No. _____

In the Supreme Court of the United States

CHELESY EASTEP,
Petitioner,

v.

STEVE CARRICK, ET AL.,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether or how police officers' own creation of, or contribution to, a dangerous situation prior to the use of deadly force factors into the Fourth Amendment's "totality of the circumstances" reasonableness analysis articulated by this Court in *Graham* v. *Connor*, 490 U.S. 386 (1989).

2. Whether for qualified immunity purposes in Fourth Amendment excessive force cases involving multiple officers firing shots in rapid succession, courts must assess the reasonableness of each officer's use of deadly force individually, including by considering whether some shots were fired after the suspect no longer posed an immediate threat.

PARTIES TO THE PROCEEDING

Petitioner, and plaintiff-appellant below is Chelesy Eastep. surviving spouse and next-of-kin of Landon Eastep.

Respondents, and defendants-appellants below are Steven Carrick, Edin Plancic, Sean Williams, Justin Pinkelton, and James Kidd, in their individual and official capacities as officers of the Metropolitan Nashville Police Department; Fabjan Llukaj, in his individual and official capacity as an officer of the Mt. Juliet Police Department; Reggie Edge, Jr. and Charles Achinger, in their individual and official capacities as officers of the Tennessee Highway Patrol.

The City of Nashville, Tennessee (a/k/a The Metropolitan Government of Nashville and Davidson County, Tennessee) and the City of Mt. Juliet, Tennessee, were defendants before the district court but were not appellants in the Sixth Circuit. Therefore, they are not parties to this petition.

Brian Murphy, who was a defendant in the district court and an appellant in Sixth Circuit, was denied qualified immunity, and that ruling is not challenged here, wherefore not a respondent.

RELATED PROCEEDINGS

United States District Court (M.D. Tenn.):

Eastep v. *Metro. Gov't of Nashville and Davidson Co.*, et al., No. 3:22-cv-00721 (Apr. 01, 2024) (memorandum opinion)

United States Court of Appeals (CA6):

Eastep v. *Murphy*, et al., Nos. 24-5319, 24-5320 24-5341 (Oct. 17 , 2025) (opinion)

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The Sixth Circuit's opinion is precedential and is reproduced in the Appendix at App.1-28. The Middle District of Tennessee's opinion is reproduced in the Appendix at App.29-52.

JURISDICTION

The judgment of the Sixth Circuit was entered on October 17, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part "No State shall… deprive any person of life, liberty, or property, without due process of law[.]"

42 U.S.C. §1983 provides in relevant part:

> 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[.]

STATEMENT OF THE CASE

I. Factual Background

On January 27, 2022, at approximately 2 p.m., Mr. Eastep walked along the shoulder of Nashville Interstate 65 when he was met by Tennessee State Trooper, Reggie Edge, Jr. App.3-4. Mr. Eastep answered all of Edge's questions and upon request handed him his driver's license. App.59. Edge returned to his vehicle where, for several minutes, Edge observed that Mr. Eastep was clearly vaping, *i.e.* smoking an electronic cigarette, by taking several draws from the vape, exhaling large clouds of white smoke, and putting the vape back in his hoody pocket as Trooper Edge reapproaches him. *Id.*

After using Mr. Eastep's driver's license to confirm his identity, Edge advised that he would pat down Mr. Eastep and give him a ride off the interstate. App.3 Prior to conducting the pat down, Edge asked if Mr. Eastep had anything that would "poke" or "harm" him and that he would have to give it to him. App.3 and 60. Before Edge completed the pat down, Mr. Eastep took a box cutter out of his pocket, briefly held it up—thereby responding to his question by showing him the box cutter—and began to trot away only to double back to the area where Edge first encountered him. Edge ordered Mr. Eastep to drop "the weapon" and get down on the ground. So began a cycle of Edge yelling commands at Mr. Eastep, and Mr. Eastep failing to acknowledge or obey them. *Id.*

An off-duty officer, Fabjan Llukaj of the Mt. Juliet Police Department, happened to be driving by and noticed the commotion. *Id.* Llukaj stopped his truck and

crossed the highway on foot to assist Edge. *Id*. While pointing his pistol at Mr. Eastep and invoking a series of profanity-laced tirades, Llukaj joined Edge in imploring Mr. Eastep to drop (what was perceived to be) "the knife." App.4 and 60. Meanwhile, Edge called for backup. App.4. Over the next thirty or so minutes, officers arrived from the Tennessee Highway Patrol and the Metropolitan Nashville Police Department ("Metro"). *Id*. The standoff that began with Mr. Eastep and Edge grew to a scene with Mr. Eastep facing as many as ten officers with guns drawn. *Id*.

