

No. 26-

IN THE
Supreme Court of the United States

KIMBERLY VAUGHN, THROUGH THE
ADMINISTRATION OF THE ESTATE OF
MOHAMMAD J. ISAIFAN, DECEASED,

Petitioner,

v.

JAMIE REA AND MATTHEW AKERS,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

In *Barnes v. Felix*, 605 U.S. 73 (2025), this Court held unanimously that the Fourth Amendment’s totality-of-the-circumstances inquiry “has no time limit” and that courts may not wear “chronological blinders.” Without acknowledging *Barnes*, the Sixth Circuit affirmed summary judgment for two officers who killed Mohammad Isaifan with fourteen rounds, the majority of which entered from behind. The sole independent eyewitness testified that Isaifan was walking away from the officers during the shooting, his shoulder never turning back toward them, when the fatal rounds were fired. The court held that this testimony could not create a factual dispute because the witness began watching only after hearing the first shot, and that the officers’ account that Isaifan turned and drew a weapon was therefore treated as undisputed fact.

1. Whether the Sixth Circuit’s rule, that eyewitness testimony to a fatal police shooting cannot create a genuine dispute when the witness did not also observe the moments preceding it, can be reconciled with *Barnes*’s command that the Fourth Amendment reasonableness inquiry “has no time limit.”
2. Whether the Sixth Circuit’s holding that the officers’ account was “undisputed,” despite eyewitness testimony and forensic evidence to the contrary, is consistent with this Court’s holdings in *Tolan v. Cotton*, 572 U.S. 650 (2014) (per curiam), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

PARTIES TO THE PROCEEDING

1. Petitioner:

Kimberly Vaughn was the plaintiff in the district court and the appellant in the court of appeals.

2. Respondents:

Jamie Rea was a defendant in the district court and an appellee in the court of appeals.

Matthew Akers was a defendant in the district court and an appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner is a natural person, suing in her representative capacity as Administrator of the Estate of Mohammad J. Isaifan. Petitioner is not a corporation, issues no stock, and has no parent corporation. Accordingly, no disclosure is required under Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

- Opinion, *Vaughn v. Rea*, 174 F.4th 530 (6th Cir. 2026)
- Memorandum Opinion and Order, and Judgment, *Vaughn v. Rea* (N.D. Ohio June 23, 2025)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kimberly Vaughn, by and through counsel, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at *Vaughn v. Rea*, 174 F.4th 530 (6th Cir. 2026). The district court's order granting summary judgment for the defendant is not officially reported but is available at 2025 WL 1746907, and is reproduced in the Appendix hereto at App. 11a–38a.

STATEMENT OF JURISDICTION

The court of appeals entered judgment on May 4, 2026, and a timely petition for rehearing en banc was denied on June 3, 2026. A copy of the denial order appears in the Appendix hereto at App. 41a–42a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. IV provides, in relevant part:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ”

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 . . . 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 . . .”

INTRODUCTION

This petition presents a question of national importance about how courts must analyze Fourth Amendment deadly-force claims at summary judgment following this Court’s decision last term in *Barnes v. Felix*, 605 U.S. 73 (2025).

Mohammad Isaifan was killed by fourteen rounds fired by two Akron police officers. The majority of the wounds entered from behind, and Isaifan never fired a weapon. An independent eyewitness testified that Isaifan was walking away from the officers, his shoulder never turning back toward them, when the fatal volley was fired.

The courts below nonetheless held, as a matter of law, that no reasonable jury could find a Fourth Amendment violation. They reached that result by crediting the officers’ account of the decisive instant, that Isaifan began to turn and draw a firearm, as established fact, and by setting the contrary eyewitness testimony aside. The Sixth Circuit entirely disregarded that testimony on a single ground: the witness “looked out his window

only after hearing the first shots,” and so, in the court’s view, he saw only events that did not “matter” to the reasonableness of the force. Because the officer’s account was thereby left “uncontested,” the Sixth Circuit held the district court “didn’t err by treating it as fact.”

That reasoning cannot be squared with this Court’s precedents. In *Barnes*, decided weeks before the district court ruled, this Court held unanimously that the Fourth Amendment reasonableness inquiry “has no time limit.” Neither court below acknowledged *Barnes*. Yet the Sixth Circuit did the very thing *Barnes* forbids. It fixed upon a single narrow window of the encounter, declared it the only window that “matters,” and used that temporal limit to exclude an eyewitness to the shooting itself. In crediting the officers’ version over the eyewitness and forensic evidence, the court resolved the central disputed fact against the nonmoving party, in direct conflict with *Tolan v. Cotton*, 572 U.S. 650 (2014) (per curiam), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

The error is consequential, and it recurs. In deadly-force cases the person best able to contradict the officers’ account of a shooting is, by definition, the person the officers killed. When courts respond to that asymmetry by treating the surviving officer’s testimony as conclusive and disregard conflicting, eyewitness accounts on the sole basis that they began observing only after the first shot, the guarantee of jury resolution of genuine factual disputes becomes hollow in cases where a life was taken. The petition should be granted.

STATEMENT OF THE CASE AND FACTS

A. The Encounter.

On the morning of December 15, 2019, several motorists called 911 to report that a car had been abandoned on the interstate, partly obstructing the fast lane. (R. 42-1, PageID 189–190). One caller described the driver as a man in purple and gray camouflage wearing what looked like a bulletproof vest. App. 14a. Officer Brian Cresswell responded to the vehicle and saw rifle rounds, an extended handgun magazine, a holstered handgun, and a wallet containing the driver's license of Mohammad Isaifan, whose registered address was on Brittain Road in Akron. Cresswell relayed that information, and the firearm, to dispatch. (R. 42-2, PageID 192-93).

Officers Matthew Akers and Jamie Rea, working a nearby detail, heard the transmissions, ran the plate, and drove toward Isaifan's address to look for him. App. 15a-16a. A few minutes later they saw a man in a tactical vest and purple and gray camouflage matching the description and pulled up in their vehicle, so the bumper was directly facing Isaifan. App. 16a. The opening moments of the encounter were captured on a surveillance camera. (R. 54). When Isaifan saw the officers, he moved into a wooded, bushy area near the road, and the officers drew their weapons, followed him into the shrubs, and repeatedly identified themselves. App. 3a. Isaifan initially began to raise his hands, then lowered them and walked toward the officers. App. 17a. When Isaifan came within reach, Rea grabbed him, but Isaifan pulled away, and as the two men separated Isaifan's vest rode up, exposing a pistol holstered on his right hip. Akers yelled, "Gun." App.

3a. At that point Isaifan, Rea, and Akers moved behind a grove of trees, which blocked the surveillance camera's view of the next roughly five seconds, the interval in which the shooting occurred. App. 3a.

B. The Officers' Account of the Shooting.

Because the camera's view of the decisive seconds was obstructed, the officers supplied that interval through their depositions. (R 45; R 46). They testified that Isaifan took a few steps eastbound, away from them, drew the pistol from its holster, and, in what Rea called "one motion," began rotating counterclockwise toward Akers. (R. 46, PageID 581). The officers then fired. Rea fired four rounds, and Akers fired ten. App. 4a. Rea testified that his "first shot was in the back somewhere, the last shot was in the front somewhere, chest area," all "under a second." (R. 46, PageID 586–87).

The officers agreed that, as this sequence began, Isaifan was moving away with his back to them. Akers confirmed that Isaifan was "headed back eastbound," that "eastbound is away from [Akers] and Officer Rea," and that Isaifan "was walking away from [Akers], he's got his back to [him]." (R. 45, PageID 442). What the officers described as converting that retreat into a threat was a simultaneous turn with the drawn weapon.

The remaining details of that account, unnoted by the panel, are conflicting. First, they described the drawing of the weapon in opposite terms. Akers testified that the pistol was "coming up the entire time when [Isaifan] was drawing it out of his holster, like we would if we were shooting at the range, like coming up on the target." (R.

45, PageID 449). Rea testified to the reverse motion: that “when he unholstered his gun, his gun did not stay in the air. It went back down towards his leg.” (R. 46, PageID 581).

Second, they described Isaifan’s position on the ground differently. Rea testified that Isaifan fell partially onto his right side and shoulder, “not directly on to his back,” and that his hands came to rest down at his sides, around “waist high,” “out a little bit,” but “not up and out.” (R. 46, PageID 597–99). Akers testified that Isaifan “fell on his back facing towards me,” and that his “arms were out in front” of his chest, his hands having “popped up,” “almost like he was in a shooting stance.” (R. 45, PageID 454–55).

Third, they described the sequence of responders differently. Rea testified that other officers arrived within seconds and took over Isaifan’s medical care before EMS reached the scene. (R. 46, PageID 604–06). Akers testified that he treated Isaifan’s wounds himself, assisted only by Rea handing him equipment, until the EMS unit and a tactical medic arrived. (R. 45, PageID 462–66).

C. The Eyewitness Account.

Michael Williams witnessed the shooting from his home, on the same side of the street, not across the street. *See* R. 47, PageID 741, *contra* App. 4a. He testified that he was on the love seat in his living room when he heard a gunshot and immediately launched to the window above the love seat, looking out through the blinds. (R. 47, PageID 688–90). That window, on the side of his house, gave him a direct view of the hillside, the field, and the

opening in the brush where the shooting took place. (R. 47, PageID 673). Williams testified that after the single first shot, “about three or four seconds” passed, and then came “a quick succession of fire” comprising the balance of the officers’ fourteen rounds. (R. 47, PageID 688, 707–08), which directly conflicts with the officers’ accounts of rapid fire all occurring in under one second. (R. 46, PageID 587; R. 45, PageID 452–53).

Throughout that volley, Williams testified, Isaifan was “walking at a fast pace, like to exit the situation,” and “trying to get away,” moving away from the officers. (R. 47, PageID 689, 701). Williams testified that Isaifan “had his right shoulder to [Williams,] and it never turned from that position until he fell,” and that Isaifan then fell “face first.” (R. 47, PageID 698–99, 704, 706). Williams did not observe Isaifan take any rounds to the front of his body. (R. 47, PageID 706).

