

No. _____

IN THE
Supreme Court of the United States

KIMBERLEY DIANE SETTLE,
AS PERSONAL REPRESENTATIVE FOR THE
ESTATE OF JACOB JOSEPH SETTLE SR.,

Petitioner,

v.

DAVID COLLIER,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case arises from disputed accounts of a fatal police shooting on November 14, 2020, when a deputy sheriff shot and killed Jacob Settle, Sr. in the backyard of his home. Viewing the facts in the light most favorable to Petitioner, the district court denied qualified immunity, recognizing that a jury must resolve the competing versions of events. The Eleventh Circuit reversed. In doing so, it evaded settled limits on appellate review: it reconfigured the factual predicates, relied on post hoc risks untethered to the district court's findings and unsupported by the record, and resolved disputed facts by drawing its own inferences under the guise of "common sense." This Court should grant certiorari to re-establish the constitutional boundary between judge and jury and halt the lower court's practice of resolving factual disputes under the guise of qualified immunity.

1. In an interlocutory qualified immunity appeal, may a court of appeals uphold deadly force by relying on predictive theories and inferred risks not supported by the evidentiary record?

2. Whether appellate courts may, resolve genuine disputes of material fact in excessive-force cases by re-weighing the evidence under the guise of "common sense."

PARTIES TO THE PROCEEDING

Kimberley Dianne Settle, as Personal Representative for the Estate of Jacob Settle, Sr., was the Plaintiff-Appellee below and is the Petitioner in this Court.

David Collier was the Defendant-Appellant below and is the Respondent in this Court.

RELATED PROCEEDINGS

The following proceedings related to this petition within the meaning of Rule 14.(b)(iii) are:

Settle v. Collier, No. 3:22-CV-22688 (N.D. Fla.) order July 1, 2024 (denying defendant's motion for summary judgment).

Settle v. Collier, No. 24-12436 (11th Cir. 2025). United States Court of Appeals for the Eleventh Circuit. Opinion reversing the district court, entered December 9, 2025, reported at 160 F.4th 1282. Petition for rehearing and en banc review denied February 3, 2026.

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OPINIONS BELOW

Pursuant to Supreme Court Rule 14.1(d), the following opinions give rise to this Petition:

On July 1, 2024, the United States District Court for the Northern District of Florida denied Defendant's Motion for Summary Judgment in *Settle v. Collier*, Case No. 3:22-cv-22688. The decision is included in the Appendix at Appendix ("App.") B (30-50).

On December 9, 2025, the United States Court of Appeals for the Eleventh Circuit issued its opinion reversing and remanding with instruction to enter judgment for Defendant in *Settle v. Collier*, Case No. 24-12436. The opinion is included in the Appendix at App. A (3-28).

On February 3, 2026, the United States Court of Appeals for the Eleventh Circuit issued its opinion denying rehearing and en banc review. The opinion is included in the Appendix at App. C (52-53).

STATEMENT OF JURISDICTION

The Court of Appeals entered its original judgment on December 9, 2025, App It denied rehearing and rehearing en banc on February 3, 2026. On May 5, 2026, this Court granted Petitioners' motion for an extension of time within which to file a Petition for a writ Certiorari to June 3, 2026. Petitioners filed this timely Petition for Writ of Certiorari. See Sup. Ct. R. 13(1), (3) and (5). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AT ISSUE

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.

Section 1983 provides in pertinent part as follows:

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. . .

42 U.S.C. § 1983

INTRODUCTION

After Deputy Sheriff David Collier shot Jacob Settle, Sr. while Settle sat in his truck in his own backyard, Settle's Estate brought this action under 42 U.S.C. § 1983, alleging a violation of the Fourth Amendment. Extensive discovery revealed conflicting accounts of the fatal shooting. Accordingly, when Collier moved for summary judgment, the district court—viewing the evidence in the light most favorable to Petitioner—concluded that a jury must resolve these competing versions of events and denied qualified immunity. Upon review, the Eleventh Circuit reversed, granting Collier qualified immunity by improperly

drawing factual inferences in the officer's favor—namely, the flawed assumption that common sense dictated Settle was about to drive away rather than remain stationary. App. 9 ¶ 3, App. 12 ¶ 2. In doing so, the panel majority departed from this Court's precedent by manipulating the factual record, invoking *post hoc* risk rationales, and improperly deciding factual issues squarely reserved for the jury.

Both the district court and a dissenting judge on the Eleventh Circuit recognized the genuine disputes of material facts precluding summary judgment. *See Vaughan v. Cox*, 343 F.3d 1323, 1331 (11th Cir. 2003) (“Viewing the facts in Vaughan's favor, a reasonable jury could conclude that the use of deadly force was not necessary...”). By contrast, the panel majority disregarded thousands of pages of evidence, briefing, and argument that provide more than a mere scintilla of support for the Estate's claim—indeed, evidence on which a reasonable jury could find that Deputy Collier shot Mr. Settle when he posed no threat to the deputy or others *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252-57 (1986).

Review is warranted because the decision below improperly expands the Fourth Amendment's 'reasonable officer' calculus beyond the established evidentiary record. In doing so, it strips the jury of its core constitutional authority to resolve critical factual disputes. If left standing, this approach would allow courts to “weigh[] the evidence and reach[] factual inferences contrary to [a nonmovant's] competent evidence . . . ,” rather than “adhere to the fundamental principle that at the summary judgment stage, reasonable inferences should be

drawn in favor of the nonmoving party.” *Tolan v. Cotton*, 572 U. S. 650, 660 (2014) (*per curiam*). By allowing judicially conjured risks to justify deadly force despite a conflicting evidentiary record, the Eleventh Circuit’s approach conflicts with this Court’s bedrock precedents governing both qualified immunity and summary judgment.

This case presents an ideal vehicle for the Court to resolve a critical, recurring question of federal law regarding the use of police force in vehicular encounters. The lower court’s distortion of Fourth Amendment precedent, and its unwarranted grant of qualified immunity, create a dangerous loophole that invites unnecessary police violence. Review is warranted under Supreme Court Rules 10(a) and 10(c).

