

IN THE
Supreme Court of the United States

KIMBERLY VAUGHN AS ADMINISTRATOR OF THE
ESTATE OF MOHAMMAD J. ISAIFAN, DECEASED,

Petitioner,

v.

JAMIE REA, *et al.*,

Respondents.

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

**BRIEF OF COMMUNITIES UNITED
AGAINST POLICE BRUTALITY,
ET AL., AS AMICI CURIAE IN
SUPPORT OF PETITIONER**

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IDENTITY AND INTEREST OF *AMICI CURIAE*¹

Communities United Against Police Brutality (“CUAPB”) is a Minnesota-based non-profit organization, founded in 2000 in the aftermath of an incident of police deadly force where an unarmed man was shot 35 times in the alleyway behind his home. Despite intense efforts by the community, there was no justice in that case. Historically and currently, Internal Affairs Units and civilian oversight bodies across the state have provided little relief or accountability in incidents of police violence. CUAPB was formed in response to this lack of accountability, on the belief that addressing day-to-day abuse will reduce more egregious incidents. An all-volunteer organization, CUAPB provides a 24-hour hotline and other referral and advocacy services for people dealing with the impacts of police brutality. CUAPB also evaluates the quality of investigations involving deadly force incidents, engages in litigation and supports legislation to change policies and practices that facilitate police brutality, and educates communities on their rights when engaging with police.

CUAPB has historically been and is currently *amicus curiae* in critical court cases surrounding police accountability and reform, including *Glik v. Cunniffe*,

1. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties received notice of *amici curiae*’s intention to file this brief at least 10 days prior to the due date. Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for a party authorized this brief in whole or in part, and that no counsel for a party, no party, and no person or entity, other than *amici curiae*, its members, or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

655 F.3d 78 (1st Cir. 2011), which confirmed the right to record police activities in public spaces. CUAPB also holds *amicus* status in the court-ordered settlement agreement between the Minnesota Department of Human Rights and the City of Minneapolis and Minneapolis Police Department. This status permits the organization and the community it represents to play a meaningful role in transforming Minneapolis Police Department (“MPD”) policies, practices, and culture. CUAPB’s feedback to the MPD implementation unit and its ongoing communication with the Minneapolis Community Commission for Police Oversight contributes notably to that shift.

CUAPB has analyzed more than a dozen law enforcement investigations of deadly force incidents and has significant expertise in accruing data and assessing the quality of those investigations. CUAPB’s expertise can provide valuable insights and assistance to this Court in resolving the issues presented by this case.

The October 22nd Coalition to Stop Police Brutality, Repression, and the Criminalization of a Generation (“O22”), a nonprofit organization based in New York City, was founded in 1996 by a nationwide assembly of organizers, artists, and long-time activists to build a national movement of organized opposition to the epidemic of police violence. Consisting of family members and other loved ones of victims of police homicide, alongside others, O22 organizes a National Day of Protest every October 22nd to build awareness of, and opposition to, police violence, political repression, and mass incarceration. Since its founding, O22 has also spearheaded the Stolen Lives Project, the first project of its kind, documenting the names and stories of people killed by law enforcement.

The Marley Foundation (“The Foundation”) is a nonprofit organization, based in Denver, Colorado and founded in 2019. The Foundation is dedicated to advancing transparency, accountability, and constitutional protections in cases involving deaths caused by law enforcement. The Foundation advocates for policies that strengthen independent oversight, require the use of body-worn cameras during law enforcement encounters, improve accountability in the use of deadly force, and address the unique injustices presented by “sole survivor” cases, in which the only surviving witnesses to a fatal encounter are the officers who used force.

Families Demanding Justice (“FDJ”) is a nonprofit organization established in 2024 and based in Chicago, Illinois. FDJ is a national network of families who have lost loved ones at the hands of police, supporters, and activists, organizing together to end police brutality in the United States. FDJ provides grief support and other types of support for impacted families, and works to raise awareness of individual cases and the issue of police deadly force incidents.