Williams was candid about the limits of his observation. He did not see the first shot, having reached the window just after it. (R. 47, PageID 700). He did, however, observe every shot thereafter, not merely the “aftermath” of the shooting. *Contra* App. 8a. And on cross-examination he agreed that, because his line of sight ran through intervening bushes, he could not rule out that Isaifan turned at some point while falling. (R. 47, PageID 731–32). His affirmative testimony, however, was consistent throughout: from the moment he reached the window, Isaifan was walking away with his shoulder to the window and did not turn back toward the officers while the shot and before he fell. *Id.*

D. The Forensic Record.

The autopsy documented fifteen gunshot wounds, which the medical examiner noted might represent fourteen, because two of the wounds could have been produced by a single bullet. (R. 42-5, PageID 292). The cause of death was gunshot wounds to the torso, manner of death was homicide, and post-mortem toxicology was negative for drugs and alcohol. (R. 42-5, PageID 291–92). The majority of the wounds entered from the back. (R. 42-5, PageID 303).

The autopsy report itself contains no opinion that Isaifan was “rotating” or turning during the shooting. Dr. Kohler’s sworn declaration authenticates only the autopsy report and the wound diagram and states no such opinion. (R. 42-5, PageID 290). The “rotating” characterization on which the courts below relied appears in the record only in a police investigator’s Report of Investigation, recounting a telephone conversation, and not in any sworn submission by the medical examiner. App. 9a (citing R. 42-3, PageID 254).

The officers submitted two forensic reports. The ballistics consultant, Richard Ernest, opined that the physical evidence was “consistent with the accounts given by the officers,” and that the shot paths, “coming from both front and back, indicate that he was turning and bending over *or* falling during various points in this event.” (R. 42-6, PageID 329) (emphasis added). The crime-scene reconstruction specialist, Scott Roder, offered a two-sentence conclusion that the evidence was “consistent with the officers['] testimony” that Isaifan was rotating, “to a reasonable degree of scientific probability.” (R. 42-

7, PageID 360). Neither report excluded the account that Isaifan was struck while walking away and falling forward. Each stated only that the evidence was “consistent with” the officers’ version.

E. Proceedings Below.

Kimberly Vaughn, as administrator of Isaifan’s estate, sued the officers under 42 U.S.C. § 1983, alleging that they unreasonably seized Isaifan and used excessive force in violation of the Fourth Amendment, and asserting state-law claims that were later voluntarily dismissed. App. 11a-12a, 38a. The officers moved for summary judgment on qualified immunity, and the district court granted the motion on both federal claims. App. 11a, 38a. On the excessive-force claim, the court held that Vaughn had not created a genuine dispute as to whether Isaifan turned toward the officers with a drawn weapon. It treated the officers’ account as effectively undisputed, reasoning that Williams had not seen the events before the first shot, that the obstructed video was not “discernible” on the point, and that Vaughn had offered no contrary expert testimony. App. 31a–34a. Vaughn appealed the grant of immunity on the excessive-force claim. App. 5a.

The Sixth Circuit affirmed. App. 1a–10a. Writing for a unanimous panel, Judge Thapar framed the case, in its first sentence, as one that unfolded “[i]n the span of five seconds.” App. 1a. The panel set Williams’s testimony aside on a single ground: because Williams “admits that he looked out his window only after hearing the first shots,” his account of “the moments after the shooting started” could not create a dispute about whether Isaifan “disobeyed commands, unholstered his weapon, and

started to turn toward the officers before the shooting,” and, in the panel’s words, “that lead-up is what matters.” App. 8a. Having excluded the eyewitness, the panel held that “the officers’ description was uncontested,” so “the district court didn’t err by treating it as fact.” App. 9a. It reached that conclusion without addressing the conflicts within the officers’ own testimony as to how Isaifan drew his weapon and how Williams’ account is equally consistent with the autopsy.

The panel’s treatment of Williams also rested on two characterizations that are patently inconsistent with the record. The panel described Williams as having seen only “aftermath” of the shooting, App. 8a, and as an observer who “lived across the street,” App. 4a. Williams did not testify to either. He testified that after the single first shot, roughly four seconds passed, and that he then watched the ensuing succession of shots as they were fired, from a window on the side of his house that looked directly onto the field where the shooting occurred, not over and across a street. The court of appeals denied rehearing en banc on June 3, 2026. App. 41a-42a.

REASONS FOR GRANTING THE PETITION

- I. The Decision Below Cannot Be Reconciled With This Court’s Holding in *Barnes v. Felix* That the Fourth Amendment Inquiry “Has No Time Limit.”**
 - A. *Barnes* forbids a court from confining the reasonableness inquiry to a single window of the encounter.**

Last term, this Court unanimously rejected the view that a court may assess the reasonableness of deadly

force by attending only to the narrow moment in which the officer perceived a threat. *Barnes v. Felix*, 605 U.S. 73 (2025). The Fourth Amendment inquiry asks whether an officer’s use of force was objectively reasonable in light of “the totality of the circumstances,” *Graham v. Connor*, 490 U.S. 386, 396 (1989), and that the inquiry “has no time limit.” *Barnes*, 605 U.S. at 80. To assess reasonableness, “a court must consider all the relevant circumstances,” not a single slice of the event chosen in advance. *Id.* at 77. A court that puts on “chronological blinders” cannot faithfully perform that inquiry. *Id.* at 82.

B. The Sixth Circuit imposed precisely the temporal limit *Barnes* prohibits.

The court of appeals framed this case, from its first sentence, as one that unfolded “[i]n the span of five seconds,” App. 1a, and it treated a single portion of that span as dispositive. It held that “what matters” is the “lead-up” to the shooting, App. 8a, and on that basis declined to consider the testimony of the only independent eyewitness to the shooting itself.

Where the courts in *Barnes* erred by looking at only the final two seconds before the officer fired, the court here erred in the mirror image, by looking only to the moments before the first shot and treating everything the eyewitness heard and saw thereafter as beside the point. The error is identical: the selection of one timeframe as the exclusive measure of reasonableness. That is the error *Barnes* squarely holds a court cannot commit. *Barnes*, 605 U.S. at 83. The fact that *Barnes* was decided five weeks before the district court ruled, and nearly a year before the Sixth Circuit’s ruling, and that neither opinion

acknowledges the rule while committing the exact error *Barnes* forbids, only underscores the conflict.

C. The excluded evidence was of the decedent's own conduct, which *Barnes* holds is "always relevant," and which *Garner* makes material.

The testimony the court set aside was not marginal. *Barnes* instructs that the "stopped person's conduct is always relevant" to the reasonableness of force, because it "indicates the nature and level of the threat" he poses. *Barnes*, 605 U.S. at 80. The eyewitness account, that Isaifan was walking away with his shoulder never turning toward the officers, is evidence of Isaifan's conduct during the shooting, and it bears directly on whether he posed the threat the officers described. As the case stands, the Sixth Circuit has formulated a rule whereby evidence of the stopped person's conduct at the time of their fatal shooting can be entirely disregarded if the eyewitness providing the evidence did not witness the events preceding the shooting. That cannot stand.

Isaifan's conduct at the time of the shooting is also material under *Tennessee v. Garner*, 471 U.S. 1 (1985), which holds that deadly force against a suspect who is attempting to escape is unreasonable absent probable cause to believe he poses a significant threat of serious harm. *Id.* at 11. According to eyewitness testimony, Isaifan was "trying to get away" and "exit the situation" as officers fired into his back. (R. 47, PageID 689, 701). That is testimony that, under this Sixth Circuit rule, was excluded. It was excluded because the eyewitness did not see what happened before the shooting or the first shot taken at Isaifan. Instead, the witness only saw Isaifan

try to walk away from the 13 or 14 shots that followed. Missing that first shot, as the Sixth Circuit candidly put it, means that what the eyewitness saw did not “matter[] to Vaughn’s excessive-force claim.” App. 8a. That cannot be squared with the no-time-limit rule in *Barnes*, and it raises significant national and public policy concerns regarding what evidence can bear on whether police conduct is reasonable after an encounter has begun.

II. The Decision Below Cannot Be Reconciled with *Tolan* and *Anderson*, Which Forbid a Court to Weigh Evidence or Credit the Movant’s Account at Summary Judgment.

A. *Tolan* summarily reversed the identical error in a Fourth-Amendment deadly force case.

On summary judgment, “[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor,” and “[c]redibility 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. 242, 255. This Court enforced those principles in the qualified-immunity setting in *Tolan*, 572 U.S. 650, reversing a grant of summary judgment for an officer because the court below “failed to view the evidence at summary judgment in the light most favorable to” the nonmovant “with respect to the central facts of this case,” and thereby “improperly ‘weigh[ed] the evidence’ and resolved disputed issues in favor of the moving party.” *Tolan*, 572 U.S. at 657 (citing *Anderson*, 477 U.S. at 249).

The court of appeals committed the same error. The central fact was whether Isaifan turned toward the officers and drew a weapon, or whether he was moving away when the officers used deadly force against him. The eyewitness states that after the first shot, three to four seconds passed, and Isaifan was walking away, never turning toward the officers, when the next volley was fired. Isaifan was shot predominantly in his back. The officers' own expert opinions could only say the physical evidence was "consistent with" the officers' account and "showed that Isaifan was 'turning' *or* 'falling' during the shooting." App. 9a (emphasis added). The court nonetheless deemed the officers' account "uncontested" and treated it as fact, App. 9a, drawing the decisive inferences for the moving parties. The court drew that inference that Isaifan was turning or falling because he had turned toward the officers, as they alleged. They neglected the competing inference that, perhaps, Isaifan was falling because he was being shot. Evidence that is merely "consistent with" one account, but is affirmatively contradicted by another, is not subject to summary judgment.

B. Petitioner came forward with affirmative, competent evidence and thus satisfied *Anderson*.

This is not a case in which a plaintiff sought to reach a jury by "merely asserting that the jury might . . . disbelieve the defendant's denial." *Anderson*, 477 U.S. at 256. *Anderson* requires that the nonmovant "present affirmative evidence," *id.* at 257, and Petitioner did exactly that. She did not merely assert that a jury might disbelieve the officers. She came forward with affirmative, competent evidence that Isaifan was not turning toward the officers with a weapon when the fatal rounds struck him. That

evidence included the surveillance video of the encounter (R. 54), the testimony of an independent eyewitness who saw the shooting (R. 47), and the autopsy which documents that the majority of the bullets entered from the back (R. 42-5). That is precisely the kind of affirmative, competent evidence this Court found sufficient in *Tolan*, not a bare invitation to disbelieve.