The panel majority held that Deputy Collier’s use of deadly force did not violate the Fourth Amendment because, “[e]ven if the truck never moved,” Collier could “reasonably perceive” Settle’s vehicle as a deadly weapon based on the assumption that “[c]ommon sense would suggest that Settle’s next step would be to drive—not to remain stationary.” App. 12 ¶ 2; see also App. 15 ¶ 3 (reasoning that Collier “could reasonably fear that Settle’s next move was to drive it”). That conclusion rests on the premise that Settle was resisting arrest “by starting the truck engine and putting it into gear,” but it is not based on any actual movement or immediate threat, only speculation about what Settle might have done. In its holding, the panel majority overlooked the disputed facts that underpinned the

district court's denial of summary judgment: (1) Collier's physical position at the time of the shooting; and (2) whether the truck moved at all. The majority nevertheless credits Collier's assumed fear on the theory that he was "trapped," even though both his alleged entrapment and any resulting fear remain contested questions for the jury. As the dissent recognized, "a reasonable jury could interpret the events on the night of the shooting differently." App. 25 ¶ 1 (Abudu, J., dissenting).

The Opinion below conflicts with this Court's foundational holdings in *Tennessee v. Garner*, 471 U.S. 1 (1985), and *Graham v. Connor*, 490 U.S. 386 (1989), which require a thorough examination of the "totality of the circumstances." While the majority fleetingly cites this Court's more recent decision in *Barnes v. Felix* to acknowledge that the severity of the suspected crime carries weight, it simultaneously recognized—only to then disregard—that Deputy Collier had "no reason to believe Settle was violent or dangerous before to the encounter. App. 16 ¶ 2 (internal citation omitted).

Instead, the majority invoked so-called "common sense" to conclude that Collier reasonably interpreted Settle's actions, starting the engine and putting the truck into gear, as escalatory in an effort to distinguish this case from controlling precedent. *See Morton v. Kirkwood*, 707 F.3d 1276, 1282 (11th Cir. 2013) (holding an officer lacked probable cause to believe an unarmed suspect in a stationary vehicle posed an immediate threat of harm). Yet the panel offered no account of

whose “common sense” governs, how its inherent ambiguities are constrained, or whether it constitutes a coherent objective standard at all, overlooking that it often reflects culturally contingent assumptions rather than neutral truth.

Similarly, the majority downplayed the spatial, proximate, and kinetic aspects of the encounter. These critical circumstances include the deputy’s position in relation to the vehicle, the distance between them, the nature of any movement, and the immediacy of any perceived threat, all of which are reflected in the plaintiffs’ adjudicative facts and the trial court’s findings. Notably, the majority ignored Deputy Collier’s concession that he could not have reasonably used deadly force had Settle been retreating from the scene. This approach disregards the fundamental principle that a reasonable jury could interpret the shooting differently. It advances a rule under which courts may convert a fact-intensive qualified immunity inquiry into one driven by judicial conjecture rather than the evidentiary record.

As the Supreme Court has made clear, “courts must take care not to define a case’s ‘context’ in a manner that imports genuinely disputed factual propositions.” *Tolan*, 572 U.S. at 657 (quoting *Brosseau*, *supra*, at 195). Disregarding this instruction, the decision below concluded otherwise. The record cannot objectively support a finding that Deputy Collier reasonably believed Settle used or threatened to use his vehicle as a deadly weapon, particularly where two reasonable federal judges fundamentally disagreed on these very facts. The court’s

revision of the factual record undermines the summary judgment standard governing qualified immunity, leaving circuit law unmoored and permitting lower courts to reshape the evidentiary record without clear legal guardrails.

Certiorari is necessary to correct the Eleventh Circuit's departure from this Court's Fourth Amendment precedents, which has resulted in an unjustified and dangerous expansion of qualified immunity.

STATEMENT OF THE CASE

A. The Incident

This petition involves the use of deadly force on November 14, 2020, by Escambia County Deputy Sherriff David Collier ("Collier") that resulted in the shooting death of Jacob Settle, Sr. ("Settle"). As set forth in the Eleventh Circuit's decision, the incident arose after Collier and another Deputy Sherriff (Raymond Hart) went to the home of Jacob Settle and Sophronia Whitehead at night to serve arrest warrants for nonviolent crimes. Specifically, Settle's arrest warrant was for driving with a suspended license. USCA Doc. 19-2 at 195-208.

Deputies Hart and Collier had never encountered Settle before that night. App. 5 ¶ 1. Hart testified that, upon arriving to serve the warrants, he "never knew if [Settle] liked to run" only "that he had a warrant, really." USCA Doc. 19-1 at 207:11-13.

At 9:40 p.m., the deputies parked their marked patrol car down the street and approached the residence on foot. USCA Doc. 19-2 at 116. Around the same

time, Settle and Whitehead decided to drive to a friend's house in Settle's truck, which was parked in the backyard. App. 5. ¶ 2-3. Settle left through the back door, with Whitehead locking it behind him and exiting through the bedroom window. *Id.*

Both deputies explained that they approached the front door to no avail, so they proceeded to the backyard to continue their search. *Id.* ¶ 3; App. 31 ¶ 2. A fence separated the front yard from the back yard, but Collier could see a black pickup truck parked behind the house. *Id.*; App. 31 ¶ 3. The deputies entered the backyard through an opening in the fence to check whether Mr. Settle and Ms. Whitehead were in the truck. App. 31 ¶ 5.

The truck was parked facing the house, with its front end close to the exterior wall. The driver's side ran parallel to a porch extending from the house. An air-conditioning unit sat immediately adjacent to the porch, roughly perpendicular to the truck's rear wheel. App. 5 ¶ 3; 31 ¶ 4. The backyard was "pitch black" that night because there were no working porch or backyard lights. The officers' flashlights were "the only light[s]" in the backyard. App. 5 ¶ 4.

Whitehead and Settle had gotten into the truck just as the deputies entered the backyard. USCA Doc. 19-3 at 110-11:25, 1-2. The parties dispute what happened next.

In Collier's version of events, the backyard was "very dark," and he and Hart used flashlights to move about on foot while trying to avoid making their

presence known. App. 5 ¶ 3; 31 ¶ 3. Collier suspected that Whitehead and Settle were aware of the officers and deliberately hiding, attributing that supposed conduct to outstanding warrants and a fear of arrest. App. 21 ¶ 2.

