

No. 25-7550

In the Supreme Court of the United States

KIMBERLY DIANE SETTLE, AS PERSONAL
REPRESENTATIVE FOR THE ESTATE OF
JACOB 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*

**BRIEF OF THE CATO INSTITUTE AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

The questions presented are:

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 reweighing the evidence under the guise of “common sense.”

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INTEREST OF *AMICUS CURIAE*¹

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999, and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement.

Cato's interest in this case arises from its commitment to defending the jury's constitutionally assigned role as a vital check on government abuse, as well as from its concern that insulating officials from accountability erodes the rule of law and the public's trust in law enforcement.

¹ Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

On the night of November 14, 2020, Jacob Settle and his wife Sophronia Whitehead left their house to visit a friend. Pet. App. 5. They exited through the back door into their yard where their truck was parked. *Id.* The yard was “pitch black” as the house did not have working exterior lights. *Id.* As the couple prepared to leave, two Escambia County, Florida, police officers arrived to serve a warrant. *Id.* at 4. “The parties dispute what happened next,” *id.* at 21, and the record contains conflicting accounts as to (1) what was visible from the backyard, (2) when the officers identified themselves, (3) whether Settle’s truck ever moved, and (4) whether Officer David Collier was even in the path the truck would have traveled when he fatally shot Settle. *Id.* at 21–22.

In November 2022, Settle’s estate filed suit under 42 U.S.C. § 1983 alleging that Collier violated his Fourth Amendment right to be free from excessive force. The district court denied Collier’s motion for summary judgment, but the Eleventh Circuit reversed based on its improper decision to resolve several factual disputes in lieu of a jury doing so. *Id.* at 19, 30.

The Founders did not view the civil jury as a mere formality, but rather a safeguard for liberty and the last line of defense against a government that might otherwise answer only to itself. The Seventh Amendment enshrined that protection in the Constitution, and when Congress enacted § 1983 following the Civil War, it designated the civil jury as the central mechanism for holding state officials accountable.

Qualified immunity corrodes the civil jury trial by filtering out valid claims when a right isn’t “clearly es-

tablished” by specific kinds of binding court precedent. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). For this reason and others, Justices of this Court have criticized the doctrine. *See, e.g., Ziglar v. Abbasi*, 582 U.S. 120, 157 (2017) (Thomas, J., concurring); *Kisela v. Hughes*, 584 U.S. 100, 121 (2018) (Sotomayor, J., dissenting).

The injustices caused by qualified immunity are exacerbated when courts usurp the jury’s role as factfinder. The rules governing summary judgment reflect the division of responsibility between courts and juries. A court may grant summary judgment only where there is no genuine dispute of material fact. In excessive-force cases—where the reasonableness of an officer’s conduct depends on what actually happened—factual disputes are routine. Facing them, a court’s task is not to supply the answers but only to ask whether a reasonable jury could find for the nonmoving party. This ensures that ordinary citizens decide whether official misconduct happened.

The Eleventh Circuit’s decision disregards these principles. Questions of fact surround this case: whether the officers identified themselves, whether Settle’s truck moved, when the shots were fired, and where Collier was standing. Pet. App. 6, 7–8, 22. These questions properly belonged to a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Yet in resolving each one, the Eleventh Circuit’s stance was clear: “We agree with Collier.” Pet. App. 11.

Decisions like the one below do more than just decide a case: they send a message about whose interests the law serves. *See Smith v. Kind*, 609 U.S. ___, at *8 (June 29, 2026) (slip op.) (Sotomayor, J., dissenting from denial of certiorari) (“Reversing only denials of

qualified immunity sends the regrettable message that, when choosing between shielding government officials from liability and vindicating individuals' constitutional rights, this Court will almost always choose the former."). The rule of law demands fairness and neutrality, yet qualified immunity makes courts complicit in excusing official misconduct. This ultimately makes policing more dangerous and harms the public.

This Court should grant certiorari, reverse the Eleventh Circuit's decision, and remand the case so that a jury of ordinary people—not a panel of three judges—can assess what happened the night Settle died.