Several officers asked Mr. Eastep to drop his weapon. Edge flagged to the other officers that he knew Mr. Eastep had a knife, but he never finished the pat down and so Mr. Eastep could have more weapons on him. App.4. He also advised that Mr. Eastep appeared to have something in his pocket. *Id*. Mr. Eastep never answered the officers' inquiries about whether he had another weapon in his pocket or why he was reaching for it. Eastep paced around the shoulder of the highway, never responding to their commands to drop his weapon. *Id*.

Eventually, Mr. Eastep took two quick steps toward the officers. At the same time, he pulled an object from his jacket pocket and pointed it at the officers, leveling it at shoulder height. Multiple officers opened fire. Within a second, Mr. Eastep fell to the ground. In the five seconds after Mr. Eastep raised the object, the officers fired approximately thirty-three shots at him. *Id*.

Approximately two seconds after Mr. Eastep fell to the ground, an unidentified officer twice called for a ceasefire. *Id*. Another officer called for a ceasefire at

least once, after shots continued to ring out following the first two calls for ceasefire. After Mr. Eastep already had been shot multiple times, had fallen to the ground, and other officers had ceased fire, Metro Officer Brian Murphy shot at Mr. Eastep for the first time. He fired two shots. App.4-5.

According to the Tennessee Bureau of Investigations report, of the thirty-three shots, Edge fired his weapon approximately seven or eight times; Metro Officer Sean Williams fired five times; Metro Officer James Kidd fired four times; Metro Officer Justin Pinkelton fired three times; Tennessee Highway Patrolman Charles Achinger and Metro Officer Steven Carrick each fired twice; Llukaj fired once; Metro Officer Edin Plancic fired a personal BCM AR15 six times; and Murphy fired his personal Colt rifle twice. Other than Murphy's two shots after Mr. Eastep was on the ground, it is unclear which officer shot when or when each stopped shooting. App.5

An autopsy report revealed that Mr. Eastep's bullet wounds ranged from his shoulders down to his left leg. Twelve of the shots hit and mortally wounded him. Five bullets entered through Mr. Eastep's back, indicating those bullets potentially struck him after he had already fallen to the ground. *Id.*

Even though the officers could have used a taser or other means of non-lethal force at any time, they shot Mr. Eastep anyway. App.68.

II. Procedural Background

A. District Court

Petitioner sued the City of Nashville, the City of Mt. Juliet, Murphy, Carrick, Plancic, Williams, Pinkelton, Kidd, Llukaj, Edge, and Achinger for their actions leading to Mr. Eastep's death. App.5 Her Second Amended Complaint ("SAC") asserts that the officers used excessive force in violation of Mr. Eastep's Fourth Amendment rights. App.5-6, 53-77. The SAC also alleges that "every" officer opened fire on Mr. Eastep when he did not pose a threat, ultimately killing him. App.5-6, 61.

All officers moved to dismiss the complaint based on qualified immunity. App.6. But the district court denied the motions because it determined that the complaint's allegations, taken as true, establish a plausible Fourth Amendment claim for excessive force and that Mr. Eastep's constitutional right to be free from such force was clearly established. *Id.* Citing Sixth Circuit's precedent, the district court explained that even if was reasonable for the officers to open fire, the district court would have to assess for each of the officers his initial decision to shoot and any subsequent decision to keep shooting because each officer's claim for qualified immunity must be decided separately. App.38; see also *Hood* v. *City of Columbus, Ohio,* 827 F. App'x 464, 470 (CA6 2020); *Smith* v. *City of Troy,* 874 F.3d 938, 944 (CA6 2017); *Baker* v. *City of Hamilton,* 471 F.3d 601, 607 (2006); *Dickerson* v. *McClellan,* 101 F.3d 1151, 1162 n.9 (CA6 1996).