Collier explained that the deputies approached the truck from the rear, with Deputy Collier approaching the driver's side and Deputy Hart approaching the passenger's side. They shined their flashlights into the truck and saw Mr. Settle sitting in the driver's seat and Ms. Whitehead sitting in the passenger's seat, both "slumped over." App. 31 ¶ 5. Collier then attempted to open the driver's side door, but it was locked. App. 6 ¶ 2; 32 ¶ 1.

According to Collier, it was at that point the deputies identified themselves and told Mr. Settle and Ms. Whitehead to exit the truck, but they refused. App. 6 ¶ 2; 32 ¶ 1. He then attempted to break the driver's side window with his baton. App. 6 ¶ 2; 32 ¶ 1. As he did so, Collier saw Settle "dig and reach around with his hands in the center console" and heard what he thought was the jingle of keys. App. 6 ¶ 2; 32 ¶ 2.

Settle reportedly started the truck and pulled the gear shift down as if to put it in reverse, which scared Collier. App. 6 ¶ 3; 32 ¶ 2. In response, Collier threw his flashlight to the ground, stepped back from the vehicle, and then tripped over an object in the yard, causing him to fall to the ground. App. 6 ¶ 2; 32 ¶ 4. He stated that he regained his balance and he drew his weapon, then fired two shots into the driver's side window, ultimately killing Settle. App. 6-7; 32-33.

In the days following the shooting, Collier stated that the truck was “coming at [him],” describing it as approaching head-on. App. 22 ¶ 2. He further explained that he was “in [a] corner” and attempting to evade the vehicle to avoid contact, reiterating that the truck “coming at [him].” *Id.* Collier also stated that “[w]hat was going through [his] mind was [he] hope[d] he continue[d] to go in reverse,” explaining that he “would have pretty much just let him leave” had the vehicle continued in that direction. USCA Doc. 19-1 at 144:18–22; Doc. 19-2 at 168:2–4.

Whitehead’s account differs materially. She explained that she and Settle did not immediately recognize Hart and Collier as law enforcement when they entered the backyard because, in the darkness, they could see only flashlights approaching, not the officers’ uniforms. App. 22 ¶ 3; Doc. 19-3 at 112:1-25, 115:10-13. She recounted that the officers did not verbally identify themselves as law enforcement when they approached the truck and attempted to open its doors. App. 22 ¶ 3. According to Whitehead, it was only after the officers came closer that she and Settle were able to discern that the individuals were deputies. *Id.* Upon realizing this and being instructed to unlock the doors, Whitehead complied. *Id.* Despite this, Collier did not attempt to open the doors, but instead threatened he would break the window with his baton unless they unlocked them. *Id.*; App. 32 ¶ 1.

Whitehead stated that Settle started the truck after Collier threatened to break the driver’s side window. App. 22 ¶ 4. She testified, however, that the truck

“never moved an inch” after it was started. *Id.*; App. 6 ¶ 3. According to Whitehead, the deputies fired at “almost the exact time” the engine turned over. App. 22 ¶ 4. She explained that she did not hear the gunshots because they were drowned out by the truck’s loud ignition and realized that shots had been fired only when she felt a burning sensation in her leg from gunpowder and heard Settle exclaim, “Oh my God. Oh, my God.” App. 22-23.

Both bullets went through the driver’s side door, striking and killing Settle. App. 7 ¶ 1. No one disputes that Collier opened the driver’s side door and rendered aid to Settle while Hart removed Whitehead and placed her in the back of his patrol car.

Settle’s toxicology report showed both methamphetamine and THC carboxy in his blood at the time of death. App. 7 ¶ 2. Although Collier initially claimed that he was aware Settle had a “narcotics violation history,” he later recanted that assertion during his deposition. USCA Doc. 19-2 at 130:20-23, 150:1-20; USCA Doc. 19-1 at 167:2-23. Collier had no way of knowing if Settle was under the influence of narcotics at the time fired his weapon.

In the aftermath of the shooting, the Estate presented expert testimony from forensic services specialist Kelly Timms. Timms opined that Collier was not positioned directly in front of the truck at the time he fired and therefore was not in the vehicle’s path or at risk of being struck. App. 7-8, 23 ¶ 3, 33 ¶ 2. Instead, Timms concluded that Collier was standing alongside the truck, aligned with the

structural area between the front windshield and the front side doors—otherwise referred to as the “A-pillar.” App. 8 ¶ 1, 23 ¶ 3, 33 ¶ 2.

In sum, the record reflects stark, material disputes of fact, namely: (1) whether the officers identified themselves as law enforcement; (2) whether Settle ever moved the truck after starting it; and (3) whether Collier was positioned in or near the path of the truck and faced any imminent risk of being struck at the time he fired.

B. Procedural History

Petitioner Kimberley Settle is Jacob Settle’s mother. She filed suit in the district court against Deputy Collier (Respondent), Deputy Hart, and the Escambia County Sheriff. She subsequently dismissed her claims against Deputy Hart, and the district court dismissed the claims against the sheriff. This left two claims pending against Respondent: a § 1983 claim for excessive force in violation of the Fourth Amendment and a state-law claim for battery under Florida law.

On July 1, 2024, the district court denied Respondent’s motion for summary judgment, holding that, when the facts are viewed in the light most favorable to the Estate, a reasonable jury could find that Settle’s vehicle posed no immediate threat of physical harm and that Deputy Collier’s use of deadly force was therefore unreasonable. The court further concluded that, under clearly established law at the time of the incident, a reasonable officer would have been on notice that the

use of deadly force in the absence of an immediate threat violates the Fourth Amendment. Petitioner timely appealed to the Eleventh Circuit.

On December 9, 2025, a divided panel of the Eleventh Circuit reversed and remanded with instructions to enter judgment for Respondent on both the federal and state-law claims. The two-judge majority held that Collier was entitled to immunity as a matter of law, because he “had an objectively reasonable belief that deadly force was necessary to protect his and Hart’s lives.” App. 11 ¶ 2. In its Opinion, the Eleventh Circuit, purporting to view the evidence in the light most favorable to the Estate, concluded that Settle’s act of starting the engine and placing the truck in gear was “escalatory” because “[c]ommon sense would suggest that Settle’s next step would be to drive—not to remain stationary.” App. 12 ¶ 2.