ARGUMENT

I. THE DECISION BELOW FURTHER ERODES THE RIGHT TO A CIVIL JURY TRIAL.

A. Juries are fundamental to civil justice.

The right to a civil jury trial has deep roots in the Anglo-American legal tradition and was cherished by the Founding Generation as a fundamental safeguard for liberty. "Legal writers and political theorists who were widely read by the colonists were firmly of the opinion that trial by jury in civil cases was an important right of freemen." Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 MINN. L. REV. 639, 653–54 (1973). Alexander Hamilton defended the civil jury as a vital protection against oppression, observing that English friends of liberty had long regarded the jury trial as "the very palladium of free government." THE FEDERALIST No. 83 (Alexander Hamilton). Thomas Jefferson described jury trials as "the only anchor, ever yet imagined by man, by which

a government can be held to the principles of its constitution.” Letter from Thomas Jefferson to Thomas Paine (July 11, 1789); *see also Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343 n.10 (1979) (Rehnquist, J., dissenting).

These opinions were formed through colonial Americans’ experience with governmental abuse. As this Court recently noted, “[w]hen the English began evading American juries by siphoning adjudications to juryless admiralty, vice admiralty, and chancery courts, Americans condemned Parliament for subvert[ing] the rights and liberties of the colonists.” *SEC v. Jarkesy*, 603 U.S. 109, 121 (2024) (internal quotation marks and citation omitted). The First Continental Congress demanded for Americans the “great and inestimable privilege of being tried by their peers of the vicinage.” Declaration and Resolves of the First Continental Congress of 1774, *reprinted in* DOCUMENTS ILLUSTRATIVE OF THE FORMATION OF THE UNION OF THE AMERICAN STATES doc. no. 398 (Charles C. Tansill ed., 1927).² The Declaration of Independence accused King George of “[d]epriving us in many cases, of the benefits of Trial by Jury.” *Declaration of Independence: A Transcription*, NAT’L ARCHIVES.³ It was against this backdrop of abuse—and near-universal esteem for the civil jury—that the Framers enacted the Seventh Amendment.

The Framers intended for the jury to be a “bulwark against tyranny and corruption,” *Parklane Hosiery Co.*, 439 U.S. at 343 (Rehnquist, J., dissenting)—guarding against overreach by not only the executive

² Available at <https://tinyurl.com/23jun5c4>.

³ Available at <https://tinyurl.com/492ckm2z>.

but the judiciary as well. *See Jarkesy*, 603 U.S. at 127. The jury system injects the judgment of ordinary citizens between the government and the governed, reserving factual questions for members of the community rather than officials who may be susceptible to political pressure. *See* Kathleen M. O'Malley, *Trial by Jury: Why It Works and Why It Matters*, 68 AM. U.L. REV. 1095, 1098 (2019). This structural role is not merely historical. This Court reaffirmed in *Jarkesy* that the Seventh Amendment's protections remain vital to "the separation of powers that the Constitution demands." *See Jarkesy*, 603 U.S. at 140.

B. Qualified immunity disposes of valid cases.

Qualified immunity undermines the Seventh Amendment, blocking cases involving egregious constitutional violations from ever reaching a jury.

Under qualified immunity, a government official is immune from suit "insofar as [his] conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity analysis depends on two considerations: (1) whether the alleged conduct violated a constitutional right and (2) whether that right was clearly established as a matter of law at the time of the alleged violation. *See Pearson*, 555 U.S. at 232. Lower courts can address these prongs in either order—a court may grant immunity based on the "clearly established" prong without ever determining whether a constitutional violation occurred in the first place. *See id.* at 236. Judges, then, can resolve suits in favor of officers without making any factual findings whatsoever.

The consequences for the civil jury trial right are dire. When a court proceeds directly to the “clearly established” prong, it determines whether factfinding is permitted at all. Instead of inviting a jury to decide disputed facts, as the Seventh Amendment and § 1983 demand, qualified immunity brings a case to a premature close in government officials’ favor.

C. Courts exacerbate the evils of qualified immunity by deciding questions of fact.

Even when courts do decide whether a plaintiff has alleged a constitutional violation, they often usurp the jury’s role by going further and resolving reasonableness—as did the court below. “Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Anderson*, 477 U.S. at 255. The Constitution reserves these tasks “to the American people”—not that subset of it privileged to wear judicial robes. *Erlinger v. United States*, 602 U.S. 821, 835 (2024).