The officers' own testimony confirms that the central fact was disputed. Officer Rea admitted that his first shot struck Isaifan "in the back." (R. 46, PageID 586). Further, the testimonies contain contradictions and inconsistencies on key facts. Officer Akers alleges that Isaifan drew the gun so that "[i]t was coming up the entire time when he was drawing it out of his holster, like we would if we were shooting at the range, like coming up on the target." (R. 45, PageID 449). Yet, Officer Rea explains that "when [Isaifan] unholstered his gun, his gun did not stay in the air. It went back down towards his leg." (R 46, PageID 581). Whether Isaifan was raising his gun to fire is the crux of this case, and the officers could not agree.

This is therefore not a case in which a movant's account stands un rebutted and the nonmovant offered only speculation. It is one in which the nonmovant's affirmative evidence, together with the movant's own admissions, squarely contradicted the single fact on which the officers' justification depended: whether Isaifan turned toward them while raising a weapon. Properly applied, *Anderson* is satisfied. The court of appeals reached the opposite conclusion only by weighing the evidence against the officers' contradicting testimony and omitting eyewitness testimony, which is the "weighing of the evidence"

and “drawing of legitimate inferences” that *Anderson* reserves to the jury. *Anderson*, 477 U.S. at 255.

C. *Plumhoff* does not save the judgment, because the dispute is whether a threat remained, not how many shots were fired.

This Court has held that officers who are justified in using deadly force “need not stop shooting until the threat has ended.” *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014). But *Plumhoff* addressed a case in which the threat indisputably persisted throughout, and it expressly reserved the “different case” in which force continues after the threat has ended. *Id.* Petitioner does not contend that the number of rounds, standing alone, established a violation. The dispute here is antecedent and factual: whether any threat justifying deadly force existed at all because Isaifan was walking away with his shoulder never turning. *Plumhoff* presupposes the answer to that question. It does not supply it, and it does not permit a court to resolve it against the nonmovant at summary judgment.

D. The panel decided the case at the first prong, so the improper weighing was outcome-determinative.

The rule of *Tolan* and *Anderson* applies with full force here. *Tolan* holds that “under either prong” of the qualified immunity analysis, “courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment.” *Tolan*, 572 U.S. at 656. The court of appeals resolved this case at the first prong, holding there was no constitutional violation at all, rather than

on the ground that any right was not clearly established. App. 10a. It reached that conclusion by only crediting the officers' account of the disputed central fact, refusing to draw reasonable inferences based on the autopsy report, eyewitness testimony, and conflicts in the officers' testimony. Therefore, there is no alternative, immunity-specific ground on which the judgment can stand. The improper weighing was the entire decision.

III. The Question Recurs, Evades Correction, and Cannot Be Left to the Courts of Appeals.

A. The decision below is not merely error correction; it is a rule that will recur.

The Sixth Circuit did more than misapply a settled standard to a set of unique facts. It announced a rule, that an eyewitness to a shooting may be disregarded when he did not also see the moments before it, and it stated its ground, that only the “lead-up” matters. App. 8a. That rule will govern the next deadly-force case, and the next. This Court granted review in *Tolan* over the identical error-correction objection, explaining that it intervenes when a decision “reflects a clear misapprehension of summary judgment standards in light of our precedents.” *Tolan*, 572 U.S. at 659.

B. The error systematically evades review in favor of officers.

This rule operates in one direction. Because it credits the surviving officers' account and discards the contrary evidence, it produces defense judgments as a matter of law, in the one category of case where the witness best

able to contradict the officers is the person the officers killed. Members of this Court have identified exactly this asymmetry in the administration of qualified immunity. *Kisela v. Hughes*, 584 U.S. 100, 121 (Sotomayor, J., dissenting). Left uncorrected, the decision below tells courts they may resolve the central fact of a deadly-force case for the movant whenever the only living witness who saw the “lead-up” is the officer.

C. This case is an ideal vehicle.

The questions presented are cleanly and dispositively raised. The court of appeals resolved the case at the first step of the qualified immunity analysis, so there is no alternative, immunity-specific ground on which the judgment can be defended. The legal questions can be decided on the existing record, without further factual development. Further, the record squarely presents both errors: the temporal exclusion of the eyewitness, and the treatment of a disputed account as uncontested fact. This Court should grant certiorari and restore the rules of summary judgment to a category of case in which they matter most.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari, reverse the judgment below as it pertains to the Fourth Amendment excessive-force claim, and remand for further proceedings consistent with the rule of *Barnes v. Felix* that the Fourth Amendment reasonableness inquiry has no time limit, and with the summary judgment standards of *Tolan v. Cotton* and *Anderson v. Liberty Lobby, Inc.*

Respectfully submitted,

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT,
FILED MAY 4, 2026**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 25-3537

KIMBERLY VAUGHN, THROUGH THE
ADMINISTRATION OF THE ESTATE OF
MOHAMMAD J. ISAIFAN, DECEASED,

Plaintiff-Appellant,

v.

JAMES REA; MATTHEW AKER,

Defendants-Appellees.

Decided and Filed: May 4, 2026

Appeal from the United States District Court for the
Northern District of Ohio at Cleveland.

No. 1:21-cv-02197—David A. Ruiz, District Judge.

Before: THAPAR, BUSH, and MURPHY, Circuit Judges.

OPINION

THAPAR, Circuit Judge. In the span of five seconds,
a noncompliant suspect drew his gun and turned toward

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two police officers. The officers fatally shot him. The district court granted the officers qualified immunity, and we affirm.

I.

One morning, multiple callers reported to police dispatchers that a driver had backed his car into a concrete median on the highway. The driver had abandoned his car, which was partially blocking the fast lane. One caller reported that the driver was wearing a purple and gray camouflage outfit and what looked like a bulletproof vest.

A nearby officer responded to the abandoned car. Through the open driver-side door, he spotted several rifle rounds, an extended handgun magazine, and a handgun in a holster. He also found a driver's license belonging to Mohammad Jamal Isaifan. After running the car's plates, he discovered that the vehicle was registered to Isaifan, who had a listed address on Brittain Road in Akron, Ohio. The officer relayed this information to dispatch.

Officers Matthew Akers and James Rea were parked near Isaifan's address on Brittain Road. While parked, they heard dispatch describe what happened and what the responding officer found in the car. Based on those reports, Akers and Rea believed Isaifan was armed—and likely nearby. They drove down Brittain Road to see whether Isaifan was walking home from the highway. A few minutes later, they spotted a man wearing a tactical vest and purple and gray camouflage who matched Isaifan's description.

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The first few moments of the officers' interaction with Isaifan were captured on grainy surveillance footage. When he saw the officers pulling over, Isaifan jogged into a wooded, bushy area near the road and ducked out of sight. The officers then drew their weapons and followed him into the shrubs, repeatedly identifying themselves as "Akron Police Department." R. 45, Pg. ID 421. As Isaifan came into view, the officers ordered him to raise his hands and get on the ground. Isaifan initially started to raise his hands, holding unidentified objects in both.

But he then stopped "following any commands whatsoever." R. 46, Pg. ID 580. Despite continuous commands to keep his hands up, Isaifan lowered them. He appeared to be "cupping something larger in his hand," which Rea initially worried was a grenade. *Id.* at 568-69. Isaifan then started walking toward the officers with a detached stare. When he got within arm's reach, Rea grabbed for him, but Isaifan twisted out of his grip. As they struggled, Isaifan stumbled and his vest moved up, giving Akers a clear view of a pistol on Isaifan's right hip. Akers then yelled, "Gun!" R. 45, Pg. ID 438.

At that point, the officers and Isaifan stepped behind a grove of trees, which obstructed the surveillance camera's view of the next five seconds of their confrontation. But at their depositions, the officers gave a frame-by-frame description of the missing five seconds.

One. Rea—close enough to touch Isaifan—saw him move toward his holster at his right side "real quick." R. 46, Pg. ID 581. Akers watched Isaifan "jam[] his hand down on his pistol" with a "sure grip." R. 45, Pg. ID 439.

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Two. Akers saw Isaifan's feet spread into a "bladed" fighting stance. *Id.* at 445. In the same "half a second," Rea noticed Isaifan take a small step, as though preparing to spin. R. 46, Pg. ID 579, 581.

Three. Akers caught a "clear shift" in Isaifan's hips and shoulders as he started turning toward the officers. R. 45, Pg. ID 440. Rea also observed Isaifan start to rotate, his hips "shift[ing] towards Officer Akers" in "one motion." R. 46, Pg. ID 581.

Four. Akers saw the barrel of Isaifan's gun fully clear his holster. From the side, Rea watched Isaifan's arm settle, as though he had finished drawing the weapon and was holding it at his hip. At that point, Rea thought it was "100 percent clear" that Isaifan "was turning with his firearm in his hand towards Officer Akers." *Id.* at 582.

Five. Isaifan turned—and both officers fired at point-blank range. Rea fired four rounds at Isaifan. Akers fired ten shots, stopping only when he could see Isaifan's hands were empty. By that point, Akers's only goal was "trying not to die [and] have Officer Rea not die." R. 45, Pg. ID 453.

After hearing the first shot, Michael Williams, who lived across the street, rushed to his window—just in time to see the end of the shooting. All told, only 18 seconds had passed between when the officers stepped out of their car and when Williams watched Isaifan hit the ground.

Isaifan died at the scene, his gun next to him. His autopsy showed that he sustained over a dozen gunshot

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wounds to his front, left side, and back. Based on the autopsy report, a ballistics expert and a shooting scene reconstruction specialist testified that Isaifan's injuries matched the officers' accounts.

Kimberly Vaughn, Isaifan's ex-wife and the administrator of his estate, sued Akers and Rea. *See* 42 U.S.C. § 1983. She asserted that the officers violated Isaifan's Fourth Amendment rights by unreasonably detaining him and using excessive force against him. After discovery, the officers moved for summary judgment based on qualified immunity. The district court granted their motion on both claims. Vaughn timely appealed only the grant of immunity on the excessive-force claim.

II.