Judge Abudu dissented, emphasizing that the record in this case presents conflicting evidence regarding the material fact of whether Deputy Collier was near or in the path of Settle’s truck, as well as if and how Settle’s truck was moving to justify Collier shooting into it and killing Settle. Thus, Judge Abudu explained, the district court correctly concluded that these factual disputes, when taken in the light most favorable to Settle’s estate (the “Plaintiff”), could allow a reasonable jury to find that Settle’s vehicle did not present an immediate threat of physical harm, thereby making Collier’s use of deadly force unreasonable. App. 20 ¶ 1.

Petitioner’s request for rehearing and en banc review was denied on February 3, 2026. This Petition follows.

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit's Decision Directly Conflicts with Controlling Supreme Court Precedent

The case warrants review under Supreme Court Rules 10(a) and 10(c). The decision below departs from established standards governing Fourth Amendment use-of-force analysis, creating a dangerous expansion of circuit court authority that warrants this Court's intervention.

The lower court's decision erodes judicial precedent along both horizontal and vertical axes,¹ expanding its own authority while constricting the fact-finding role of lower courts and disregarding prior precedent. Vertically, it dissolves the hierarchy that grounds the legitimacy of and deference to trial courts' second-guess the district court's determination of which facts are genuinely disputed for trial.² Horizontally, the opinion distorts its Fourth Amendment analysis to the

¹ See Frederick Schauer, *Stare Decisis—Rhetoric and Reality in the Supreme Court*, 2018 SUP. CT. REV. 121, 124-25 (summarizing the distinction between “vertical” precedent, a “feature of a judicial system in which lower courts . . . treat higher court decisions on matters of legal interpretation and application as if they were law themselves” and “horizontal” precedent, i.e. stare decisis, “the obligation of a court to follow the previous decisions of the same court”)

² FED. R. CIV. PRO. 52(a)(6) (“Findings of fact . . . must not be set aside unless clearly erroneous.”); see also Ricky J. Marc, *Qualified Immunity: Emerging Fault Lines in the Eleventh Circuit*, 16 U. MIA Race & Soc. Just. L. Rev. 211 (2026). Available at: <https://repository.law.miami.edu/umrsjlr/vol16/iss2/5>

point of irreconcilable conflict with Supreme Court precedent, creating doctrinal inconsistency at the circuit level where none should exist. Both warrant the exercise of this Court's supervisory authority.

A recurring departure from this Court's precedent has persisted in the lower courts, where denials of qualified immunity are reviewed without proper consideration of the totality of the circumstances in the light most favorable to the nonmoving party. But the court below has taken this misapplication a dangerous step further: it offered an irreconcilable account of the underlying events, disregarded the district court's determination of genuinely disputed facts, credited assertions advanced by Deputy Collier the district court had already rejected, and introduced new factual narratives of its own.

The touchstone of the Fourth Amendment is reasonableness. Given the difficult nature of police encounters, the Court has recognized that officers do have "the right to use some degree of physical coercion or threat thereof to effect it." *Graham v. Connor*, 490 U.S. 386, 396 (1989). Nonetheless, the "proper application" of the reasonableness standard "requires careful attention to 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." *Id.* (citing *Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985)). The ultimate inquiry is whether the officers' actions were "objectively reasonable" in light of the

facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* At 397 (citing *Scott v. United States*, 436 U.S. 128, 137–139 (1978)). The standard, in short, is an objective one, anchored in the realities of the encounter.

Here, the realities of the encounter between Mr. Settle and Deputy Collier that night point to affirmative evidence to support the Plaintiff's claims that when Deputy Collier shot Mr. Settle, Mr. Settle posed no reasonable threat of harm to the him or others. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986) (“[T]he plaintiff must present evidence in order to defeat a properly supported motion for summary judgment.”).

A. The Eleventh Circuit's Resolution of Material Factual Disputes Contradicts Basic Summary Judgment Principles and Fundamentally Misconstrues the Record.

The lower court's departure from the totality-of-the-circumstances analysis clarified in *Barnes* cannot be understood without first acknowledging its threshold failure to adhere to basic summary judgment principles. Summary judgment is appropriate when the moving party (and in the context of qualified-immunity appeals, the defendant is nearly always the moving party) shows that no genuine issues of material fact exist, such that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). When reviewing a district court's denial of qualified immunity at summary judgment, a majority of circuit courts have

jurisdiction to address only the clarity of the alleged constitutional violation and may not look behind the district court's assumed facts³, nor second-guess the district court's determination of which facts are genuinely disputed for trial.⁴ See *Johnson v. Jones*, 515 U.S. 304, 319 (1995). It remains true that jurisdiction may still exist where the parties debate not only evidentiary sufficiency issues but also an "abstract issue of law" related to qualified immunity. *Behrens v. Pelletier*, 516 U.S. 299, 312-13 (1996); *Nelson v. Tompkins*, 89 F.4th 1289, 1295 (11th Cir. 2024) (internal citations omitted). All the while, this Court has noted that an officer's claims of qualified immunity hardly present "purely legal" issues capable of resolution "with reference only to undisputed facts." *Ortiz v. Jordan*, 562 U.S. 180, 190 (2011) ("Cases fitting that bill typically involve contests not about what occurred, or why an action was taken or omitted, but disputes about the substance and clarity of pre-existing law" (emphasis added)).

The Eleventh Circuit, falling within the minority, interprets *Johnson* as limited only to the unusual case where "the only question before an appellate court is one of pure fact." *Hall v. Flournoy*, 975 F.3d 1269, 1276 (11th Cir. 2020) (emphasis in original); *Aguirre v. Seminole County*, 158 F.4th 1276, 1291 (11th

³ Lammon, Bryan (2021), *Assumed Facts and Blatant Contradictions in Qualified-Immunity Appeals*, Georgia Law Review: Vol. 55: No. 3, Article 2. Available at: <https://digitalcommons.law.uga.edu/blr/vol55/iss3/2>.

⁴ MARC, *supra* note 2, at 216

Cir. 2025) (*Johnson* inapplicable so long as the appeal “implicates both an issue of fact and an issue of law”). But even when both the evidentiary sufficiency and the question of clearly established law are raised on appeal (permitting the appellate court to choose to conduct its own analysis of the facts) it cannot “disturb a factual finding by the district court if there is any record evidence to support that finding.” *Nelson*, 89 F.4th at 1296. The court must instead take the facts as the district court saw them.⁵ *Id.*; see also *Johnson*, 515 U.S. at 319.