One such function is determining the reasonableness of an officer’s use of force. Reasonableness is “the ultimate touchstone of the Fourth Amendment.” *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). It entails a “factbound morass” encompassing “the totality of the circumstances.” *Barnes v. Felix*, 605 U.S. 73, 80 (2025); *see also* Alan K. Chen, *The Facts about Qualified Immunity*, 55 EMORY L.J. 229, 263 (2006) (“[A]ny legal standard defined by the reasonableness of an individual’s behavior requires close examination of the relevant facts.”). Reasonableness is precisely the kind of hyper-factual question the Constitution leaves to juries, as this Court has recognized. *See Ohio v. Robinette*, 519 U.S. 33, 39 (1996); *Graham v. Connor*,

490 U.S. 386, 396–97 (1989); *Brosseau v. Haugen*, 543 U.S. 194, 206 (2004) (Stevens, J., dissenting) (writing that split-second decisions about deadly force are “quintessentially” jury questions).

The last body capable of resolving factual questions is an appellate court. Even were they permitted to do so, they are ill-equipped for the job. *See Keith v. Griffiths*, No. 24-3444, 2025 U.S. App. LEXIS 14025, at *14 (6th Cir. June 6, 2025) (reversing and remanding qualified immunity case because factual disputes “are best left to the jury to resolve”). Juries hear live testimony, observe witness demeanor, weigh credibility firsthand, and deliberate collectively as a cross-section of the community. Appellate courts do not. “At best, the [appellate] court may be looking at a paper record,” Chen, *supra*, at 271—one that cannot capture the “perceptions, recollections, and even potential biases” displayed subtly on witnesses’ faces and in their voices. *Tolan v. Cotton*, 572 U.S. 650, 660 (2014). An appellate court’s decision directing summary judgment means a party “never gets the facts before a jury, whose role it is to decide ‘questions of human behavior, reasonableness, and state of mind.’” Nicholas T. Davis & Phillip B. Davis, *Qualified Immunity and Excessive Force: A Greater or Lesser Role for Juries*, 47 N.M. L. REV. 291, 294 (2017). Rather, those matters are left to “three appellate judges playing junior-varsity jury” off of lifeless transcripts. *Spiller v. Harris Cnty.*, 113 F.4th 573, 582 (5th Cir. 2024) (Willett, J., concurring).

Juries are not a mere formality in the context of an alleged constitutional violation. “If two minds are better than one, [then] nine, or twelve are better still.” O’Malley, *supra*, at 1102. A group of ordinary citizens brings to a case “common sense and community val-

ues” and avoids the “stereotypes that infect the judicial eye.” *Parklane Hosiery Co.*, 439 U.S. at 335 (Rehnquist, J., dissenting) (internal citation omitted). This is especially important in excessive-force cases given their importance for the life of the community and its prerogative of self-governance. “It takes a special type of arrogance to simply conclude that American jurors cannot handle complex issues involving . . . constitutional rights.” O’Malley, *supra*, at 1102–03. Ordinary citizens are constitutionally entitled “to participate in our democracy” by adjudicating claims of government abuse. *Id.* at 1109. The decision below denied them that opportunity by resolving reasonableness without their involvement.

II. THE ELEVENTH CIRCUIT IMPROPERLY APPLIED THE SUMMARY JUDGMENT STANDARD.

The decision below systematically resolved factual disputes in an officer’s favor—treating contested evidence as settled, drawing inferences against the non-movant, and substituting the court’s own assessment of reasonableness for a jury’s. It closed off the constitutionally and statutorily prescribed route leading from injury to redress.

Summary judgment is a narrow procedural device, appropriate only where there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). It is a “threshold inquiry” to determine “whether there is the need for a trial”—not authority for a court to make findings of fact. *Anderson*, 477 U.S. at 250; see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). At this stage, all evidence must be viewed and all reasonable inferences must be drawn in favor of the nonmoving

party. *Anderson*, 477 U.S. at 255; *Tolan*, 572 U.S. at 656. This standard is deliberately demanding, and if reasonable minds could differ on the evidence—if a rational jury “could return a verdict for the nonmoving party”—summary judgment is inappropriate. *Anderson*, 477 U.S. at 248.

Despite claiming to view the facts in Settle’s favor, the Eleventh Circuit resolved every factual dispute, and drew every inference, in Collier’s. Pet. App. 11. The parties disputed whether the officers identified themselves when entering Settle’s backyard. *Id.* at 22. They disputed whether he knew the officers were government agents rather than intruders. Settle’s wife Sophronia said the gunshots were “simultaneous” with the truck being turned on whereas Collier claimed that the truck was “coming at him” when he opened fire. *Id.* at 6–7, 21–22. Sophronia also said the truck “never moved an inch,” while an expert witness placed Collier alongside—rather than in front of—the vehicle. *Id.* at 6. Collier, meanwhile, claimed that the truck was preparing to strike him head-on. *Id.* at 22.