Vaughn maintains that the officers aren't entitled to qualified immunity because "all the shots" were an "unnecessary and excessive" use of force. Appellant's Br. at 11. We review a district court's grant of summary judgment based on qualified immunity de novo. *Barton v. Martin*, 949 F.3d 938, 946 (6th Cir. 2020). The officers are entitled to qualified immunity unless Vaughn establishes a genuine dispute of material fact as to whether their conduct "violated [Isaifan's] clearly established constitutional right." *Pearson v. Callahan*, 555 U.S. 223, 232, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009); *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Vaughn hasn't done so.

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Vaughn hasn't shown that the officers' use of force was objectively unreasonable. *See Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). The officers believed they were facing a heavily armed suspect who had fled the scene of an accident. When they approached him, he resisted their efforts to detain him and then reached for a weapon. As we've consistently found, officers may reasonably use deadly force against a noncompliant suspect drawing a firearm. *See Puskas v. Delaware County*, 56 F.4th 1088, 1096 (6th Cir. 2023) (collecting cases). In this context, Rea's and Akers's split-second choice to repeatedly use deadly force was objectively reasonable.

Start with the choice to use deadly force. Throughout the incident, the officers believed they were interacting with a suspect armed with a gun (and holding a grenade). That suspect then ignored commands to show his hands, walked menacingly toward officers, and resisted their efforts to detain him. *See Chappell v. City of Cleveland*, 585 F.3d 901, 904-05, 916 (6th Cir. 2009) (granting qualified immunity to officers who shot noncompliant suspect advancing on them with a knife); *Thornton v. City of Columbus*, 727 F. App'x 829, 830-31, 837 (6th Cir. 2018) (granting qualified immunity to officers who repeatedly shot a noncompliant suspect advancing on them with a gun). A split second later, Isaifan unholstered his firearm, gripped it, and started to turn toward the officers. *See Eastep v. City of Nashville*, 156 F.4th 819, 824, 829 (6th Cir. 2025) (granting qualified immunity after officers shot a suspect turning toward them while raising what they believed to be a weapon); *Lemmon v.*

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City of Akron, 768 F. App'x 410, 412-13 (6th Cir. 2019) (granting qualified immunity to officers who shot a suspect four times after he “made a quick movement” toward them). So as our caselaw makes clear, the officers’ choice to use deadly force against Isaifan—an armed suspect who refused to comply with orders while reaching for a weapon—was reasonable.

Nor was the degree of deadly force unreasonable. As the officers explained, they continued to shoot until they “perceived [Isaifan] was no longer a threat.” R. 45, Pg. ID 452. They reached that point only once they could tell “his hands were empty and there was no gun.” *Id.* In similar circumstances, courts have held that an officer’s decision to shoot until a suspect was neutralized was reasonable. *See Plumhoff v. Rickard*, 572 U.S. 765, 768, 770, 134 S.Ct. 2012, 188 L.Ed.2d 1056 (2014) (granting qualified immunity to officers who fired 15 shots at a suspect fleeing in his car); *Pollard v. City of Columbus*, 780 F.3d 395, 398, 400 (6th Cir. 2015) (granting qualified immunity to officers who shot 80 bullets at a noncompliant suspect, 23 of which hit him); *Hocker v. Pikeville City Police Dep’t*, 738 F.3d 150, 152-53 (6th Cir. 2013) (granting qualified immunity to officers who fired 20 shots at a defendant driving away in his car, nine of which hit him). In short, the key question for courts to ask isn’t how many times an officer may pull the trigger in a dangerous situation where split-second decisions can be the difference between life and death. Rather, the question courts must ask is whether the officers stopped shooting once they knew the suspect was neutralized. *See, e.g., Eastep*, 156 F.4th at 831. And here, the officers stopped shooting when the suspect was

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neutralized. So neither the officers' use of deadly force nor the number of bullets fired was unreasonable.

In response, Vaughn argues that three sources of evidence create material factual disputes about whether the officers' use of force was excessive. None does.

First, Vaughn argues that the surveillance footage creates a genuine dispute of material fact because it shows the officers shooting Isaifan as he runs away. But the footage doesn't show that. A grove of trees and a pole obstruct the key moment when Isaifan unholstered his gun and turned toward the officers. So, as the district court concluded, a jury couldn't use the surveillance footage to discern whether Isaifan was fleeing at the time of the shooting. *See Feagin v. Mansfield Police Dep't*, 155 F.4th 595, 601 (6th Cir. 2025). The grainy, partially obstructed footage doesn't create a triable factual issue.

Second, Vaughn asserts that Williams's eyewitness testimony creates a genuine dispute about whether Isaifan was fleeing when the officers shot him. But the reasonableness of the officers' use of force here depends on the events leading up to the shooting. And Williams admits that he looked out his window only after hearing the first shots. So Williams's testimony about the moments *after* the shooting started can't create a factual dispute about whether Isaifan disobeyed commands, unholstered his weapon, and started to turn toward the officers *before* the shooting. And that lead-up is what matters to Vaughn's excessive-force claim.

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Aside from Williams’s narrative, Vaughn doesn’t advance any evidence to cast doubt on the officers’ deposition testimony about the shooting. And at summary judgment, Vaughn can’t simply “hope that the trier of fact will disbelieve the [officers’] denial of a disputed fact,” but must instead “make an affirmative showing with proper evidence.” *Alexander v. CareSource*, 576 F.3d 551, 558 (6th Cir. 2009) (quotation omitted). Williams’s account of the aftermath of the shooting doesn’t affirmatively contradict the officers’ testimony about the lead-up to it. Since the officers’ description was uncontested, the district court didn’t err by treating it as fact.

Third, Vaughn claims that the autopsy report creates a genuine dispute about whether Isaifan turned toward the officers because it shows Isaifan was primarily shot in the back. Although the majority of shots hit Isaifan’s back, the autopsy also confirms that Isaifan was shot six times in the front. The medical examiner later stated that the pattern of wounds supported the “reasonable assumption . . . that Isaifan was rotating during the actual shooting.” R. 42-3, Pg. ID 254. The government’s forensic experts lent additional—and uncontested—support to this analysis. As the government’s ballistics expert stated, the “various shot paths . . . coming from both front and back” showed that Isaifan was “turning” or “falling” during the shooting. R. 42-6, Pg. ID 329. And based on multiple CGI reconstructions, the government’s crime-scene specialist likewise agreed that the evidence was “consistent with the officers[’] testimony” that Isaifan was rotating toward them. R. 42-7, Pg. ID 360. Far from creating a genuine

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dispute, the autopsy and forensic evidence corroborate the officers' narrative of the shooting.

All told, Vaughn hasn't established any genuine dispute of material fact about the shooting. Based on this record, a reasonable juror couldn't find that the officers violated Isaifan's Fourth Amendment rights. The officers are thus entitled to qualified immunity.

* * *

We affirm.

**APPENDIX B — MEMORANDUM OPINION AND
ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION, FILED JUNE 23, 2025**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. 1:21-cv-02197

KIMBERLY VAUGHN, *ADMINISTRATOR OF THE
ESTATE OF* MOHAMMAD J. ISAIFAN,

Plaintiff,

v.

JAMES REA, *et al.*,

Defendants.

Filed June 23, 2025

MEMORANDUM OPINION AND ORDER

JUDGE DAVID A. RUIZ

Plaintiff Kimberly Vaughn, as administrator of decedent Mohammad Isaifan's estate, brought this suit alleging that Defendants Officer James Rea and Officer Matthew Akers violated Isaifan's rights under the Fourth Amendment to the U.S. Constitution, 42 U.S.C. § 1983,

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and committed certain state-law torts, namely wrongful death and assault and battery. (R. 11, PageID# 39-41). Plaintiff alleges that Defendants unreasonably seized Isaifan and, in doing so, used excessive force, causing his death. *Id.* Defendants moved for summary judgment. (R. 42). Plaintiff filed an opposition, (R. 56), and Defendants filed a reply in further support of their motion, (R. 58). For the reasons that follow, the Court will grant Defendants' motion for summary judgment.

I. Procedural History

Plaintiff's initial complaint alleged that Defendants violated Isaifan's rights against unreasonable search and seizure and excessive force under the Fourth Amendment to the U.S. Constitution, 42 U.S.C. § 1983. (R. 1, PageID# 3-4). Plaintiff's Amended Complaint alleges that Defendants violated Isaifan's rights against unreasonable seizure and excessive force under the Fourth Amendment, 42 U.S.C. § 1983, and committed torts in violation of state law. (R. 11, PageID# 39-41).

Following the close of discovery, Defendants moved for summary judgment. (R. 42). Defendants argue that they are entitled to qualified immunity and, therefore, summary judgment. (*Id.* at PageID# 163-79). Plaintiff filed a response opposing the motion for summary judgment on the federal claims, and she voluntarily dismissed her state-law tort claims for wrongful death and assault and battery. (R. 56). Defendants filed a reply supporting their motion, (R. 58), and later filed supporting supplemental authority, (R. 60).

*Appendix B***II. Standard of Review**

Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Quinn v. Eshem*, No. 16-3272, 2016 WL 9709498, at *2 (6th Cir. Dec. 20, 2016). A genuine dispute as to a material fact exists when proffered evidence that would be admissible at trial, viewed in the light most favorable to the nonmoving party, “is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also Peffer v. Stephens*, 880 F.3d 256, 262 (6th Cir. 2018) (quoting *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505); *Cox v. Ky. Dep’t of Transp.*, 53 F.3d 146, 149 (6th Cir. 1995). “The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson*, 477 U.S. at 247-48, 106 S.Ct. 2505.

“The moving party has the initial burden of proving that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law.” *Cox*, 53 F.3d at 149 (citing *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989)); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). “If the moving party satisfies its burden, then the burden” shifts to the nonmovant “to produce evidence that results in a conflict of material fact to be resolved by a jury.” *Cox*, 53 F.3d at 150. The nonmovant may not rest

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upon the mere allegations in her pleadings or upon general allegations that issues of fact may exist. *See Bryant v. Kentucky*, 490 F.2d 1273, 1275 (6th Cir. 1974) (per curiam). In ruling on a motion for summary judgment, a court must “construe the evidence and all inferences to be drawn from it in the light most favorable to the nonmoving party.” *Kraus v. Sobel Corrugated Containers, Inc.*, 915 F.2d 227, 229 (6th Cir. 1990) (citing *Blakeman v. Mead Containers*, 779 F.2d 1146, 1150 (6th Cir. 1985), *abrogated in part by, Massachusetts v. Morash*, 490 U.S. 107, 109 S.Ct. 1668, 104 L.Ed.2d 98 (1989)).