Regardless of which circuit court’s review is applied, courts must properly credit the evidence and draw reasonable factual inferences in favor of the nonmoving party. See *Brosseau v. Haugen*, 543 U. S. 194, 195, n. 2 (2004) (per curiam); *Saucier v. Katz*, 533 U. S. 194, 201 (2001). The importance of doing so has been outlined by this Court in *Tolan v Cotton*:

The witnesses on both sides come to this case with their own perceptions, recollections, and even potential biases. It is in part for that reason that genuine disputes are generally resolved by juries in our adversarial system. By weighing the evidence and reaching factual inferences contrary to Tolan’s competent evidence, the court below neglected to adhere to the fundamental principle that at the summary judgment stage, reasonable inferences should be drawn in favor of the nonmoving party.

⁵ *Johnson*’s jurisdictional rule admits a narrow exception where the version of events credited by the district court is “blatantly contradicted by the record.” *Scott v. Harris*, 550 U.S. 372, 380 (2007). Although Deputy Collier attempted to invoke *Scott*’s blatant-contradiction exception, the panel neither addressed the misapplication nor clarified the limits of its appellate jurisdiction. See USCA Doc. 18 at 23, 46 (App. Brief at 12, 35).

572 U. S. 650, 660 (2014) (per curiam).

Here, the only true issues on appeal were factual disputes. The district court's order and Justice Abudu's dissent took similar forms, grounding their rulings in two significant disputed facts: (1) Collier's physical position at the time of the shooting; and (2) the truck's alleged movement. App. 23 ¶ 3, 33 ¶ 2. Both recognized that a reasonable juror could interpret the events on the night of the shooting differently. More importantly, the discrepancy about what the evidence could prove at trial was the basis on which the district court made its decision. Even Deputy Collier concedes that he could not have reasonably used deadly force had Mr. Settle been retreating from the scene. App. 27 ¶ 2. So, this dispute comes down to the officers' position at the time of the shooting, as well as how and if the truck moved. These are both factual disputes appropriate for a jury.

Nevertheless, the Opinion below collapsed factfinding into lawmaking. The fact that the district court judge and dissenting judge disagreed about the disputed of circumstances surrounding the shooting shows that reasonable jurors could do the same. *See Scott v. Harris*, 550 U.S. 372, 396 (2007) (Stevens, J., dissenting) ("If two groups of judges can disagree so vehemently about the nature of the pursuit and the circumstances surrounding that pursuit, it seems eminently likely that a reasonable juror could disagree with this Court's characterization of events"). By unilaterally revising the factual findings developed below in a way

that is inapposite to the Estate's favor, the majority panel undermined the fundamental premise that law must be built on facts found in the first instance.

B. The Opinion Conflicts with *Barnes* and Ignores Decades of Fourth Amendment Jurisprudence.

Had the lower court's misstep ended there, this case would not present such a compelling need for this Court's intervention. But the Opinion below goes further, encroaching on the substantive protections of the Fourth Amendment itself.

In *Barnes v. Felix*, this Court clarified that the “totality of the circumstances” inquiry requires courts to consider the events leading up to the “climactic moment” of force when deciding whether the officer's conduct was reasonable. 605 U.S. 73, 76 (2025). *Barnes* reflects the common law's long-standing protection of human life, which this Court recognized in *Tennessee v. Garner*, 471 U.S. 1, 12–13 (1985), as strictly limiting officers' use of deadly force—especially against fleeing suspects accused of minor offenses. Building on that principle, *Graham v. Connor* set the operative framework for the “proper application” of the reasonableness test, requiring careful attention “to 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.” 490 U.S. at 396, citing *Garner*, 471 U.S. at 8–9.

The majority opinion disregards these foundational principles. Specifically, while acknowledging that “the severity of the crime prompting [the encounter] can carry weight” in the reasonableness analysis, the opinion artificially fractured the inquiry by asserting that “[s]ometimes, an officer does not have time to reflect and consider why the encounter was initiated—whether it was a routine *Terry* stop or a high-speed chase.” App. 16 ¶ 2. *Graham* accounted for precisely those split-second conditions, explaining that reasonableness must allow “for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving”. 490 U.S. at 396. Even so, this Court has never endorsed an approach that confines the analysis to the “moment of threat” to the exclusion of the totality of the circumstances. Yet the majority did precisely what *Barnes* forbids—collapsing the inquiry to the instant before Deputy Collier fired, while refusing to account for the broader context bearing on the immediacy and severity of any threat.

Instead of sloshing through the “factbound morass” and “careful[ly] balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake,” the panel substituted its own reconstructed narrative for the record below—reweighing disputed evidence, resolving credibility determinations, and imputing intent to the deputy in hindsight despite testimony to the contrary.

Barnes, 605 U.S. at 675 (citing *Scott*, 550 U.S. at (quotations omitted) and *Graham*, 490 U.S. at 396 (quotations and citations omitted)).

In constructing a different factual account, the majority asserts that Deputy Collier feared for his life when Settle put the truck into gear, that Deputy Collier “could have reasonably perceived that he was in the path of the vehicle,” and that he “reasonably could have feared being struck if the vehicle went in reverse.” App. 14 ¶ 2. These assertions are unconvincing as a matter of common sense and improper as a matter of law for the following reasons.

First, the record reflects the opposite. Deputy Collier testified that when he saw Mr. Settle grab the keys from the center console, “it crossed [Collier’s] mind that he’s probably going to try and escape to start the truck.” USCA Doc. 19-2 at 156:14-16. In fact, Deputy Collier *hoped* Mr. Settle would “continue[] to go in reverse and just get[] out of here,” USCA Doc. 19-2 at 168:2-4, explaining that if Mr. Settle had “continued in reverse and left and exited the yard, [Collier] would have pretty much let him leave,” USCA Doc. 19-1 at 144:20–22. Second, it disregards the undisputed facts in the record and fails to draw all reasonable inferences in favor of the Estate as the nonmoving party in resolving disputed facts.