Even with the benefit of the record video evidence, the district court could not discern exactly when each

officer, with the exception of Murphy, discharged his weapon. App.39. Without additional factual information or evidence, the district court determined that it could not identify the subset, if one exists, of the Individual Defendants who, as a matter of law, exercised the required restraint. App.40. Furthermore, based upon the Sixth Circuit's holding in *Russo* v. *City of Cincinnati* "that a reasonable jury could find that the officers violated the suspect's constitutional rights with the use of deadly force when they repeatedly shot at the suspect, even after he dropped his weapon and posed no serious threat of harm," the district court could not say that the officers lacked fair warning that shooting Mr. Eastep when he no longer posed a safety threat was unconstitutional. 953 F.2d 1036, 1045 (CA6 1992), App.40-41.

Noting that the SAC has alleged the plausible use of excessive force, and the video evidence is not dispositive on this issue, the district court held that qualified immunity did not attach and that further factual development was necessary to properly consider the officers' qualified immunity defense. App.41. To that end, the district court reserved its decision on the matter until that time.

B. Sixth Circuit

The nine individual officers appealed the district court's decision regarding qualified immunity to the Sixth Circuit. Mrs. Eastep moved to dismiss the appeal asserting that the district court's holding was not a final judgment. App.6.

Regarding the issue of jurisdiction, the Sixth Circuit pointed to this Court's decision in *Ashcroft* v. *Iqbal* to

show that it had the authority to treat a motion to dismiss on qualified immunity grounds as being a final judgment under 28 U.S.C. §1291. 556 U.S. 662 (2009), App.6-7. Citing to this Court's holding in *Scott* v. *Harris*, 550 U.S. 372 (2007), the Sixth Circuit held that it had jurisdiction to consider whether qualified immunity applied by taking the SAC's allegations as true to the extent they are not blatantly contradicted by video evidence. App.7-8.

After addressing the question of jurisdiction, the Sixth Circuit pointed to the two-part test established by this Court in *Saucier* v. *Katz* to determine whether qualified immunity applied, *to-wit*: (1) whether the facts taken in the light most favorable to the party asserting the injury show the officer's conduct violated a constitutional right, and (2) whether the constitutional right was clearly established. 533 U.S. 194, 201 (2001), App.10.

As pretext for its analysis of whether a constitutional right was violated, the Sixth Circuit noted that video footage "shows that Murphy, who was the farthest away from the encounter, began shooting *after* other officers made multiple calls for a ceasefire, Mr. Eastep had fallen to the ground, and every other officer had stopped shooting." App.11 (emphasis in original). However, the Sixth Circuit found that "the video does not reveal which of the eight remaining officers continued shooting after the ceasefire was called—it only shows that as many as ten shots were fired after Mr. Eastep fell and dropped what he had been holding." *Id.* However, the Sixth Circuit discerned from the autopsy report that "five bullets [had] entered through Mr. Eastep's back, indicating those bullets

potentially struck him after he had already fallen to the ground." App.5.

With that in view, the Sixth Circuit analyzed whether the officers had violated Mr. Eastep's constitutional right, utilizing the reasonableness factors found in *Graham* v. *Connor*, *to-wit*: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of the police officers or others; and (3) whether the suspect actively resisted arrest or attempted to evade arrest by flight. 490 U.S. 386, 396 (1989); App.12. In doing so, the Sixth Circuit bifurcated the eight Respondents from *Murphy*. *Id.*

As for the first factor, the Sixth Circuit held that this weighed in Mrs. Eastep's favor since her husband was only committing a Class C misdemeanor, the least serious type of misdemeanor in Tennessee. App.14; see also Tenn. Code Ann. §55-8-127. The Sixth Circuit held that such a minor offense would not reasonably justify the use of deadly force. *Id.*

Touching the second factor, the Sixth Circuit held that it was objectively reasonable for the officers to perceive Mr. Eastep's actions as an immediate threat. App.14. Here the Sixth Circuit relied heavily on the video evidence to find that Mr. Eastep's actions, taken together, would have evinced a reasonable perception of an immediate threat. App.14-15. The Sixth Circuit would find that Murphy's late shots violated Mr. Eastep's constitutional right since "the use of force after a suspect has been incapacitated or neutralized is excessive as a matter of law." App.17-27. However, the Sixth Circuit opted against "pars[ing] the few ticks of the clock that spanned the continuous shooting to determine the reasonableness of the [other eight]

officers' actions" even though (1) five bullets had hit Mr. Eastep after he had fallen, (2) Murphy had fired only two shots; and thus, (3) at least one other officer necessarily fired after Mr. Eastep was incapacitated. App.5, 16.