III. Factual Background¹

On the morning of December 15, 2019, multiple people called 911 reporting that a silver Toyota Camry had been abandoned and was partially blocking the fast lane on Interstate 76 East. (R. 42-1, PageID# 189-90). One caller reported that a man wearing purple and gray camouflage and a black vest that “looked like [a] bullet[]proof vest” got out of the car. (*Id.* at PageID# 189). After getting out of the car, the man started walking away from the car in

1. The facts set out below are undisputed unless otherwise indicated. These facts come from Plaintiff’s opposition to the motion for summary judgment, (R. 56), Defendants’ depositions, (R. 45; R. 46), Captain David Laughlin and Officer Brian Cresswell’s affidavits attached to the motion for summary judgment, (R. 42-1; R. 42-2), surveillance footage of the incident, (R. 54), and Michael Williams’s deposition, (R. 47). All evidence and reasonable inferences drawn therefrom are presented in the light most favorable to Plaintiff as the nonmovant. *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505; *see also Kraus*, 915 F.2d at 229.

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what Defendants later determined to be the direction of Isaifan's apartment. (*Id.*, Laughlin Decl., Item 3).

Officer Brian Cresswell responded to these calls. (R. 42-2, PageID# 192). He found the silver Toyota Camry with its driver's door open parked "against the center concrete median wall with the rear driver side bumper contacting the wall." *Id.* "The vehicle was registered to" Isaifan. (*Id.* at PageID# 193). Officer Cresswell "looked into the passenger compartment" and "saw several rifle rounds in plain view in the . . . center console." (*Id.* at PageID# 192). He "immediately advised radio [dispatch] of the ammunition because responding officers were in the area and may have encountered the occupant." *Id.* He "was concerned for police and public safety," given what he saw and his knowledge that "the driver may have had a bullet[.]proof vest." (*Id.* at PageID# 193). He "then saw an extended handgun magazine on the passenger[-]side floor" and "a black leather wallet with a chain attached." *Id.* The wallet contained Isaifan's driver's license. *Id.* He also "saw a black nylon holster in the backseat that contained an apparent 9mm handgun." *Id.* He "advised radio dispatch of this information and recovered the handgun and holster." *Id.*

Meanwhile, Defendants, two Akron police officers, were working a police job with the Akron Metropolitan Housing Authority (AMHA), providing security for an AMHA building. (R. 45, PageID# 388, 392-94; R. 46, PageID# 534-35). They heard radio transmissions reporting that a male wearing camouflage and a tactical or bulletproof vest had abandoned his vehicle on the

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highway with a gun and ammunition inside it. (R. 45, PageID# 393-98; *see also* R. 46, PageID# 539-43). Officer Cresswell relayed the car's license plate number, and Defendants ran the license plate number, which brought up Isaifan's information. (R. 45, PageID# 398-400; R. 46, PageID# 539-40). Officer Cresswell also relayed that Isaifan's driver's license was in the vehicle. (R. 45, PageID# 398). Defendants determined that they were near Isaifan's home address and decided to look for him by driving along the street between the location where the vehicle was abandoned and his home address. (R. 45, PageID# 406; R. 46, PageID# 542-43).

While searching that route, Defendants saw Isaifan walking down the street in the direction of his home address. (R. 45, PageID# 408-09; R. 46, PageID# 542-45, 548). Then, they saw Isaifan, wearing purple camouflage and a black vest, walk through a yard into a wooded area where he crouched down. (*See* R. 45, PageID# 409-10; R. 46, PageID# 548-49; *see* R. 54). Officer Akers "pull[ed] [Defendants'] vehicle reverse of traffic angled outwards," such that the vehicle's front "bumper [wa]s directly facing" Isaifan. (R. 45, PageID# 416; *see* R. 46, PageID# 548-49; *see also* R. 54). Officer Rea "radioed it in," (R. 46, PageID# 553), and Defendants drew their firearms as they exited their vehicle, (R. 45, PageID# 420-21; R. 46, PageID# 560). They assert that they yelled several times that they were Akron police officers and ordered Isaifan to raise his hands. (R. 45, PageID# 421; R. 46, PageID# 565-66).

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Surveillance footage shows and Defendants acknowledge that Isaifan initially raised his hands, but he then lowered them and began to walk towards Defendants. (R. 54; *see also* R. 45, PageID# 421, 428-30; R. 46, PageID# 566). As Isaifan approached, Officer Rea told him to get on the ground, but he did not comply. (R. 45, PageID# 429-30; R. 46, PageID# 570). Officer Rea then grabbed Isaifan with his left hand and went to holster his gun, but Isaifan resisted, “struggling with [Officer Rea], pushing [his] hand away,” and pulling away. (R. 46, PageID# 570-72, 580; *see also* R. 45, PageID# 430). Officer Rea and Isaifan tripped as Isaifan resisted. (R. 45, PageID# 430, 442). During that interaction, Officer Akers saw Isaifan’s vest “pull[] up” such that he could see a “gun on [Isaifan’s] right hip.” (*Id.* at PageID# 430). Officer Akers “start[ed] notifying Officer Rea that [Isaifan] ha[d] a gun on him” by yelling that information multiple times. (*Id.* at PageID# 430, 442). In response, Officer Rea stepped back from Isaifan, who walked between and past Defendants. (R. 54). Officer Rea “kept [his] gun out,” (R. 46, PageID# 573), as did Officer Akers, (*see* R. 45, PageID# 439).

After that point, a grove of trees partially obstructs the surveillance camera’s view of Isaifan and Defendants’ interaction, (R. 54; *see also* R. 46, PageID# 573-74), and the parties’ versions of events differ. Defendants assert that they again ordered Isaifan to get on the ground, but he was “not following any commands whatsoever.” (R. 46, PageID# 580; *see also* R. 45, PageID# 441). Instead, Isaifan took a few steps, stopped, grabbed the gun from its holster on his right side, and started turning

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towards Officer Akers. (R. 45, PageID# 439-40; R. 46, PageID# 580-81). After Isaifan removed the gun from its holster and simultaneously began turning, shifting his hips toward Officer Akers, Defendants started to shoot at him. (See R. 45, PageID# 446-49; R. 46, PageID# 582-83). Officer Rea “fired [his] first round in [Isaifan]’s back area, center mass, but he continued” turning towards Officer Akers. (R. 46, PageID# 583; see R. 45, PageID# 449). Officer Rea believed that Isaifan’s “vest was stopping the rounds,” so Officer Rea “fired below the vest to try to get [Isaifan] to stop shifting towards Officer Akers.” (R. 46, PageID# 583). Nevertheless, Isaifan “continued spinning all the way around.” *Id.* Thus, although Defendants’ first shots hit Isaifan’s back, their last shots were “towards the chest area.” (See *id.* at PageID# 592). Defendants continued to shoot until Isaifan fell to the ground and no longer held a gun. (R. 45, PageID# 449, 452-53; R. 46, PageID# 592-93). Isaifan fell backward such that he was laying on his back. (R. 45, PageID# 454; R. 46, PageID# 592-93). The full encounter lasted “seconds.” (R. 45, PageID# 444). Only five seconds passed from Isaifan walking past Officer Rea to Isaifan falling to the ground. (R. 54). Defendants proffer expert opinions that the physical evidence is consistent with their version of events. (See R. 42-6; R. 42-7).

In contrast, Plaintiff alleges that Isaifan “continue[d] to walk away from” Defendants, “never twist[ed] or lift[ed] his right arm prior to being shot by” Defendants, and had “his back facing” Defendants when they started shooting. (R. 56, PageID# 927). Plaintiff notes Michael Williams’s testimony as corroborating this version of events. See *id.*

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Williams testifies that on the day of the shooting, he was in his living room on the love seat when he heard at least one gunshot and “[i]mmmediately. . . . launched up to the window and [] looked through the blinds.” (R. 47, PageID# 669-73, 677, 688-90). He “didn’t see the first shot.” (*Id.* at PageID# 700). Once he was looking out the window, he saw Isaifan walking and “trying to get away” as Defendants continued to shoot him. (*Id.* at PageID# 689). Isaifan “had his right shoulder to [Williams,] and it never turned from that position until he fell.” (*Id.* at PageID# 698-99).

The parties do not dispute that once Isaifan fell, the gun was on the ground next to him, Defendants moved his gun away from him, handcuffed him, and triaged his injuries until emergency medical services arrived. (R. 45, PageID# 455, 462; R. 46, PageID# 599, 603-07). Tragically, Isaifan died from his injuries. The medical examiner found that Defendants shot Isaifan fourteen or fifteen times total, and he had entrance wounds on the front, side, and back of his body. (R. 42-5, PageID# 292, 303).²

IV. Discussion

Defendants argue that they are entitled to qualified immunity and, therefore, summary judgment on Plaintiff’s remaining claims. (R. 42, PageID# 163-79). On the unreasonable seizure claim, they argue that they reasonably seized Isaifan because he abandoned

2. Isaifan had “15 gunshot wounds,” but the medical examiner notes that two of them could have been the result of the same bullet, meaning that he could have been shot fourteen times rather than fifteen. *Id.*

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his vehicle, with a gun and ammunition in it, partially blocking the fast lane of the highway. (*Id.* at PageID# 163-70). On the excessive force claim, they argue that using deadly force was reasonable because Isaifan ignored their commands, physically resisted them, grabbed his gun from its holster, and started turning towards Officer Akers with the gun in his hand. (*Id.* at PageID# 170-75, 177-79). They also argue that Williams did not see Isaifan's initial interactions with officers—only standing up and looking out his window after hearing the first gun shot—and therefore Williams's testimony does not create a genuine issue of material fact as to Isaifan's behavior before Defendants began to shoot. (*Id.* at PageID# 175-77). In fact, they argue that the Court should disregard Williams's version of events. *Id.* They assert that Williams lacked the requisite personal knowledge of the events leading up to Defendants' use of force because he did not begin observing the encounter until after Defendants fired their first shot. *Id.*

Plaintiff responded, opposing the motion for summary judgment. (R. 56). On the unreasonable seizure claim, she argues that Defendants did not have probable cause or reasonable suspicion to seize Isaifan, and therefore, they seized him unreasonably in violation of the Fourth Amendment. (*Id.* at PageID# 928). She asserts that Defendants lacked probable cause or reasonable suspicion because Isaifan's vehicle "was abandoned for only a half hour in total" and "abandoning a vehicle on the public way is not a crime until the vehicle remains abandoned for 48 hours." *Id.* (citing *State v. Harris*, 2009-Ohio-1948, No. 2008-CA-31, 2009 WL 1114228, at *2 (Ohio Ct. App. Apr.