Properly viewed, the record would permit a reasonable juror to find that no immediate threat existed. Although Mr. Settle had shifted the truck into gear, it remained stationary—an objective and highly probative fact cutting directly

against any claim that the vehicle was being used, or was about to be used, as a deadly weapon. *See Vaughan v. Cox*, 343 F.3d 1323, 1329–31 (11th Cir. 2003). The majority’s contrary account finds no support in the evidence. There is no record evidence that the air-conditioning unit or surrounding debris obstructed Deputy Collier’s path, or that retreat would have forced him into the truck’s trajectory. App.16. To the contrary, Collier himself estimated that he stood approximately eight feet from the truck when he fired, and the Estate’s expert opined—without contradiction—that Collier was not positioned directly in the truck’s path, but was instead off to the side, near the A-pillar, outside any immediate zone of danger. On this record, a jury could readily conclude that a reasonable officer would not have perceived an imminent threat of serious harm—particularly when the full context is considered, including the non-violent nature of the warrant, Collier’s own testimony that if Mr. Settle would have reversed he would have permitted him to leave, and the absence of any aggressive use of the vehicle. The majority does not simply misapply settled law; it discards the totality-of-the-circumstances inquiry that *Barnes* requires, substituting instead a narrowed and legally erroneous conception of reasonableness that cannot be reconciled with governing Fourth Amendment standards.

The majority next asserts that “[c]ommon sense would suggest that Settle’s next step would be to drive—not to remain stationary.” App. 12 ¶ 2. But that

assertion is neither compelled by the record nor consistent with the governing summary judgment standard.

This Court has long made clear that “[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge,” and that at summary judgment “[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The majority’s “common sense” prediction does the opposite: it adopts a speculative inference drawn in its own favor rather than the Estate’s—exactly the approach this Court and the Eleventh Circuit itself have repeatedly forbade. *See Harrigan v. Metro Dade Police Dep’t Station #4*, 636 F. App’x 470, 474 (11th Cir. 2015) (“We must further assume that, although Defendant had reason to suspect Plaintiff was driving a stolen vehicle, he had no other indication that Plaintiff was dangerous or posed an imminent threat of harm. If these assumptions prove to be true, Defendant’s conduct was unreasonable, and thus unconstitutional”). The record does not establish what Mr. Settle would have done next, and it is not the role of a court at summary judgment to resolve such uncertainty by resorting to conjecture, much less conjecture that disfavors the nonmoving party.

Courts should feel no “heartburn with the notion that [a] dispute can go to trial.” *Spiller v. Harris County*, 113 F.4th 573, 582 (5th Cir. 2024) (Willett, J., concurring) (citation and internal quotation marks omitted). “There, in a solemn

United States courtroom,” the law “can be vindicated by a jury,” rather than “three appellate judges playing junior-varsity jury.” *Id.* It was precisely this kind of predictive reasoning—premised on a perceived risk of future harm—that led Justice Stevens to observe that his colleagues were acting more like a “jury” than neutral arbiters. *Scott*, 550 U.S. at 392 (Stevens, J., dissenting) (referring to the evidence seen by and reasoning of “[m]y colleagues on the jury”).

This departure is particularly consequential in the excessive-force context, where the risk of future danger is distinct from the reality of a present threat. As one court has explained, “[a] future hypothetical—plausible or not—is not a justification for the use of significant force because a threat cannot be immediate when it has not yet materialized.” *Anderson v. Avond*, 631 F. Supp. 3d 721, 737 (D. Minn. 2022) (citing *Tatum v. Robinson*, 858 F.3d 544, 548–49 (8th Cir. 2017)).

By substituting its own preferred inference—that Mr. Settle must have been about to drive—the majority does not simply misread the record; it usurps the jury’s role. Its conclusion that “common sense” dictated that Mr. Settle would move the vehicle rests on an unexplained and unsupported assumption, untethered to the evidentiary record and unaccompanied by any principled standard for determining whose “common sense” governs.

In the same fashion, the Opinion concludes that even if the truck never moved, Deputy Collier could reasonably perceive that Mr. Settle’s vehicle was a deadly weapon. App. 12 ¶ 2. Once again, such a conclusion cannot be reconciled

with the court's obligation to view the evidence in the light most favorable to the non-moving party. Proper application of that standard forecloses speculation about hypothetical dangers and instead requires reliance on the actual record. Here, the majority's conclusion rests not on the actual record, but on a series of layered assumptions about what Deputy Collier could or could not have done:

- “Had Collier tried to escape by rushing directly away from the house toward the back of the truck, the air conditioning unit and debris would have obstructed his path.”
- “Moving the other way would have required him to step in front of the vehicle which had been put into gear.”
- “So even if there were a clear path of escape, Collier would not have been able to see it.”

App. 15-16.

Each premise reflects an assumption that resolves factual uncertainty in favor of the moving party, even though the record shows that Deputy Collier stood approximately eight feet to ten feet from a stationary truck and outside its path when he fired his weapon. App. 6-7, 40; USCA Doc. 19-1 at 145:5-10. A juror could credit the Estate's expert and find that Deputy Collier was positioned “closer to the end of the porch,” rather than trapped between the house and the truck. App. 40 ¶ 1. On that record, the district court correctly determined that, resolving factual disputes in favor of the Estate, “a jury could reasonably infer that [Settle's

actions], in context, did not amount” to a threat that he would “inflict harm” on Collier. *Tolan*, 572 U. S., at 658. The panel majority “may have disagreed with that inference, but it was the jury’s to make.” *N.S. v. Kan. City Bd. of Police Comm’rs*, 143 S. Ct. 2422, 2423 (2023) (Sotomayor, J., dissenting).

Petitioner does not contend that this Court should act as a court of error correction. Rather, this case presents the rare but well-recognized circumstance warranting review: a lower court’s clear misapprehension of the governing legal standard at a critical stage of the litigation. This Court’s precedents make clear that such departures—particularly in the excessive force and summary judgment context—require correction to preserve the integrity and uniform application of constitutional protections.

II. The Eleventh Circuit’s Departure from Settled Law Undermines Constitutional Safeguards.

A. The Majority’s Mischaracterization of the Record Threatens Summary Judgment Integrity.

By replacing record-based analysis with layered inferences, the majority invites speculation, undermining Fourth Amendment protections and displacing the jury’s role.