As for the third factor, *i.e.*, any attempts to resist or evade arrest, the Sixth Circuit found that Mr. Eastep's movements right before the shooting, as depicted by video, would give rise an inference of resistance. App.16.

In reviewing the three *Graham* factors, the Sixth Circuit held that Murphy violated Mr. Eastep's constitutional right, but that the Respondents did not. App.17, 27. Accordingly, the Sixth Circuit passed on whether the Respondents had violated clearly established law, thereby holding that the Respondents maintained qualified immunity. App.16-17, 27. However, the Sixth Circuit found that Murphy did violate clearly established law. App.23-27

This petition follows.

REASONS FOR GRANTING THE PETITION

I. This Case Presents Important Questions Warranting Certiorari Due to Circuit Splits and National Significance

This case involves an escalation of events resulting in the use of deadly force against Mr. Eastep, who was initially stopped for a Class C misdemeanor under Tenn. Code Ann. §55-8-127. App.14. Mr. Eastep was walking along the shoulder of Interstate 65 when encountered by Officer Edge. App.3. The encounter led to a standoff involving multiple officers, culminating

in approximately thirty-three shots fired, twelve of which struck Mr. Eastep, including five bullets that entered through his back after he had fallen to the ground. App.4-5.

Officer Edge drew his weapon during the initial encounter. App.3. Officer Llukaj, upon arriving, pointed his pistol at Mr. Eastep and issued commands that included profanity. App.3, 60. Over the approximately thirty-minute standoff, additional officers arrived, resulting in up to ten officers with weapons drawn. App.4. The allegations indicate that non-lethal options, such as tasers, were available but not used. App.68.

The questions presented for appeal can be summarized as follows:

First, should police officers' own creation of, or contribution to, a dangerous situation prior to the use of deadly force factor into the Fourth Amendment's "totality of the circumstances" reasonableness analysis articulated by this Court in *Graham*, 490 U.S. at 396. This question has not been addressed by this Court. See *Barnes* v. *Felix*, 605 U.S. 73, 83-84 (2025).

In the context of this case, Petitioner contends that a totality-of-the-circumstances analysis under *Graham* should include the officers' pre-shooting conduct, such as the escalation during the standoff, which may have contributed to the events leading to the use of force. App.3-5, 60-61.

Second, for qualified immunity purposes in Fourth Amendment excessive force cases involving multiple officers firing shots in rapid succession, must courts assess the reasonableness of each officer's use of

deadly force individually, including by considering whether some shots were fired after the suspect no longer posed an immediate threat?

The answer to this question is critical to this case because five shots entered Mr. Eastep through the back, indicating that he had been hit five times after being immobilized. App.5. As such, multiple unknown officers shot Mr. Eastep after he had no longer posed a threat (assuming, *arguendo*, that he even posed one to begin with).

Mrs. Eastep respectfully submits that the Sixth Circuit narrowly focused on the shooting moment, in contravention of this Court's rejection of the "moment of threat" rule in *Barnes*, *supra*, by effectively disregarding the officers' pre-shooting escalation. Then, while focusing almost exclusively on the shooting itself, the Sixth Circuit applied a completely different standard to the eight Respondent officers than it did to Murphy, aggregating the Respondent officers' shots together without parsing them like they did with Murphy's shots. As a result, Murphy (though clearly liable for his own malfeasance) now must bear exclusive responsibility for those other officers who also contributed unconstitutionally to Mr. Eastep's demise.

This disparate application of the law should be addressed given its extreme national importance in light of recent events. Although not directly related to the facts of this specific case, the January 7, 2026, shooting of Renee Good in Minneapolis, Minnesota by Immigration and Customs Enforcement ("ICE") agents has drawn intense national scrutiny to the question of when and how deadly force should be used by law enforcement officers, prompting 1,000 nationwide

protests. See Chandelis Duster & Sergio Martínez-Beltrán, NPR, *Nationwide Anti-ICE Protests Call for Accountability After Renee Good's Death*, available at https://www.npr.org/2026/01/10/nx-s1-5673229/ice-protests-minneapolis-portland-renee-good (last accessed Jan. 12, 2026). This case is an excellent vehicle to address related issues sooner rather than later and thereby temper the current national mood.

Beyond this, certiorari is warranted because circuit splits on the issues exist and because an important issue of federal law has been decided by the Court. See S. Ct. R. 10(a) & (c).

