. App'x 829, 830 (CA6 2018), and *Wilkerson v. City of Akron*, 906 F.3d 477, 479 (CA6 2018), officers confronted suspects who were pointing firearms, running toward officers with guns, threatening others, or actively struggling over a weapon. All the above cases are materially distinguishable in facts and were decided based on specific and undisputed facts of each case, not based on courts incorrectly making assumptions which should be left to a jury. The courts in each case conducted thorough review of the factual circumstances beyond what is found in other decisions, because each matter presents a novel instance for the courts to render judgement. If courts are left to make decisions based only on cases which are factually the same, there can be no room for new circumstances which will present themselves as shown by the varying facts described above.

The Sixth Circuit's decision applies the correct Fourth Amendment analysis to an excessive force claim involving a shooting and correctly determined that if Keith was not in possession of a gun at the time he was shot by Griffiths, then Keith's clearly established rights under the Fourth Amendment to be free from deadly force was violated.

CONCLUSION

For all the aforementioned reasons, this Court should deny certiorari.

Respectfully submitted,

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