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17, 2009)). On the excessive force claim, Plaintiff argues that the surveillance footage, Williams's testimony, and the autopsy findings create a genuine issue of material fact as to Isaifan's behavior preceding Defendants' use of force and, thus, as to whether Defendants' use of deadly force was excessive. (*See id.* at PageID# 924, 926-27, 931). Plaintiff asserts that the surveillance footage shows that Defendants "shot and killed [Isaifan] while he was walking away from them . . . without holding anything in his hand" while "making no movement toward them." (*Id.* at PageID# 924, 926-27, 931). Plaintiff contends that Williams's testimony "corroborates the surveillance footage." (*Id.* at PageID# 927, 931). She asserts that the autopsy found Isaifan had entry wounds in his back and side and that the entry wounds in the front of his body were angled downward although he was taller than Defendants. (*Id.* at PageID# 927, 931 (citing R. 56-3, PageID# 1035-39)). Plaintiff argues that these pieces of evidence support the notion that Isaifan "was walking away with his back to" Defendants, "was not a threat to" Defendants, and merely possessed a firearm and, thus, that Defendants' use of deadly force was excessive. (*Id.* at PageID# 930-31).

Defendants replied, supporting their motion. (R. 58). They argue that they had probable cause to stop Isaifan for abandoning his vehicle partially in the fast lane on the highway because the relevant statute does not require that a vehicle be abandoned for forty-eight hours. (*Id.* at PageID# 1066-68). They also argue that their use of deadly force was reasonable because Isaifan posed "a threat of imminent harm to the officers" when he started turning towards Officer Akers "with a gun

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in hand” and that they did not use deadly force “against Isaifan to prevent his escape.” (*Id.* at PageID# 1070-72). They further argue that the evidence Plaintiff cites does not create a genuine issue of material fact as to Isaifan’s behavior before they began to shoot. (*Id.* at PageID# 1072). As to the surveillance footage, they argue that it does not create a genuine issue of material fact because it “is of poor quality” and taken at a distance with an obstructed view such that “it is not discernible from the video whether Isaifan was turning towards” Officer Akers “with a drawn firearm.” *Id.* As to Williams’s testimony, they argue that it does not create a genuine issue of material fact because he did not witness the events preceding Defendants firing their first shot. (*Id.* at PageID# 1073-75).³

3. Defendants also argue that the Court should strike Plaintiff’s response in opposition to the motion for summary judgment because Plaintiff’s counsel failed to sign it, thereby violating Rule 11 of the Federal Rules of Civil Procedure. (*Id.* at PageID# 1063). “Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name.” Fed. R. Civ. P. 11(a). A “court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney’s or party’s attention.” *Id.*; see also *Moro Aircraft Leasing, Inc. v. Keith*, 789 F. Supp. 2d 841, 845 (N.D. Ohio 2011).

Here, Plaintiff’s counsel did not sign the opposition to the motion for summary judgment, (*See* R. 56), as Defendants correctly note, (R. 58, PageID# 1063). Plaintiff’s counsel has been on notice of this error since Defendants filed their reply. *See id.* Plaintiff’s counsel has had ample time to correct this error but has not done so. Although failing to comply with Rule 11(a)’s signature requirement has serious potential consequences for litigants and it would be appropriate to strike the filing, the Court finds it more appropriate to consider the opposition as filed and issue a decision on the merits of the motion for summary judgment.

*Appendix B***A. Qualified Immunity & Section 1983 Claims**

After voluntarily dismissing her two state-law tort claims, (R. 56, PageID# 928), only Plaintiff's two Fourth Amendment claims brought under 28 U.S.C. § 1983 remain for consideration. (See R. 11, PageID# 39-40). To prove a claim under § 1983, a plaintiff must establish "(1) that he was deprived of a right secured by the Constitution or laws of the United States[] and (2) that he was subjected to or caused to be subjected to this deprivation by a person acting under color of state law." *Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994) (citing *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978)). The evidence required to prove the first element will depend upon the specific constitutional right or provision at issue. See *Daniels v. Williams*, 474 U.S. 327, 330, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986).

Defendants move for summary judgment on the basis that they are entitled to qualified immunity on Plaintiff's claims. (R. 42, PageID# 163-80). Qualified immunity "protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)); see also *Reichle v. Howards*, 566 U.S. 658, 664, 132 S.Ct. 2088, 182 L.Ed.2d 985 (2012). "Qualified immunity is a question of law resolved by courts." *Wiley v. City of Columbus*, 36 F.4th 661, 668 (6th Cir. 2022) (citing *Everson v. Leis*, 556

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F.3d 484, 494 (6th Cir. 2009)). Evaluating an assertion of qualified immunity involves analyzing whether: (1) a government official violated the plaintiff’s constitutional or statutory right and (2) that right was clearly established at the time of the alleged violation. *See id.* at 668-69 (quoting *Est. of Hill ex rel. Hill v. Miracle*, 853 F.3d 306, 312 (6th Cir. 2017)). Courts may consider the two prongs of qualified immunity analysis in whatever order “will best facilitate the fair and efficient disposition of each case.” *See Pearson*, 555 U.S. at 236-42, 129 S.Ct. 808. “If either inquiry is answered in the negative,” then the official is entitled to qualified immunity. *Wiley*, 36 F.4th at 669 (citing *Goodwin v. City of Painesville*, 781 F.3d 314, 321 (6th Cir. 2015)). The plaintiff bears the burden of proof on qualified immunity and thus must “demonstrat[e] a constitutional violation and a clearly established right at the time of the incident.” *Id.* (citing *Hart v. Hillsdale County*, 973 F.3d 627, 635 (6th Cir. 2020)). When the plaintiff names multiple defendants, liability “is analyzed individually based on” each official’s “own actions.” *Id.* (citing *Binay v. Bettendorf*, 601 F.3d 640, 650 (6th Cir. 2010)).

**1. Officer Rea’s Alleged Unreasonable Seizure
in Violation of the Fourth Amendment**

The Fourth Amendment, as incorporated against the states by the Fourteenth Amendment, guarantees people the right to be free from “unreasonable searches and seizures.” U.S. Const. amend. IV; *see also United States v. Obasa*, 15 F.3d 603, 606 (6th Cir. 1994). Not all interactions between police officers and citizens involve seizures of persons under the Fourth Amendment. *See*

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United States v. Mendenhall, 446 U.S. 544, 552, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980) (quoting *Terry v. Ohio*, 392 U.S. 1, 19, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). Rather, “a person is ‘seized’ only when, by means of physical force or a show of authority,” his liberty is restrained in some way. *Id.* at 553, 100 S.Ct. 1870; *see also* *Hopkins v. Nichols*, 37 F.4th 1110, 1115 (6th Cir. 2022) (quoting *Torres v. Madrid*, 592 U.S. 306, 311, 141 S.Ct. 989, 209 L.Ed.2d 190 (2021)). “A person’s liberty is restrained if a reasonable person in the circumstances would not believe that [] he w[as] free to leave.” *Bennett v. City of Eastpointe*, 410 F.3d 810, 821 (6th Cir. 2005) (citing *Mendenhall*, 446 U.S. at 554, 100 S.Ct. 1870). Generally, a law enforcement officer’s seizure of a person is constitutionally permissible upon probable cause or reasonable suspicion that the person has committed, or is about to commit, a crime. *See United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989); *see also* *Smith v. Stone*, No. 99-3208, 2000 U.S. App. LEXIS 11785, at *24, 2000 WL 687672 (6th Cir. May 19, 2000).

Here, the undisputed facts and evidence show that Officer Rea seized Isaifan. Certainly, grabbing Isaifan, (*see* R. 54; R. 46, PageID# 570-72), qualifies as a seizure. *See Mendenhall*, 446 U.S. at 553, 100 S.Ct. 1870 (using physical force to restrain a person’s “freedom of movement” qualifies as a seizure). Regarding this initial seizure, Defendants argue that they had probable cause to seize Isaifan because he abandoned his vehicle on the highway partly obstructing the fast lane, violating Ohio Revised Code § 4511.66. (*See* R. 42, PageID# 164-66; R. 58, PageID# 1066-68). Plaintiff contends that they lacked probable cause or reasonable suspicion because

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“abandoning a vehicle on the public way is not a crime until the vehicle remains abandoned for 48 hours.” (R. 56, PageID# 928 (citing *Harris*, 2009 WL 1114228, at *2)). “Probable cause exists where the ‘facts and circumstances within the officer’s knowledge [] are sufficient to warrant a prudent person . . . in believing . . . that the suspect committed, is committing, or is about to commit an offense.’” *Smith v. City of Wyoming*, 821 F.3d 697, 715 (6th Cir. 2016) (alterations in original) (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 37, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979)); see also *Howse v. Hodous*, 953 F.3d 402, 409 (6th Cir. 2020) (“[u]nder the Fourth Amendment, an officer can seize someone so long as he has probable cause,” which exists if he has reason to believe “that the person has violated the law”).

Ohio Revised Code § 4511.66 provides that leaving a vehicle “upon the paved or main traveled part of the highway” is a third-degree misdemeanor “if it is practicable to stop, park, or so leave such vehicle off the paved or main traveled part of said highway” unless the vehicle is disabled. Ohio Rev. Code § 4511.66. Despite Plaintiff’s assertions, this statute does not contain any waiting period, let alone a forty-eight hour one, before abandoning a vehicle on the paved or main traveled part of a highway becomes a misdemeanor crime. See *id.* For her assertions, Plaintiff relies upon *Harris*, a state case that is inapposite because it addresses Ohio Revised Code § 4513.61. 2009 WL 1114228, at *2. That section provides that law enforcement officers may place an abandoned vehicle into storage once it has been abandoned for forty-eight hours or, if it is obstructing traffic, immediately. Ohio Rev. Code § 4513.61.