II. The Sixth Circuit's Decision Exacerbates a Circuit Split by Limiting Consideration of Officers' Pre-Seizure Conduct in the Totality-of-the-Circumstances Analysis Under *Graham*

In *Barnes*, 605 U. S. at 79, this Court rejected the Fifth Circuit's "moment of threat" rule which disregarded any prior events leading up to the shooting as being irrelevant. In making this determination, however, this Court expressly states that it does not address whether or how the officer's own creation of the dangerous situation factors into the reasonableness analysis. See *id.* at 83. Instead, this Court states, "The question presented to us was one of timing alone: whether to look only at the encounter's final two seconds, or also to consider earlier events serving to put those seconds in context." *Id.* at 84.

In this case, Mrs. Eastep, the Petitioner, invites the Court to look beyond the timing of the shooting and

examine the circumstances leading up it. Petitioner respectfully submits that one cannot fully conduct a "totality of the circumstances" analysis pursuant to *Graham*, *supra*, without actually examining all the circumstances.

The Sixth Circuit attempts to "consider[] Mr. Eastep's threat within the totality of the circumstances." App.15. For example, reference is made to how Mr. Eastep's initial stop was due to a minor misdemeanor infraction. See App.14. However, no significant attention is given Officer Edge's initial reaction, to Officer Llukaj's profanity-laced tirade after appearing from virtually out of nowhere, or to how tasers were available during the thirty-minute standoff. Likewise, no direct attention is given to Mr. Eastep's mental or emotional state. As a result, the Sixth Circuit's analysis, while referencing the totality of the circumstances, placed primary emphasis on the moments immediately preceding the shooting, potentially limiting consideration of pre-seizure events in a manner inconsistent with *Barnes*.

This approach differs with that of the Tenth Circuit, which held in *Estate of Ceballos* v. *Husk*, "that the reasonableness of the use of force depends not only on whether the officers were in danger at the precise moment they used force but also on whether the officers' own conduct during the seizure unreasonably created the need to use such force." 919 F.3d 1204, 1214 (CA10 2019), see also *Medina* v. *Cram*, 252 F.3d 1124, 1132 (CA10 2001); *Allen* v. *Muskogee, Okl.*, 119 F.3d 837, 840 (CA10 1997); *Sevier* v. *City of Lawrence, Kan.*, 60 F.3d 695, 699 (CA10 1995). Although "[m]ere negligence or conduct attenuated by time or intervening

events is not to be considered," "reckless and deliberate conduct that is immediately connected to the seizure will be considered." *Ceballos,* 919 F.3d at 1214 (internal citations and quotations omitted). Furthermore, "[t]he mentally ill or disturbed condition of the suspect is a relevant factor in determining reasonableness of an officer's responses to a situation." *Id.* (citing *Allen*, 119 F.3d at 840, 842; *Sevier*, 60 F.3d at 699–701 and n.10.)

In *Ceballos*, 919 F.3d at 1223, the Tenth Circuit denied qualified immunity for Officer Husk after he had shot and killed Ceballos. The suspect's wife called 911 at 7:30 p.m. on August 30, 2013, reporting, among other things, that her husband was in the driveway of their home with two baseball bats and acting crazy; that she was afraid and had her 17-month-old daughter with her; that Ceballos was drunk and probably on drugs; and that two of Ceballos' friends were with him. *Id.* at 1209. Husk arrived on scene with Officer Ward and took charge. *Id.* at 1210. At that time, two other officers arrived in separate cars; Commander Carbone parked near Husk's and Ward's patrol cars, while Officer Snook parked on the other side of Ceballos's home and began approaching Ceballos from the opposite direction as Husk and Ward. *Id.* Officer Snook then decided to return to his vehicle to get a beanbag shotgun, which is non-lethal and can be fired at a greater distance than a Taser. *Id.*

Not waiting for Officer Snook to return with the beanbag gun, Officers Husk and Ward continued to approach Ceballos. *Id.* (internal quotations omitted). When they were approximately 100 yards from the Ceballos residence, they saw Ceballos pacing in the

driveway, swinging a baseball bat, yelling and throwing his arms in the air. *Id.* (internal quotations omitted). There was no one else in the driveway with Ceballos. *Id.* By this time the officers knew he was alone. *Id.* Ceballos went inside his garage; either before or after this, Officer Husk drew his lethal weapon, while Officer Ward drew his non-lethal weapon. *Id.* Ceballos returned from the garage and moved toward the officers with the bat while yelling expletives. *Id.* Both men fired their weapons, and Ceballos was killed. *Id.* at 1211.