Life After the Impact is a nonprofit organization based in Baltimore, Maryland. Life After the Impact is dedicated to supporting individuals and families impacted by police violence and other forms of harm through advocacy, legal education, community engagement, and resource navigation. Through its work, Life After the Impact has connected with families across the country who continue to seek transparency, accountability, and meaningful access to the courts after the loss of a loved one.

SUMMARY OF ARGUMENT

Two glaring flaws in the Sixth Circuit’s analysis led it to affirm summary judgment in favor of Respondents James Rea and Matthew Aker, both police officers. As the panel determined, the reasonableness of the officers’ use of deadly force in this case came down to a “span of five seconds.” *See* Petitioner’s Appendix (“Pet. App.”) 1a. The panel determined that, during those five seconds, Mohammad Jamal Isaifan (1) “jam[med] his hand down on his pistol,” (2) spread his feet “into a ‘bladed’ fighting stance,” (3) took “a small step, as though preparing to spin,” (4) shifted his “hips and shoulders” toward the officers, (5) drew his weapon and “was holding it at his hip,” (6) and actually “turned” and faced the officers before the officers fired the fatal shots. *Id.* at 3a-4a. The panel held that the officers were entitled to qualified immunity because their use of force was not unreasonable as a matter of law. But the non-moving party, Petitioner Kimberlee Vaughn, through the administration of the estate of Mohammad J. Isaifan, raised genuine and material issues of fact that put the officers’ version of events into dispute.

First, surveillance footage captures the critical moments at issue. *See id.* at 3a. And a reasonable juror viewing this footage could determine “that the surveillance footage creates a genuine dispute of material fact because it shows the officers shooting Isaifan as he [tries to get] away.” *Id.* at 8a. The panel, viewing and assessing the video on its own, disagreed, holding that the “grainy, partially obstructed footage doesn’t create a triable factual issue.” *Id.* But in so holding, the panel failed to consider how the video created a “genuine” dispute as to the officers’ “frame-by-frame” version of

events. *Id.* at 3a. The video, which as the panel admits was not completely but only “partially,” obstructed, *see id.* at 8a, does not show Isaifan stopping, spreading his feet into a bladed fighting stance, taking a step as though preparing to spin, shifting his hips and shoulders toward the officers, drawing his weapon and holding it at his hip, and actually turning and facing the officers. Instead, a reasonable juror could view the video and see the outline of Isaifan’s figure walking away from the officers and then falling to the ground without stopping, as though he had been shot in the back. *See* Petition (“Pet.”) at 15 (citing R. 54). By foreclosing this possible account of the video, the panel failed to apply this Court’s precedent in *Scott v. Harris* that a court should only use its own assessment of a video at the summary judgment stage when the video “blatantly” or “quite clearly contradicts” the version of events put forth by the nonmoving party. 550 U.S. 372, 378, 380 (2007). At least one circuit judge has recently commented on “the troubling trend in which appellate courts become fact finders by watching video, and drawing their own inferences, rather than leaving the fact finding to the trial court and jury.” *Pryor v. Corrigan*, 124 F.4th 475, 502 (7th Cir. 2024) (J. Rovner, concurring in part and dissenting in part). This case provides an opportunity to clarify this legal standard and reverse this troubling trend.²

2. This issue is fairly encompassed in the second question presented in the Petition. *See* Pet. at i. The video is, moreover, characterized in the Petition as affirmative evidence in favor of the nonmoving party. *See* Pet. at 15. Accordingly, the issue has been raised in the Petition and may be addressed by this Court, with or without supplemental briefing.

Second, the panel agreed that an eyewitness, Michael Williams, who lived right next to the scene of the shooting, “rushed to his window—just in time to see the end of the shooting.” Pet. App. at 4a. But the panel completely disavowed Williams’s testimony, holding that his “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.” *Id.* at 8a (emphasis in original). In so holding, the panel ignored this Court’s recent guidance in *Barnes v. Felix*, that to “assess whether an officer acted reasonably in using force, a court must consider all the relevant circumstances.” 605 U.S. 73, 76 (2025). Here, by improperly limiting its analysis to the moments leading up to the shooting, the panel failed to consider Williams’s testimony about what happened right after the first shot was fired.