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Here, Defendants knew based on radio transmissions that a male wearing purple camouflage and a black vest had abandoned a vehicle partly in the fast lane on the highway. (R. 45, PageID# 393-98; *see also* R. 46, PageID# 539-43). Abandoning the vehicle there violated Ohio Revised Code § 4511.66. Then, Defendants saw Isaifan, who matched that description, walking on the side of the street. (*See* R. 45, PageID# 409-10; R. 46, PageID# 548-49; *see also* R. 54). They knew from the radio transmissions that the abandoned vehicle was registered to Isaifan and that his wallet and license were in the car alongside “a firearm” and ammunition. (R. 45, PageID# 398-400; *see also* R. 46, PageID# 539-40, 543). They also knew Isaifan’s home address based on the radio transmissions and Isaifan’s driver’s license, so they could tell that he was walking towards his house. (*See* R. 45, PageID# 405-09; R. 46, PageID# 542-45, 548). Given Isaifan’s “close physical match to the description of the person said to have” abandoned the vehicle coupled with the additional information connecting him to the abandoned vehicle, Defendants had probable cause to believe that Isaifan violated Ohio Revised Code § 4511.66, which is a misdemeanor crime. *See Turner v. Viviano*, No. 04cv70509, 2005 WL 1678895, at *7 (E.D. Mich. July 15, 2005). This probable cause supported Defendants seizing Isaifan. *See State v. McGrath*, 2021-Ohio-2605, No. 2019-CA-21, 2021 WL 3234792, at *3 (Ohio Ct. App. July 30, 2021). Because Defendants had probable cause to believe that Isaifan committed a crime, Officer Rea did not violate Isaifan’s Fourth Amendment right to be free from unreasonable seizure by grabbing Isaifan’s arm. *See Howse*, 953 F.3d at 409. Thus, Officer Rea is entitled

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to qualified immunity on this claim. *See Wiley*, 36 F.4th at 669.

2. Seizure via Shooting and Alleged Excessive Force in Violation of the Fourth Amendment

Based on the circumstances of this police encounter, the Court finds it appropriate to consider the second seizure via shooting and alleged excessive force claims together. The Fourth Amendment’s prohibition on unreasonable seizures includes seizures effectuated using excessive force. *Stewart v. City of Euclid*, 970 F.3d 667, 672 (6th Cir. 2020) (citing *Latits v. Phillips*, 878 F.3d 541, 547 (6th Cir. 2017)). Whether the force used to effectuate a seizure was constitutionally permissible “depends on context.” *Id.* The amount of force used “must be objectively reasonable under the totality of the circumstances,” *id.* (citing *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)), as “judged from the perspective of a reasonable officer on the scene,” *Graham*, 490 U.S. at 396, 109 S.Ct. 1865. When evaluating the objective reasonableness of the force used, courts examine “(1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of the officers or others; and (3) whether the suspect [wa]s actively resisting arrest or attempting to” flee. *Sigley v. City of Parma Heights*, 437 F.3d 527, 534 (6th Cir. 2006) (citing *Dunigan v. Noble*, 390 F.3d 486, 492 (6th Cir. 2004)); *see also Stewart*, 970 F.3d at 672.

“In deadly force cases, the most critical factor is the immediate danger to officers and members of the public

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in the area,” *Stewart*, 970 F.3d at 672 (citing *Cass v. City of Dayton*, 770 F.3d 368, 375 (6th Cir. 2014)), because that factor “is dispositive,” *Raimey v. City of Niles*, 77 F.4th 441, 449 (6th Cir. 2023) (citing *Foster v. Patrick*, 806 F.3d 883, 887 (6th Cir. 2015)). If a person “poses no immediate threat to the safety of an officer or others, the use of deadly force is unreasonable and violates the Fourth Amendment.” *Id.* Furthermore, “[a]s a general rule, the Fourth Amendment prohibits the use of deadly force to prevent the escape of fleeing suspects unless ‘the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.’” *Latits*, 878 F.3d at 547-48 (quoting *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985)).

Here, the undisputed facts and evidence show that both Defendants seized Isaifan by shooting him, using deadly force against him, (*see* R. 42-5, PageID# 292; R. 45, PageID# 446; R. 46, PageID# 583). *See Stewart*, 970 F.3d at 672; *Yatsko v. Grazioli*, Nos. 20-3574, 3576, 3643, 2021 WL 5772527, at *6 (6th Cir. 2021) (“[T]here is ‘no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.’” (quoting *Garner*, 471 U.S. at 7, 105 S.Ct. 1694)). As explained above, Defendants had probable cause to seize Isaifan. Nevertheless, whether their use of deadly force to seize Isaifan violated his Fourth Amendment right to be free from unreasonable seizures effectuated by excessive force is a separate issue that the Court must consider.

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As to the first consideration for determining the reasonableness of force used, the severity of the crime at issue here was low. Isaifan abandoned his vehicle on the highway such that it partly obstructed the fast lane, (R. 42-1, PageID# 189-90; *see also* R. 56, PageID# 925), violating Ohio Revised Code § 4511.66. This crime is “a minor misdemeanor,” Ohio Rev. Code § 4511.66(B), and thus not particularly severe. As for the third consideration, the undisputed facts and evidence demonstrate that Isaifan attempted to both resist and flee. He physically resisted by “struggling with [Officer Rea], pushing [his] hand away,” and breaking away when Officer Rea grabbed him. (R. 46, PageID# 570-72; *see also* R. 54; R. 56, PageID# 926). He then walked between Defendants and initially began walking past them, apparently attempting to resist or flee, before he stopped. (R. 54; *see also* R. 56, PageID# 927).

As to the second consideration, “merely possessing a weapon is not enough” for a person to pose an immediate threat. *Jacobs v. Alam*, 915 F.3d 1028, 1040 (6th Cir. 2019). “But on the other end of the spectrum, an officer need not face the business end of a gun to use deadly force.” *Id.* (citing *Thomas v. City of Columbus*, 854 F.3d 361, 366 (6th Cir. 2017)). Defendants argue that Isaifan posed an immediate threat because he resisted, ignored commands, drew a firearm, and started turning towards them with the firearm in his hand. (R. 42, PageID# 170-75, 177-79). They argue that under those circumstances, there is no genuine issue of material fact regarding whether using deadly force against Isaifan was objectively reasonable. *Id.* In support of their argument, they proffer their own deposition testimony, (R. 45; R. 46), and expert opinions

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that the physical evidence corroborates their version of events, (R. 42-6, PageID# 329; R. 42-7, PageID# 360). Plaintiff disputes Defendants' version of events, contending that Isaifan merely possessed a gun as he walked away from Defendants "with his back to" them. (R. 56, PageID# 930-31). She proffers Williams's testimony, the medical examiner's report, and the surveillance footage in support of her version of events. (*Id.* at PageID# 927, 930-31). She argues that this evidence creates a genuine issue of material fact as to the events preceding Defendants' use of deadly force and, therefore, whether Defendants' use of deadly force was reasonable. *See id.* Defendants argue that Plaintiff's proffered evidence does not create a genuine issue of material fact as to this sequence of events. (R. 58, PageID# 1072-75).

As to Williams's testimony, Plaintiff contends that it corroborates that Isaifan was walking away from Defendants and did not draw a firearm or start turning towards them when they started shooting him. (R. 56, PageID# 927, 930-31 (citing R. 47, PageID# 703, 706-08)). Nevertheless, as Defendants argue, Williams's testimony does not create a genuine issue of material fact because he did not witness the encounter leading up to or the beginning of the shooting itself. (R. 42, PageID# 175-77; R. 58, PageID# 1073-75). By his own admission, Williams heard at least one gunshot before he got up and "looked out through the blinds," meaning that he "didn't see the first shot," let alone the events preceding it. (R. 47, PageID# 688-90, 700). Thus, no dispute exists between Williams's testimony that he did not see what happened before Defendants initiated deadly force and Defendants'

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testimony and proffered expert opinions that before the first shot, Isaifan started turning toward Officer Akers with a firearm in his right hand. *Cf. Roth v. Viviano*, No. 15-11972, 2016 U.S. Dist. LEXIS 67154, at *8-9 (E.D. Mich. May 23, 2016).

Plaintiff highlights that Isaifan had multiple entry wounds in his back and side and that the entry wounds in the front of his body were angled downward even though he was taller than Defendants. (*See* R. 56, PageID# 927, 931 (citing R. 56-3, PageID# 1035-39)). She argues that this evidence supports her version of events and creates a genuine issue of material fact as to whether Isaifan started turning towards Officer Akers with a drawn firearm and, thus, whether Defendants' use of deadly force was reasonable. *Id.* Defendants proffer expert opinions that the physical evidence, including the evidence Plaintiff highlights, is consistent with their version of events. (R. 42-6, PageID# 329; R. 42-7, PageID# 360). Their first expert report is from Richard Ernest, a forensic ballistics consultant. (R. 42-6). Ernest opined that the "various shot paths into/through [Isaifan's] body . . . , coming from both front and back, indicate[d] that he was turning and bending over or falling during various points in this event," consistent with Defendants' testimony. (*Id.* at PageID# 329). Defendants' second expert report is from Scott Roder, an "Evidence Specialist" who "do[es] Crime Shooting Scene Reconstruction & Forensic Animation." (R. 42-7). Roder opined that the "physical and forensic evidence [were] consistent with [Defendants'] testimony" that Isaifan was turning during the shooting "to a reasonable degree of scientific probability." (*See id.* at

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PageID# 346-47, 360). The Court need not weigh this evidence or Defendants' credibility. Plaintiff, however, "offers no contrary expert testimony" to support her interpretation of the evidence and argument on this issue, (*see generally* R. 56). *Abboud v. Travelers Prop. Cas. Ins. Co.*, No. 1:20cv1523, 2022 WL 541189, at *6 (N.D. Ohio Feb. 23, 2022). Instead, Plaintiff relies on her own perception of the physical evidence, making assertions extrapolated from her own nonexpert review of the autopsy report, (*see generally* R. 56). *Abboud*, 2022 WL 541189, at *6. In doing so, Plaintiff fails to establish a genuine dispute of material fact as to whether the physical evidence demonstrates that Isaifan grabbed his gun from its holster and started turning towards Officer Akers with it in his hand. *See id.*

Finally, Plaintiff argues that the surveillance footage creates a genuine dispute of material fact regarding whether Isaifan grabbed his gun from its holster and started turning toward Officer Akers. (R. 56, PageID# 927, 931 (citing R. 54)). She asserts that the footage shows that Isaifan "never twist[ed] or lift[ed] his right arm prior to being shot" and Defendants "shot and killed [Isaifan] while he was walking away from them . . . without holding anything in his hand" while "making no movement toward them." (R. 56, PageID# 927, 931 (citing R. 54)). Despite Plaintiff's assertions, Defendants correctly note the surveillance video footage "is of poor quality" and taken at a far distance from the incident with trees and shrubs obstructing the view such that "it is not discernible from the video whether Isaifan was turning towards" Officer Akers "with a drawn firearm at the time of the shooting," (R. 58, PageID# 1072). (R. 54).