Officer Husk did not dispute the "clearly established Fourth Amendment principles." *Id.* at 1214. Instead, he argued that this established law was too general to have warned him that the specific actions he took during the confrontation with Ceballos would violate the Fourth Amendment. *Id.* The Tenth Circuit disagreed. *Id.* at 1223.

Mrs. Eastep respectfully submits that if this matter had been considered by the Tenth Circuit instead of the Sixth Circuit, the Respondents likely would have lost their appeal. Officer Llukaj's deliberate and reckless sudden appearance, while brandishing his weapon and spewing expletives, likely would have been deemed an aggravation of Mr. Eastep's disturbed mental condition. See *id.* at 1214. This combined with the officers' semi-circular firing squad formation, the officers' ability to taze Mr. Eastep instead of shooting him, and the relatively small nature of Mr. Eastep's offense would likely have been deemed a violation of his constitutional right to be free from unreasonable seizure pursuant to the Fourth Amendment. See *id.*

The Respondents "have adopted Mrs. Eastep's version of facts, except where blatantly contradicted by video evidence." App.7 Therefore, Mrs. Eastep's assertion that the Respondents "could have used a taser or some other means of non-lethal force," App.68, is unrebutted to the extent no video evidence contradicts it. Since the Sixth Circuit did not address whether the officers could have used less lethal means, this reveals another circuit split.

In the Ninth Circuit, "[o]ther relevant factors [to the *Graham* analysis] include the availability of less intrusive force, whether proper warnings were given, and whether it should have been apparent to the officers that the subject of the force used was mentally disturbed." *Vos* v. *City of Newport Beach*, 892 F.3d 1024 (CA9 2018) (citing *Bryan* v. *MacPherson*, 630 F.3d 805, 831 (CA9 2009); *Deorle* v. *Rutherford*, 272 F.3d 1272, 1282-83 (CA9 2001)).

In *Vos*, at approximately 8:15 p.m. one night, an agitated man (Vos) ran around a convenience store shouting things like "[k]ill me already, dog." 892 F.3d at 1028. At one point, Vos grabbed and immediately released a store employee, yelling "I've got a hostage!" *Id.* at 1029. Ten minutes later, Officer David Kresge ("Kresge") arrived at the scene. *Id.* Kresge asked for backup and specifically asked for a 40-millimeter less-lethal projectile launcher. *Id.* As other officers arrived, Kresge informed them that Vos was agitated and likely under the influence of narcotics. *Id.* Eventually, at least eight officers would be present. *Id.* The officers knew that Vos had been simulating having a gun and that he was agitated, appeared angry, and was

potentially mentally unstable or under the influence of drugs. *Id.*

At about 8:43 p.m., Vos opened the door of the 7-Eleven's back room. *Id.* As he ran to the door, he held an object over his head in his hand. *Id.* The distance between Vos and the officers at the point he started running was approximately 30 feet. *Id.* One officer shouted that Vos had scissors. *Id.* Over the public address system, one officer twice told Vos to drop the weapon. *Id.* Vos did not drop the object but instead kept charging towards the officers. *Id.* Another officer fired his less-lethal weapon, and within seconds two other officers fired their AR-15 rifles. *Id.* at 1029-30. Vos was shot four times and died from his wounds. *Id.* at 1030. About eight seconds elapsed from the time Vos came out of the back room to when he was killed. *Id.* Somewhere around 20 minutes passed from when officers arrived until Vos ran at them. *Id.*

The Ninth Circuit held that "it is undisputed that the officers had less intrusive force options available to them." *Id.* at 1034. Likewise, "the officers had upwards of 15 minutes to create a perimeter, assemble less-lethal means, coordinate a plan for their use of force, establish cover, and, arguably, try to communicate with Vos." *Id.* The Ninth Circuit then opined, "While a Fourth Amendment violation cannot be established based merely on bad tactics that result in a deadly confrontation that could have been avoided, the events leading up to the shooting, including the officers' tactics, are encompassed in the facts and circumstances for the reasonableness analysis." *Id.* (internal citations and quotations omitted). The Ninth Circuit then observed, "These indications of mental

illness create a genuine issue of material fact about whether the government's interest in using deadly force was diminished." *Id.* All things being considered, the Ninth Circuit held that "a reasonable jury could find that the force employed was greater than is reasonable in the circumstances." *Id.* (internal citations and quotations omitted).