At his deposition, Williams “testified that after the single first shot, roughly four seconds passed,” and 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.” Pet. at 10. Williams testified that he saw Isaifan “walking at a fast pace, like to exit the situation,” and “trying to get away.” *Id.* at 7 (citing R. 47, PageID 689, 701). He testified that Isaifan “had his right shoulder to [Williams,] and it never turned from that position until he fell,” and that Isaifan fell “face first.” *Id.* (citing R. 47, Page ID 698-99, 704, 706). Williams did not see Isaifan get shot in the front of his body—only in the back. *Id.* (citing R. 47, PageID 706). As summarized in the Petition, Williams testified that, “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[y] shot and before he fell.” *Id.*

The panel should have viewed Williams’s testimony in the light most favorable to the nonmoving party and found that his testimony created a genuine dispute as to whether Isaifan had actually turned and faced the officers before they fired the fatal shots. Contrary to the officers’ version of events, a reasonable juror could conclude, based on Williams’s testimony, that Isaifan had been “trying to get away” and was shot in the back. To completely disregard Williams’s testimony was to fail to account for all the relevant circumstances. This case provides an opportunity for this Court to confirm that *Barnes* requires courts to consider “all the relevant circumstances,” and not merely those preceding the first shot. *See Barnes*, 605 U.S. at 76.

In making these two critical errors, the panel held that there was no “genuine dispute of material fact about the shooting” and that “a reasonable juror couldn’t find that the officers violated Isaifan’s Fourth Amendment rights.” Pet. App. at 10a. The panel, therefore, affirmed the district court’s holding granting qualified immunity.

But that holding was error, and this Court should grant *certiorari* to remedy the multiple errors in the Sixth Circuit’s decision and to clarify the law in this important area.

ARGUMENT

I. The Sixth Circuit Failed to Draw Reasonable Inferences in Favor of the Nonmoving Party at Summary Judgment.

A. The Properly Viewed Facts.

In ruling on a motion for summary judgment, “[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). “The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Id.*

The disputed facts on the excessive force claim came down to a critical five second span. The panel determined that there was no genuine dispute that during that span “a noncompliant suspect drew his gun and turned toward two police officers,” causing the officers to fatally shoot him. Pet. App. at 1a-2a. In so holding, the panel relied exclusively on the officers’ version of events. But the nonmoving party pointed to evidence that, viewed under the proper standard, revealed a genuine dispute as to what occurred during that five second span.

The officers testified at their depositions (though not entirely consistently, *see, e.g.*, Pet. at 5-6) that Isaifan stopped following commands and twisted out of their reach when they were trying to detain him, revealing a pistol on his right hip. *Id.* at 3a. Officer Rea then saw Isaifan “move toward his holster at his right side ‘real quick.’” *Id.* Officer Akers “watched Isaifan ‘jam his hand down on

his pistol' with a 'sure grip.'" *Id.* Officers Akers then saw Isaifan's feet spread into a "bladed" fighting stance, while Officer Rea "noticed Isaifan take a small step, as though preparing to spin." *Id.* at 4a. Both officers claim they saw Isaifan begin turning toward them. *Id.* Officer Akers "saw the barrel of Isaifan's gun fully clear his holster," and Officer Rea "watched Isaifan's arm settle, as though he had finished drawing his weapon and was holding it at his hip." *Id.*³ Finally, both officers testified that "Isaifan turned" to face them and that, as a result, "both officers fired at point-blank range" with Officer Rea firing four rounds and Officer Akers firing ten. *Id.*⁴

But surveillance footage captured this incident, and a reasonable juror could view that footage and determine that the footage shows Isaifan walking away without stopping or turning and then falling down after being shot by the officers in the back. That version of events is also supported by an eyewitness who testified that, as soon as he heard the first shot, he "launched to the window" next to where he had been sitting, saw Isaifan "trying to get

3. As pointed out in the Petition, the officers disagreed on whether Isaifan raised his gun to his chest or was holding it down by his leg. *See* Pet. at 15.