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Although evidence is construed in the nonmovant's favor on summary judgment, "where, as here, some of the relevant facts are recorded on video, [the Court] view[s] those facts as the video depicts." *Francis v. Huff*, No. 22-5282, 2022 WL 7973109, at *2 (6th Cir. Oct. 14, 2022) (citing *Cunningham v. Shelby County*, 994 F.3d 761, 765 (6th Cir. 2021)). However, "[i]f the facts shown in the video can be interpreted in multiple ways, or if," as here, "the video does not show all relevant facts," the Court construes "any relevant uncertainties or gaps in the light most favorable to" the nonmovant. *Id.* (citing *Latits*, 878 F.3d at 544). Because the surveillance "video does not provide a clear picture of what happened" immediately before Defendants started shooting Isaifan, (R. 54), the Court construes "any relevant uncertainties in the light most favorable to" Plaintiff. *Francis*, 2022 WL 7973109, at *3 (citing *Latits*, 878 F.3d at 544). "But even so construed, an inference, unsupported by additional evidence, does not provide a sufficient basis for a jury to reasonably find in [Plaintiff]'s favor." *Id.* (citing *Anderson*, 477 U.S. at 250, 106 S.Ct. 2505). Thus, because, as explained above, no additional evidence supports an inference that Isaifan did not start to turn towards Officer Akers with a drawn firearm, the surveillance footage does not create a genuine issue of material fact. *Id.*

Because Plaintiff's proffered evidence does not create a genuine dispute as to whether Isaifan grabbed his gun from its holster and started turning towards Officer Akers with it in hand, the only issue that remains is whether Isaifan posed an immediate threat when he did so such that Defendants' use of deadly force was objectively

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reasonable. A person does not pose an immediate threat because he merely possesses a weapon. *Jacobs*, 915 F.3d at 1040. Similarly, an officer may not “shoot a suspect merely because he has a gun in his hand.” *Thomas*, 854 F.3d at 366. But depending upon the totality of the circumstances, a person need not necessarily point a gun at an officer, *Jacobs*, 915 F.3d at 1040, or even raise a gun to pose an immediate threat such that officers using deadly force is objectively reasonable, *Thornton v. City of Columbus*, 727 F. App’x 829, 838 (6th Cir. 2018); *see also Thomas*, 854 F.3d at 366. Whether a person “has a weapon constitutes just one consideration in assessing the totality of the circumstances.” *Thomas*, 854 F.3d at 366 (citing *Perez v. Suszczyński*, 809 F.3d 1213, 1220 (11th Cir. 2016)).

The Sixth Circuit held that using deadly force was objectively reasonable when a person facing officers from a “short distance” away held a gun as though he could point it at them and “fire at any moment,” even though he did not raise the gun or point it at them. *Thornton*, 727 F. App’x at 831, 837-38. It also held that using deadly force was objectively reasonable when a person with a gun in his hand ran toward and came close to an officer, even though he did not raise the gun or point it at the officer. *Thomas*, 854 F.3d at 363, 365-67. Finally, it held that using deadly force was objectively reasonable when an officer knocked on a car’s driver’s window and saw the initially compliant person in the driver’s seat stop complying and “pick up and swing [a] gun in his direction.” *Jordan v. Howard*, 987 F.3d 537, 539-40, 543-44 (6th Cir. 2021).

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Here, on exiting their vehicle, Defendants yelled that they were Akron police officers and ordered Isaifan to raise his hands. (R. 45, PageID# 421; R. 46, PageID# 565-66). Although Isaifan initially complied and raised his hands, he then lowered them and began to walk toward Defendants. (R. 54; *see also* R. 45, PageID# 421, 428-30; R. 46, PageID# 566). As Isaifan walked towards Defendants, they told him to get on the ground, but he did not comply and instead continued walking towards them. (R. 45, PageID# 429-30, 435; R. 46, PageID# 570). Officer Rea grabbed Isaifan as he attempted to walk between Defendants, but Isaifan resisted, “struggling with [Officer Rea], pushing [his] hand away,” and ultimately pulling away. (R. 46, PageID# 570, 580; *see also* R. 45, PageID# 430). Officer Rea and Isaifan tripped in the scuffle, and Officer Akers saw that Isaifan had a gun on his right hip and shouted that information multiple times to notify Officer Rea. (R. 45, PageID# 430, 442). Defendants again ordered Isaifan to get on the ground, but he was “not following any commands whatsoever.” (R. 46, PageID# 580; *see also* R. 45, PageID# 441).

Instead, Isaifan took a few steps, suddenly stopped, and grabbed the gun from its holster. (R. 45, PageID# 439-40; R. 46, PageID# 580-81). When he removed the gun from its holster, he simultaneously began turning and shifting his hips toward Officer Akers. (R. 45, PageID# 446-49; R. 46, PageID# 582-83). Thus, like the plaintiff in *Thornton* and the decedents in *Thomas* and *Jordan*, Isaifan was relatively close to Defendants when he drew his gun and began turning because he had taken only a few steps past them before stopping. (*See* R. 45, PageID# 439-40; R. 46,

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PageID# 580-81). Like the suspect in *Jordan*, he suddenly stopped what he was doing, drew a firearm, and started turning towards an officer. (R. 45, PageID# 439-49; R. 46, PageID# 580-83). Only then did Defendants begin shooting at Isaifan. (*See* R. 45, PageID# 446-49; R. 46, PageID# 582-83). Officer Rea “fired [his] first round in [Isaifan]’s back area, center mass, but [Isaifan] continued” turning towards Officer Akers. (R. 46, PageID# 583). As such, Officer Rea thought Isaifan’s “vest was stopping the rounds,” so Officer Rea “fired below the vest to try to get him to stop shifting towards Officer Akers.” *Id.* Nevertheless, Isaifan “continued spinning all the way around.” *Id.* Consequently, although Defendants’ first shots were in Isaifan’s back, their last shots were “towards the chest area.” (*See id.* at PageID# 592). They continued shooting until Isaifan fell to the ground on his back and no longer held a gun. (R. 45, PageID# 452-54; R. 46, PageID# 592-93). From the time Isaifan walked past Officer Rea to the point at which Isaifan fell to the ground, only five seconds passed. (R. 54).

Thus, within the span of five seconds, Isaifan resisted Officer Rea and refused to follow commands; suddenly stopped walking, unholstered and grabbed his gun, and started turning towards Officer Akers with the gun in hand while he was close to Defendants; and continued to turn as Defendants shot. Therefore, “from the perspective of a reasonable officer on the scene” making “split-second judgments” in “tense, uncertain, and rapidly evolving” circumstances, *Graham*, 490 U.S. at 396, 109 S.Ct. 1865, Isaifan posed an immediate threat to Defendants, *see Jordan*, 987 F.3d at 539-40, 543-44; *see also Thornton*, 727

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F. App'x at 831, 837-38; *Thomas*, 854 F.3d at 363, 365-67. Defendants' use of deadly force was objectively reasonable given the totality of the circumstances. *See Jordan*, 987 F.3d at 539-40, 543-44; *see also Thornton*, 727 F. App'x at 831, 837-38; *Thomas*, 854 F.3d at 363, 365-67. Plaintiff does not demonstrate a genuine issue of material fact regarding whether Defendants' use of force was excessive in violation of the Fourth Amendment. Accordingly, Defendants are entitled to qualified immunity on these claims. *See Wiley*, 36 F.4th at 669. As such, Defendants are entitled to judgment as a matter of law, and the Court will grant their motion for summary judgment.

V. Conclusion

For the foregoing reasons, Plaintiff's state-law claims at Counts III and IV of the Amended Complaint, (R. 11), are dismissed at her request, (R. 56), and Defendants' motion for summary judgment, (R. 42), is GRANTED as to Plaintiff's remaining claims. The remaining pending motion, (R. 62), is denied as moot.

IT IS SO ORDERED.

s/ **David A. Ruiz**

David A. Ruiz

United States District Judge

Date: June 23, 2025

**APPENDIX C — JUDGMENT ENTRY OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO, EASTERN
DIVISION, FILED JUNE 23, 2025**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. 1:21-cv-02197

KIMBERLY VAUGHN, *ADMINISTRATOR OF THE
ESTATE OF* MOHAMMAD J. ISAIFAN,

Plaintiff,

v.

JAMES REA, *et al.*,

Defendants.

Filed June 23, 2025

JUDGMENT ENTRY

JUDGE DAVID A. RUIZ

In accordance with the Court's accompanying Memorandum Opinion and Order granting Defendants' Motion for Summary Judgment, judgment is entered in Defendants' favor.

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IT IS SO ORDERED.

s/ **David A. Ruiz**
David A. Ruiz
United States District Judge

Date: June 23, 2025

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**APPENDIX D — ORDER DENYING REHEARING
OF THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT, FILED JUNE 3, 2026**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 25-3537

KIMBERLY VAUGHN, THROUGH THE
ADMINISTRATION OF THE ESTATE OF
MOHAMMAD J. ISAIFAN, DECEASED,

Plaintiff-Appellant,

v.

JAMES REA; MATTHEW AKER,

Defendants-Appellee.

Filed June 3, 2026

ORDER

BEFORE: THAPAR, BUSH, and MURPHY, Circuit
Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full

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court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/ Kelly L. Stephens
Kelly L. Stephens, Clerk