In the present case, had Mrs. Eastep's petition been filed in the Ninth Circuit, the result would have been different. Like Vos, Mr. Eastep was agitated. See *id.* at 1028. But unlike Vos, Mr. Eastep posed no threat to any other person (up until arguably the final moment before he died). See *id.* at 1028 (describing his erratic behavior with customers). Like the police in *Vos*, the Respondents had access to non-lethal means of subduing Mr. Eastep. See *id.* at 1029. In fact, the thirty minutes they had to assemble non-lethal force was more time than the police in *Vos* had. See *id.* at 1030. But unlike the police in *Vos*, the Respondents had complete access to Mr. Eastep, not inhibited by the closed doors and windows of a convenience store. See *id.* at 1029. With these factors in view, Mrs. Eastep contends that she would have won in the Ninth Circuit given how differently the law is viewed there than in the Sixth Circuit.

Thus, there is a clear split between the Sixth Circuit's approach and the Ninth and Tenth Circuits' approaches to how pre-seizure conduct should factor into shootings initiated by multiple officers. This alone should be enough for this Court to grant certiorari, particularly in view of the fact that this particular question has not been addressed by this Court. See *Barnes*, 605 U.S. at 83-84. But in view of the pressing

national question of law this presents, certiorari is all the more important.

III. The Decision Below Deepens a Circuit Split on Individualized and Segmented Assessments in Multi-Officer Rapid Shootings for Qualified Immunity.

Mrs. Eastep respectfully submits that in Fourth Amendment excessive force cases involving multiple officers firing shots in rapid succession, courts should assess the reasonableness of each officer's use of deadly force individually, including by considering whether some shots were fired after the suspect no longer posed an immediate threat.

This Court has held that "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." *Plumhoff* v. *Rickard*, 572 U.S. 765, 777 (2014). However, in light of the canon *"expressio unius est exclusio alterius*," if the police may volley as many as 15 shots into a person while a threat to the public is still pending, as occurred in *Plumhoff*, see id., then once the threat ceases, so should the hail of bullets.

Without directly analyzing the question, the Sixth Circuit in the decision below indicates that following *Barnes* "some have suggested that the demise of the moment-of-threat rule was likewise a death knell to more narrow applications of the 'segmented approach' on which Mrs. Eastep may partially rely." App.15. The decision below then lists two recent Sixth Circuit opinions. Examination of these opinions suggest an entrenched circuit split.

In the first referenced opinion, *Hodges* v. *City of Grand Rapids*, 139 F.4th 495, 517 (CA6 2025), the Sixth Circuit held:

> Historically, this Circuit's precedent required the court to "segment the incident into its constituent parts and consider the officer's entitlement to qualified immunity at each step along the way." *Id.* We would "carve up the incident into segments and judge each on its own terms to see if the officer was reasonable at each stage." *Dickerson* v. *McClellan*, 101 F.3d 1151, 1161 (CA6 1996) (quoting *Plakas* v. *Drinski*, 19 F.3d 1143, 1150 (CA7 1994)); *id.* at 1162 (limiting the scope of inquiry to "the moments preceding the [police] shooting" and excluding all prior events). But the Supreme Court's recent holding in *Barnes v. Felix*, 605 U.S. ___ (2025) makes clear that such a segmented approach inappropriately "constricts the proper inquiry into the 'totality of the circumstances.'"

139 F.4th 495, 517 (CA6 2025) Slip Op. at 4.

The Sixth Circuit's criticism of the segmented approach is heightened in *Feagin* v. *Mansfield Police Dept.*, 155 F.4th 595 (CA6 2025). "The seminal Supreme Court cases on use of force simultaneously emphasize the 'split-second judgments' that an officer must make in a use of force situation while instructing lower courts nonetheless to employ a 'totality of circumstances' approach." *Id.* at 610 (citing *Graham*, 490 U.S. at 396; *Tennessee* v. *Garner*, 471 U.S. 1, 8-9

(1985)). After describing how the Third Circuit considered all context and causes prior to the moment of the use of force, see *Abraham* v. *Raso*, 183 F.3d 279, 291 (CA3 1999), while the Fifth Circuit adopted the moment of threat rule, the Sixth Circuit took a different path:

> "carv[ing] up [an] incident" into "conceptually distinct" segments, "judg[ing] each on its own terms to see if the officer was reasonable at each stage." *Dickerson* v. *McClellan*, 101 F.3d 1151, 1161-62 (CA6 1996) (citation modified); *Pleasant* v. *Zamieski*, 895 F.2d 272, 276 (CA6 1990). This segmented approach allows for evaluation of the "events preceding" the use of force occurring in "close temporal proximity," *Bletz* v. *Gribble*, 641 F.3d 743, 752 (CA6 2011), while excluding distinct events that played no direct or foreseeable role in a particular use of force, see, e.g., *Puskas* v. *Delaware County*, 56 F.4th 1088, 1097 (CA6 2023); *Claybrook v. Birchwell*, 274 F.3d 1098, 1103 (CA6 2001); *Pleasant*, 895 F.2d at 276-77.
>
> Admittedly, we sometimes strayed from this approach, albeit in different ways. Here and there, we nodded towards the over-inclusive provocation approach utilized elsewhere, considering whether an officer should be denied immunity because he unreasonably "placed himself in potential danger" at some point prior to

> the incident necessitating the use of force. See, e.g., *Latits* v. *Phillips*, 878 F.3d 541, 552 (CA6 2017) (faulting officer for violating police procedures by ramming suspect's car, leading to a later use of deadly force); *Kirby* v. *Duva*, 530 F.3d 475, 482 (CA6 2008). Yet on other occasions, we veered in the opposite direction, narrowing the timeframe question functionally to adopt the moment of threat doctrine. See, e.g., *Reich* v. *City of Elizabethtown*, 945 F.3d 968, 978 (CA6 2019). In extreme outlier cases, we even "hyper-segment[ed]" within the moment of the use of force. See *Osborn* v. *City of Columbus*, No. 22-3570, 2023 WL 2523307, at *7 (CA6 Mar. 15, 2023) (Readler, J., concurring in part and dissenting in part). At the height of such absurdity, we went so far as to divvy up shots fired just seconds apart in the heat of a continuous confrontation to analyze each as a discrete use of force. *See Palma* v. *Johns*, 27 F.4th 419, 441 (CA6 2022), see also *Hart* v. *Michigan*, 138 F.4th 409, 420 (CA6 2025) (distinguishing between an officer's use of pepper spray and use of tear gas moments after the pepper spray proved ineffective); *Hood* v. *City of Columbus*, 827 F. App'x 464, 469-70 (CA6 2020).

Feagan v. *Mansfield Police Department*, 155 F.4th 595, 610-11 (CA6 2025).

As the above cases indicate, the state of the Sixth Circuit's post-Barnes jurisprudence remains rather fluid. This further adds to the confusion of this already troubling case.

The Sixth Circuit asserts in the decision below, "The facts do not suggest that eight of the nine officers [*i.e.*, Respondents] fired their first shots after Mr. Eastep was incapacitated." App.13. That is because, according to the Sixth Circuit, "it was objectively reasonable to use deadly force at the time the officers initiated their fire, and the officers quickly registered and heeded the call for a ceasefire once Mr. Eastep was subdued." App.16.

Nevertheless, the facts do indicate that Mr. Eastep was shot five times in the back, indicating that he was hit multiple times after being incapacitated. App.5. The facts also indicate that Murphy, who was not granted qualified immunity, fired only two shots. *Id.* Therefore, as the Sixth Circuit states, "Other than Murphy's two shots after Mr. Eastep was on the ground, it is unclear which officer shot when or when each stopped shooting." *Id.*

Clearly, the only way to ascertain which officers shot the five bullets that hit Mr. Eastep after he had been incapacitated would be to engage in discovery. However, that cannot be done at this early stage if the eight Respondents are granted qualified immunity. And even if the discovery that may be conducted vis-à-vis Murphy could show who else continued to fire after Mr. Eastep was incapacitated, by then it will be too late to hold the other officer (or officers) accountable since he (or they) will be immune from suit.

Respectfully, Mrs. Eastep submits that this Court should grant certiorari to address this situation. In view of the fluidity of the current jurisprudence in the Sixth Circuit and elsewhere, as well as the current national mood, Mrs. Eastep suggests this case is an ideal vehicle for certiorari.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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