4. Critically, however, the officers "described Isaifan's position on the ground" after having been shot "differently." Pet. at 6. Officer Rea testified that Isaifan fell partially onto his right side and shoulder and "not directly on to his back," with his hands down by his sides around "waist high." *Id.* (citing R. 46, PageID 597-99). Officer Akers, on the other hand, "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.'" *Id.* (citing R. 45, PageID 454-55).

away,” and only saw Isaifan be shot in the back. Pet. at 6-7 (citing R. 47, Page ID 688-90, 698-99, 704, 706).

These facts, when viewed in light of the applicable law, do not justify the Sixth Circuit’s determination that the force used was not excessive as a matter of law. *See, e.g., King v. Taylor*, 694 F.3d 650, 663 (6th Cir. 2012) (finding a genuine dispute of fact existed about whether the plaintiff pointed “a gun towards the officers just before he was shot, thereby rendering [the officer’s] use of deadly force unreasonable”).

B. The Sixth Circuit Disregarded Evidence That It Should Have Weighed in Favor of the Nonmoving Party.

In deciding that there was no genuine dispute as to the material facts and determining as a matter of law that Isaifan stopped walking away and turned to face the officers with a gun drawn just before the fatal shots were fired, the panel did not construe the evidence in the light most favorable to the non-movant, as it was required to at summary judgment. It erred in two critical ways.

First, the panel unjustifiably disregarded the surveillance footage and what it showed happened during the critical five second span. The panel held that a “grove of trees and a pole obstruct the key moment [on the footage] when Isaifan unholstered his gun and turned toward the officers.” Pet. App. at 8a. It, therefore, affirmed the district court’s holding that “a jury couldn’t use the surveillance footage to discern whether Isaifan was fleeing at the time of the shooting.” *Id.*

But by so holding, the panel failed to view the video in the light most favorable to the nonmoving party. The panel cited one case—*Feagin v. Mansfield Police Dep’t*, 155 F.4th 595, 601 (6th Cir. 2025)—to support its decision to disregard the surveillance footage. That case, in turn, relied on this Court’s *Scott v. Harris* decision. *See Feagin*, 155 F.4th at 601 (citing *Scott*).

Feagin involved a situation where “dash cam video vividly [told] the tale” of the plaintiff’s encounter with police officers. *Id.* But, here, there was no dash cam video, no body camera footage, and no other footage that “vividly” depicted the events at issue. Instead, there is, as the panel described it, “grainy, partially obstructed footage.” Pet. App. at 8a. And this surveillance footage does not “quite clearly contradict[] the version of the story told by” Isaifan. *See Scott*, 550 U.S. at 378. Nor does the video “blatantly contradict[]” or “so utterly discredit[]” Isaifan’s version of events such that it rendered Isaifan’s version “visible fiction.” *Id.* at 380-81.

Instead, the surveillance footage captures the critical five second span with enough clarity that a reasonable juror could view the footage and conclude that Isaifan did not—per the officers’ version of events and as adopted by the panel—stop walking away from the officers, jam his hand down on his pistol, spread his feet into a bladed fighting stance, take a small step, prepare to spin, shift his hips and shoulders toward the officers, draw his weapon, and then actually turn and face the officers. Instead, a reasonable juror could view the video and conclude that it shows the outline of Isaifan’s body continuing to move away from the officers without stopping before falling down in the same direction that Isaifan had been moving.

At a minimum, a reasonable juror could conclude that the officers' version of events would have taken much longer to pan out compared to the brief interaction depicted in the video. Either way, the video creates a genuine dispute as to the officers' version of events.