While acknowledging that “[t]he constitutional test for excessive force is necessarily fact specific,” *McCullough*, 559 F.3d at 1206”, the majority panel nonetheless accused the Estate of advancing “a categorical rule that officers

cannot reasonably perceive that a vehicle has been converted into a deadly weapon either until the vehicle moves or unless the suspect's behavior before the incident established that he was dangerous." App.13 ¶ 2

The panel's misstatement of the Estate's position functions to substitute its own account of events for one grounded in the evidentiary record, without acknowledging that substitution. The Estate does not seek a bright-line rule; it asks only that settled Fourth Amendment principles be applied in the ordinary way: by allowing a jury to resolve disputed facts and draw reasonable inferences.

Rather than identifying clear error in the district court's findings or challenging the dissent's record-backed narrative, the panel majority adopted its own version of the facts as settled. It presents its narrative as both explicitly what occurred and implicitly what is undisputed. Treating contested evidence as self-evident truths allows the majority to obscure the record and bypass appellate scrutiny of how those flawed facts drive its Fourth Amendment analysis.

Applying the same logic in reverse would allow judges to discount officers' real-time threat assessments, substituting them with idealized, post-hoc alternatives. Under this approach, a court can speculate that an officer should have waited, taken cover, attempted less-lethal methods, or assume that "common sense" would suggest a suspect was unarmed or compliant despite ambiguous movements—thereby using hindsight to negate the existence of a reasonable threat. This invalidates split-second decisions based on imagined, alternative

scenarios and turns the required fact-specific, on-scene inquiry into abstract conjecture untethered from the evidentiary record.

The district court held that the materially disputed facts could allow a reasonable jury could find that Settle's vehicle did not pose an immediate threat of serious harm, rendering Collier's use of deadly force unreasonable—a conclusion Judge Abudu endorsed in a nine-page dissent. The panel majority, however, departed from that standard by substituting its own view of the disputed facts.

Under the panel majority's approach, courts may disregard the requirement to view materially disputed facts in the light most favorable to the nonmovant and instead make their own credibility determinations and resolve conflicting stories, even though those disputes bear on the dispositive question—whether, at the moment each shot was fired, the use of force was reasonable under the totality of the circumstances. That approach authorizes courts to bypass the jury's constitutionally assigned role and invites judges to reconstruct events rather than adhere to the evidentiary record. Absent this Court's review, the decision threatens to normalize judicial factfinding at summary judgment and to distort the uniform administration of Fourth Amendment principles.

Moreover, by recasting the facts to sustain conduct that pushes beyond established Fourth Amendment limits, the Eleventh Circuit leaves unclear what constraints, if any, govern the use of deadly force or how similar claims should be

evaluated going forward. If minimal and ambiguous conduct can be construed as sufficiently threatening, then what circumstances would fall outside that category? The opinion offers no limiting principle.

That uncertainty creates asymmetric incentives for lower courts: denying relief based on officer-favorable assumptions carries little risk, while crediting record evidence suggesting unreasonableness invites reversal. The predictable result is diminished judicial scrutiny in excessive-force cases and further erosion of the jury's role.

B. The Panel Effectively Established a Per Se Rule Permitting Lethal Force for Mere Noncompliance

Under *Tennessee v. Garner*, 471 U.S. 1, 20–21 (1985), it is unreasonable to use deadly force simply because a felon flees the scene—let alone someone who *might* be considering flight.

By its reasoning, the lower court reduces *Garner*'s prohibition on killing fleeing suspects to a nullity whenever a judge believes it is “common sense” to infer the driver would have moved. Instead, under the Eleventh Circuit's approach, an officer may employ deadly force against a stationary driver based merely on the officer's belief that the driver might attempt to flee, justified by a post hoc assertion that the suspect was planning an escape.

The majority denotes *Long v. Slaton* as instructive:

While the car had not yet become a “deadly weapon” at the time of the shooting, the plaintiffs “unstable frame of mind, energetic

evasion of the deputy's physical control, . . . criminal act of stealing a police cruiser, and [his] starting to drive . . . gave the deputy reason to believe that [he] was dangerous." *Id.* at 581–82. (footnote omitted).. 508 F.3d 576 (11th Cir. 2007).

App. 12 ¶ 1.

Mr. Settle did not energetically evade the officers' control nor engage in conduct amounting to theft of a police cruiser. Rather, he turned on the ignition of his own car when instructed to exit the vehicle. Turning on the ignition may have been a failure to comply with an order, but it cannot be fairly characterized as conduct to give Deputy Collier reason to believe he was dangerous as the suspect was in *Long*. Moreover, the toxicology report showing both methamphetamine and THC carboxy in his blood at the time of death cannot be considered in comparing Deputy Collier's knowledge to the *Long* defendant, who knew the suspect was mentally unstable prior to the encounter.

The majority minimized these distinctions as documented by the Estate's Answer Brief and the trial court's factual findings. *See* App. 43; *see also* USCA Doc. 24 at 42-43. Instead, it adopted a construction of the "totality of the circumstances" that permits reliance on speculative facts: those that might have been, rather than those actually supported by the record.

In the excessive-force context, this approach is particularly problematic. By inserting judicial assumptions about how an encounter might unfold, the court dilutes the required individualized assessment and inflates perceived threat levels untethered to objective evidence. *See Tolan*, 572 U. S., at 660. Mere

noncompliance, standing alone, does not establish a threat of serious physical harm to officers or others. Allowing courts to supply missing facts through “common sense” reasoning transforms the Fourth Amendment inquiry into one governed by post hoc rationalization rather than contemporaneous, fact-bound analysis.

By relying on its own idealized, assumption-based narratives of how the encounter should or might play out, the Eleventh Circuit authorizes the use of deadly force based on minimal, non-threatening acts of noncompliance, such as failing to keep both hands on the wheel, transforming routine or ambiguous behavior into a constitutionally sufficient basis for lethal force. While the Fourth Amendment does not “require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect,” *Long*, 508 F.3d at 581, this principle does not negate the requirement that officers possess a basis to conclude that such a point is imminent. It permits reasonable anticipation of danger—not the judicial creation of it.

By treating minimal and ambiguous conduct as inherently threatening, the court effectively collapses the distinction between precaution and justification, allowing lethal force to rest on conjecture rather than concrete, particularized facts indicating a risk of serious physical harm. In doing so, the holding shifts the Fourth Amendment inquiry away from what the officer actually confronted and toward what the court later imagines could have occurred, undermining the

requirement that deadly force be grounded in an objectively reasonable perception of an immediate threat.