The Eleventh Circuit relied on Collier’s word to infer that Settle was preparing to use the truck as a deadly weapon and so deem reasonable Collier’s decision to pull the trigger. *Id.* at 11.

Rather than crediting Settle’s evidence, which would have necessitated sending this case to a jury, the Eleventh Circuit resolved determinative questions thus: “we agree with Collier.” *Id.* This usurped the constitutionally prescribed role of the jury.

III. QUALIFIED IMMUNITY ERODES PUBLIC TRUST IN LAW ENFORCEMENT AND THE COURTS.

The community is excluded from adjudicating the use of government force only at a real cost. When courts resolve factual disputes unilaterally in order to grant qualified immunity, the judiciary appears complicit in excusing government abuse. *See Smith*, 609 U.S. at *8 (Sotomayor, J., dissenting from denial of certiorari) (criticizing over-readiness to grant qualified immunity because it “emboldens government officials . . . to act with impunity” and “sends the regrettable message that, when choosing between shielding government officials from liability and vindicating individuals’ constitutional rights, this Court will almost always choose the former.”). The rule of law, policing, and community safety suffer as a result.

The rule of law requires “a substantial amount of legal predictability.” Michael Rosenfeld, *The Rule of Law and the Legitimacy of Constitutional Democracy*, 74 S. CAL. L. REV. 1307, 1313 (2001). It demands that the law be applied uniformly and fairly, and that “no one within the polity be above the law.” *Id.* at 1307. Qualified immunity frustrates these principles. Officers routinely receive it not because their conduct was lawful but because no prior case was sufficiently similar. The result is years of litigation ending in little or no recovery for Americans whose rights have been violated. *See e.g., Barnes v. Felix*, 152 F.4th 669 (5th Cir. 2025) (granting qualified immunity ten years after a police shooting, following reversal by this Court); *Green v. City of St. Louis*, 134 F.4th 516 (8th Cir. 2025) (granting qualified immunity on summary judgment eight years after police shooting).

This frequently happens even when government officials clearly violate the Constitution. In *NRA of America v. Vullo*, this Court unanimously held that an official violated the First Amendment. 602 U.S. 175, 198 (2024). Yet on remand, the Second Circuit granted her qualified immunity. *NRA of Am. v. Vullo*, 144 F.4th 376, 379 (2d Cir. 2025).

The sense that a double standard protects government officials accused of wrongdoing ultimately harms those officials who abide by the Constitution in carrying out their duties. JACK MCDEVITT et al., PROMOTING COOPERATIVE STRATEGIES TO REDUCE RACIAL PROFILING 21 (2008) (explaining that law-abiding officers “must consistently work to overcome the negative image” that others have caused).⁴ This problem is especially acute in the context of policing. Effective “crime control and disorder management depends on public cooperation with the police.” Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC’Y REV. 513, 516 (2003). In turn, cooperation depends on whether the public views law enforcement as fair and accountable. “Views about legitimacy are rooted in the judgment that the police and the courts are acting fairly when they deal with community residents.” Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283, 286 (2003). When the community cannot hold police officers who violate rights accountable through the judicial system, perceptions of fairness falter. And when people do not trust the police or the courts, they are less likely “to accept the directives and decisions” is-

⁴ Available at <https://tinyurl.com/cxvkenk6>.

sued by those institutions, increasing the “likelihood of defiance, hostility, and resistance.” *Id.* at 286.

Granting certiorari and reversing the decision below would assure the public that neutral tribunals will provide fair justice. Greater confidence in government officials and the courts should follow.

CONCLUSION

Instead of remanding this case to a jury, the Eleventh Circuit “agree[d] with Collier” on every question of fact. Pet. App. 11. Yet courts should feel no “heartburn with the notion that [a] dispute can go to trial.” *Spiller*, 113 F.4th at 582 (Willett, J., concurring) (internal citation omitted). “There, in a solemn United States courtroom,” the law “can be vindicated by a jury.” *Id.* This Court should grant certiorari and reverse the decision below.

Respectfully submitted,

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