By asserting its own interpretation of the "grainy, partially obstructed surveillance footage" and deciding to discredit it entirely, the panel failed to view the video in the light most favorable to the nonmoving party and failed to heed this Court's clear limitations on assessing video evidence at the summary judgment stage, as articulated in *Scott*.

Second, Isaifan's version of events was also supported by Williams, an eyewitness. And the panel's second critical error was to completely disregard Williams's testimony. The panel held that "Williams admits that he looked out his window only after hearing the first shots," and that because "the reasonableness of the officers' use of force here depends on the events leading up to the shooting[,] . . . Williams's testimony about the moments *after* the shooting started can't create a factual dispute about" Isaifan's conduct "*before* the shooting." Pet. App. at 8a.

But the panel made a critical error by completely disregarding Williams's testimony and focusing only on the facts about "the events leading up to the shooting," thereby ignoring the way in which Williams's testimony creates a genuine dispute as to the officers' version of what happened immediately prior to the shooting. *Id.*

Williams testified at his deposition that "he heard a gunshot and immediately launched to the window above

the love seat, looking out through the blinds.” Pet. at 6 (citing R. 47, PageID 688-90). From there, he had a “direct view” of “the opening in the brush where the shooting took place.” *Id.* at 6-7 (citing R. 47, PageID 673). Williams testified that, after this first shot, three or four seconds passed and then there was a volley of gunshots. *Id.* at 7 (citing R. 47, PageID 688, 707-08). “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.” *Id.* (citing R. 47, Page ID 689, 701). He “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.’” *Id.* (citing R. 47, PageID 698-99, 704, 706).

A reasonable juror could hear Williams’s testimony and determine that Isaifan was shot in the back while trying to get away from the police officers. That puts the officers’ version of events—that Isaifan had stopped, drawn his weapon, and turned and faced them before they fired—in genuine dispute. Viewing Williams’s testimony in the light most favorable to the nonmoving party, as the panel was required to, his testimony creates a genuine dispute of material fact.

The panel’s justification for disregarding Williams’s testimony had no legal basis and it “reflects a clear misapprehension of summary judgment standards in light of [this Court’s] precedents.” *Tolan v. Cotton*, 572 U.S. 650, 659 (2014) (per curiam). As this Court held in *Barnes v. Felix*, “[t]o assess whether an officer acted reasonably in using force, a court must consider all the relevant circumstances” without “time limit” and without “chronological blinders.” 605 U.S. at 76, 80, 82. By focusing

only on the evidence about the lead-up to the shooting, the panel applied a version of “the so-called moment-of-threat rule,” which this Court explicitly rejected in *Barnes*. *Id.* at 76. Moreover, Williams’s testimony sheds light on Isaifan’s conduct, which “is always relevant because it indicates the nature and level of the threat he poses, either to the officer or to others.” *Id.* at 80.

This Court should grant *certiorari* to correct these issues.

II. *Scott v. Harris* Has Become a License for Courts to Weigh Video Evidence at Summary Judgment, and This Court Should Put a Stop to This Troubling Trend.

This case also provides an opportunity to confirm *Scott v. Harris*’s holding. In *Scott*, the video at issue “quite clearly,” “blatantly,” and “utterly discredited” the “version of the story told by respondent,” rendering that version “visible fiction.” *Scott*, 550 U.S. at 378, 380-81. Only in such limited circumstances did *Scott* authorize a court to view video evidence in favor of the moving party at summary judgment.

But courts have strayed from this Court’s guidance in *Scott* and have declined to view video evidence in the light most favorable to the nonmoving party at summary judgment, even where the video is not quite clear and does not blatantly or utterly discredit the nonmovant. Here, for example, the Sixth Circuit entirely disregarded the only video evidence at issue and declined to view it in the light most favorable to the nonmoving party, even though a reasonable juror could have viewed it as creating a genuine dispute as to the officers’ version of events.