III. This Case is an Ideal Vehicle to Resolve Circuit Conflicts and to Promote Consistency in Fourth Amendment Application.

For decades, *Graham v. Connor* has guided lower courts in evaluating constitutional and federal excessive force claims by introducing an “objectively reasonable” standard for assessing excessive force that rises to the level of violating an individual’s 4th Amendment rights. 490 U.S. 386, 397 (1989). This standard recognizes that officers must make split-second decisions in tense, uncertain, and rapidly evolving circumstances. *Id.*, at 396–397. Nevertheless, the inquiry remains strictly objective, evaluating what a reasonable officer would have done in the same situation based on the information known at the time, rather than judging the officer’s actions in hindsight. *Id.* at 397.

Alongside the “objective reasonableness” inquiry, this Court has emphasized that use-of-force claims must be evaluated under the “totality of the circumstances,” requiring courts to consider the full context confronting the officer. *See generally Barnes*, 605 U.S. 73 (2025). That assessment includes familiar factors such as the severity of the crime, whether the suspect poses a threat to the safety of officers or others, and whether the suspect is resisting or attempting to flee. In practice, however, these factors often converge on a single, dispositive question: how immediate the perceived threat must be to justify force.

The weight given to “immediacy” frequently determines the outcome, as it shapes whether an officer’s use of force is viewed as a reasonable response to unfolding events. The pressing need for this Court’s review is highlighted by a deepening divide over the temporal nature of a threat.

1. Despite its central importance, the circuits diverge widely on what constitutes an “immediate” threat. See *Lytle v. Bexar County Tex.*, 560 F.3d 404, 415 (5th Cir. 2009) (“As the cases addressing this all-too-common scenario evince, the real inquiry is whether the fleeing suspect posed such a threat that the use of deadly force was justifiable”); see also *Heeter v. Bowers*, 99 F.4th 900, 914 (6th Cir. 2024) (reasoning that another officer’s failure to use deadly force when he similarly perceived the events undercut the defendant officer’s assertion that the plaintiff created an imminent threat of harm); *Jefferson v. Lias*, 21 F.4th 74, 85-86 (3d Cir. 2021) (“an otherwise non-threatening individual [] engaged in vehicular flight is entitled to be free from being subjected to deadly force if it is unreasonable for an officer to believe his or others’ lives are in immediate jeopardy from their actions”); *Monzon v. City of Murrieta*, 966 F.3d 946, 953-54 (9th Cir. 2020); *Watkins v. Davis*, 156 F.4th 1084, 1102 (11th Cir. 2025) (“And as we’ve explained, we must resolve the dispute of fact as to whether Officer Davis was ever even in the path of Watkins’s car in Watkins’s favor. Under that version of the facts, no one’s life was at risk”).

Some focus narrowly on the instant that force is used, effectively rejecting any meaningful consideration of whether the situation was still developing. Other circuits require a manifest and immediate danger before force is deemed reasonable. This split is outcome-determinative at the qualified-immunity stage, creating fractured constitutional standards nationwide and depriving both officers and citizens of fair notice.

2. At the same time, there is a growing trend among forward-thinking law enforcement agencies to recognize that *Graham* establishes only a floor, not a ceiling, for use of force policies. Leading institutions, such as Stanford Law School's Center for Racial Justice, report that nearly half of the police agencies in America's 100 largest cities have adopted stricter "necessity" standards that surpass *Graham's* baseline. See Dan Sutton and Fatima Dahir, *Police Use of Force Policies Across America*, Stanford Center for Racial Justice (June 2025). Yet lower courts move in the opposite direction, endorsing an artificially expansive view of "imminence" that dilutes constitutional protections. This Court's intervention is needed to clarify how immediate a threat must be to justify force and to prevent "imminence" from becoming an elastic label that swallows the Fourth Amendment. Absent such guidance, doctrine cannot evolve in a principled way, especially where, as here, courts recast narratives of "imminence" through their own skewed assumptions and resolve the genuine disputes of material facts rather than respecting them.

This case presents an ideal vehicle for the Court to provide operational definitions that currently breed confusion among both officers and reviewing courts. Although *Graham v. Connor* instructs courts to consider, among other things, “whether the suspect poses an immediate threat to the safety of the officers or others” and “whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight,” this Court has yet to articulate workable standards for applying those concepts in practice. That is, the Court has yet to articulate how a reasonable officer should assess an “immediate threat” or how to cleanly distinguish “active resistance” from an attempt to “evade arrest by flight.” While this Court’s decision in *Barnes* clarified the need for a holistic totality-of-the-circumstances inquiry, it left open the precise definitions of these core terms.

Meaningful guidance on how to evaluate the severity, likelihood, and immediacy of perceived threats—and clarifying what actually constitutes “active resistance”—would furnish a workable framework for both officers in the field and courts on review. Absent such definitions, lower courts have adopted divergent and incompatible interpretations, as illustrated by the panel majority’s resort to its own unguided assumptions of “common sense.”

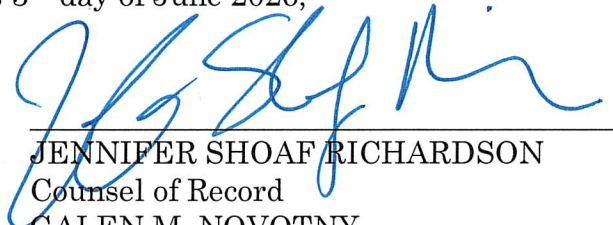
This Court’s intervention is needed to resolve this confusion, ensure a uniform application of *Barnes* and *Graham*, reduce unnecessary uses of force, and secure the consistent, fair application of Fourth Amendment protections.

CONCLUSION

This case presents an important and recurring federal question concerning the proper the proper boundaries of appellate review. By departing from factual findings and failing to view the evidence in the light most favorable to the nonmovant, the court of appeals undermines the foundation on which judicial decision-making rests. The rule of law depends on a shared commitment to facts, or at a minimum, to settled processes for determining them. It requires that litigants' evidence be taken seriously, credited where the governing standard requires, and evaluated through established procedures. Fidelity to those structural norms ensures uniformity, predictability, and legitimacy in the administration of federal law.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted on this 3rd day of June 2026,

A handwritten signature in blue ink, appearing to read "J. Shoaf Richardson", is written over a horizontal line.

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