This Court should heed Judge Rovner’s recent partial dissent in *Pryor v. Corrigan*, where she powerfully commented on “the troubling trend in which appellate courts become fact finders by watching video, and drawing their own inferences, rather than leaving the fact finding to the trial court and jury.” 124 F.4th 475, 502 (7th Cir. 2024) (J. Rovner, concurring in part and dissenting in part). She noted that “*Scott* did not announce a new rule” but merely applied the “old rule”—that “on summary judgment a court need not credit facts that are so incredible or implausible that no reasonable fact finder could believe them”—to the gigabytes of video evidence now available in modern police encounter cases. *Id.* at 498. But Judge Rovner cautioned that “[v]ideo evidence cannot resolve disputes where reasonable jurors could disagree about what the video reveals.” *Id.* at 504.

Judge Rovner noted that, while “in some cases[] the actual events depicted in the video may be ‘plainly portrayed,’ . . . the interpretation of, and inferences from, that evidence still must be left to a jury.” *Id.* Trials are where juries view and weigh evidence, including video evidence. “Trials allow parties to fully air competing inferences about video evidence by, among other things, cross examining witnesses, using closing arguments to frame video evidence in light of the surrounding circumstances, and by presenting expert testimony about the benefits and limitations of video evidence.” *Id.* at 504-05. Video evidence often proves the adage that “things are seldom as they seem,” and trials give “parties the opportunity to explain why this might be so.” *Id.* at 505. Research has shown that jurors’ prior attitudes about police can lead to different conclusions about the same video. *See id.* Video evidence itself could create bias due to

the camera angle, point of view of the camera, prominence of people and objects in the visual field, speed and movement, the amount of detail at issue, and distortions caused by the type of camera lens. *See id.* (citing Nora G. McNeil, *Perceptual and Cognitive Biases in the Uptake of Police Body-Worn Camera Footage: Implications and Suggestions for Introduction of Video Evidence at Trial*, 41 Quinnipiac L. Rev. 499, 504-538 (2023)). “It is a rare case indeed where the video evidence leaves no room for interpretation or qualification.” *Id.*

Here, a reasonable juror could view the video as affirming the nonmoving party’s version of events. It appears to show that Isaifan continued moving away from the officers and then fell away from the officers without stopping or turning to face the officers. A reasonable juror could view the video evidence and find that it contradicts the officers’ frame-by-frame version of events.

This Court should use this case as a vehicle to confirm its limited holding in *Scott* and put an end to the troubling trend that Judge Rovner warns about—a trend that has affected this case—and return to the jury the job of interpreting video evidence in the vast majority of cases.

III. This Case Also Presents an Ideal Vehicle to Confirm That *Barnes v. Felix* Requires Courts to Consider All Relevant Circumstances, Including Those That Unfold After the First Shot.

Finally, *certiorari* is warranted to resolve whether *Barnes* permits courts to ignore evidence that develops after the use of force at issue when that evidence is probative of what happened in the moments immediately preceding the use of force.

This Court in *Barnes* made clear that “the ‘totality of the circumstances’ inquiry into a use of force has no time limit.” 605 U.S. at 80. But *Barnes* also focused on the lead-up to the event, faulting the Fifth Circuit’s “moment-of-threat rule” that caused the court to limit “their view to the two seconds before the shooting” and ignore other, earlier facts *Id.* at 81.

So while *Barnes* made clear that courts are to “consider all the relevant circumstances,” *Barnes* did not explicitly state that facts arising *after* the use of force at issue may be relevant. This case illustrates how facts arising after the first shot can shed light on the suspect’s conduct in the moments leading up to it. By granting *certiorari*, the Court could not only correct the clear error committed by the panel in its failure to apply *Barnes*, but also confirm that this Court’s holding in *Barnes* applies to all the relevant circumstances, even those that may arise after the use of force at issue, and especially where those facts shed light on what the officer confronted and the suspect’s conduct prior to the use of force.

CONCLUSION

For the foregoing reasons, *amici curiae* urge this Court to grant the Petition, reverse the judgment below as it pertains to the Fourth Amendment excessive-force claim, and remand for further proceedings.

Dated: September 9, 2026

Respectfully submitted,

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