

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

**JOSEPH FRASURE and LISA FISHER, individually and as Co-
Administrators of the Estate of Joe Frasure, deceased,**

Petitioners,

v.

**CITY OF WYOMING, OHIO; DREW JONES; JORDAN BATTS; RYAN
WARMACK,**

Respondents.

ON PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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RULE 29.6 STATEMENT

Petitioners are individuals. No corporate disclosure statement is required under Supreme Court Rule 29.6.

1. QUESTIONS PRESENTED

This case arises from the fatal police shooting of Joe Frasure during a late-night encounter at a family apartment that Petitioners contend they were lawfully cleaning out after the death of Joe's grandmother. Officers responded to a report of silhouettes and lights in a building believed to be vacant. The caller did not report an armed suspect, did not report violence, and could not provide a description. The officers did not announce themselves, did not order the occupants out through an open window, and within seconds of approaching the rear of the building, two officers fired into Joe's van. Joe was shot in the back of the head and died.

The questions presented are:

1. Whether, after *Barnes v. Felix*, courts reviewing Fourth Amendment deadly-force claims may affirm summary judgment by focusing primarily on the seconds immediately before shots were fired while giving little operative weight to earlier facts bearing on the reasonableness of the officers' conduct, including failure to announce, erosion of suspicion, escalation, and officer-created danger.
2. Whether a court of appeals may affirm qualified immunity at summary judgment by crediting officers' later testimony about perceived danger

- where body-camera footage, physical evidence, and competing reasonable inferences would permit a jury to find that the vehicle was passing or moving away and did not pose an immediate threat when the shots were fired.
3. Whether clearly established law under **Tennessee v. Garner**, **Graham v. Connor**, and Sixth Circuit precedent including **Smith v. Cupp** prohibits deadly force against a fleeing vehicle when, taking the facts in the plaintiffs' favor, no officer or bystander faced an immediate threat at the moment deadly force was used.
 4. Whether pointing firearms at compliant, nonthreatening individuals during an investigation can constitute clearly established excessive force under the Fourth Amendment.

2. LIST OF PARTIES

Petitioners are **Joseph Frasure** and **Lisa Fisher**, individually and as Co-Administrators of the Estate of Joe Frasure, deceased. They were Plaintiffs-Appellants in the United States Court of Appeals for the Sixth Circuit.

Respondents are **City of Wyoming, Ohio; Drew Jones; Jordan Batts; and Ryan Warmack**. They were Defendants-Appellees in the United States Court of Appeals for the Sixth Circuit.

3. RELATED CASES

United States District Court for the Southern District of Ohio, **Frasure et al. v. City of Wyoming, Ohio et al.**, Case No. 1:24-cv-00092. The district court entered orders granting Defendants' Daubert motion and motion for summary judgment and denying Plaintiffs' motion for partial summary judgment on September 17, 2025.

United States Court of Appeals for the Sixth Circuit, **Frasure et al. v. City of Wyoming, Ohio et al.**, Case No. 25-3750. Petitioners filed a notice of appeal on September 17, 2025. The court of appeals issued an unpublished opinion affirming the district court on May 5, 2026. The judgment stated that the case was submitted on the briefs without oral argument.

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5. PETITION FOR WRIT OF CERTIORARI

A. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit was issued on May 5, 2026, in Case No. 25-3750. *Pet. App. 1a*. The opinion is unpublished. *Id.* The judgment of the court of appeals affirmed the judgment of the United States District Court for the Southern District of Ohio. *Pet. App. 23a*. On July 9, 2026, a mandate was issued after the court denied appellants petition for rehearing en banc. *Pet. App. 24a-25a*.

The relevant district court orders were entered on September 17, 2025. *Pet. App. 24a & 48a*. The district court granted Respondents' Daubert motion, granted Respondents' motion for summary judgment, and denied Petitioners' motion for partial summary judgment. *Pet. App. 119a*.

B. JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion and judgment on May 5, 2026. *Pet. App. 1a*. Petitioners seek review of that judgment. This Court has jurisdiction under 28 U.S.C. §§ 1254(1) and 1291.

Petitioners filed a timely petition for rehearing en banc in the court of appeals, the time to file this petition runs from the denial of rehearing. *Pet. App. 24a-25a*.

**C. CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED**

The Fourth Amendment to the United States Constitution provides:

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

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

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured.

D. STATEMENT OF THE CASE

1. Factual Background

This case concerns the fatal shooting of **Joe Frasure** by officers of the City of Wyoming, Ohio. Joe's grandmother had died earlier in January 2023. *Pet. App. 2a-3a*. Petitioners' evidence showed that family members were cleaning out her apartment at 320 Durrell Avenue and that the police department had been told that family members would be doing so. *Id.*

On the night of January 29 into the early morning of January 30, 2023, a neighbor called what he believed was a non-emergency line. *Pet. App. 3a*. The caller reported that a building believed to be vacant had lights on and that he saw silhouettes. *Id.* He did not report an armed person. He did not report violence. He could not provide descriptions of the people he saw. *Pet. App. 3a*. Dispatch relayed the incident as two or three subjects attempting to break into a vacant residence. *Pet. App. 3a*.

Officers Ryan Warmack, Drew Jones, and Jordan Batts responded. They approached the building and observed lights. *Pet. App. 3a-4a*. They heard voices. *Pet. App. 4a*. The officers knew or discussed that an elderly tenant had died. *Id.* Batts asked whether they should order the people out because a window was open, but no officer did so. *Pet. App. 94a*. The officers did not announce themselves before the encounter escalated at the rear of the

building. *Pet. App. 4a*. They moved toward the rear with weapons drawn. *Pet. App. 5a*.

Officer Warmack encountered Joseph Frasure and Joe near a silver van in the paved area behind the building. *Pet. App. 5a*. Joseph Frasure raised his hands and repeatedly stated, “I ain’t going nowhere.” *Pet. App. 6a*. Officers pointed firearms. Joe was in the van. *Pet. App. 6a*. The van reversed, then moved forward. *Id.* Warmack moved out of the way and did not fire because, according to the record, he knew he could get out of the way. *Pet. App. 6a*.

Officers Batts and Jones then fired into the van. *Pet. App. 7a*. Petitioners contended that the body-camera footage and still images showed that the van’s tires were turned away from Batts when he fired, that Jones fired from the passenger side while the van was passing, and that Batts and Jones were positioned on opposite sides of the van in a cross-fire. Joe was struck in the head. *Pet. App. 7a, 61a*. The post-mortem evidence showed that the bullet entered behind the left ear and traveled left to right, back to front, and slightly downward. *Pet. App. 8a*.

After the shooting, officers continued pointing weapons at Joseph Frasure. *Id.* Jones shouted, “you’re gonna get shot! On the ground!” Joseph Frasure responded, “why you gonna shoot me for?” *Pet. App. 8a*.

2. District Court Proceedings

Petitioners filed suit under 42 U.S.C. § 1983 and state law. *Pet. App. 48a & Dist. Ct. Rs. 1 & 29*. They alleged excessive force, deadly force, municipal liability, wrongful death, and related claims. *Pet. App. 26a, 64a-65a & Dist. Ct. Rs. 1 & 29*. Petitioners also offered expert evidence from Dr. Lawrence Hunter concerning police practices, use of force, and de-escalation. *Pet. App. 10a & Dist. Ct. R. 68*.

The parties filed cross-motions for summary judgment. *Pet. App. 48a & Dist. Ct. Rs. 11, 48, & 49*. Respondents also moved to exclude Dr. Hunter's testimony. *Pet. App. 10a & Dist. Ct. R. 65*. On September 17, 2025, the district court granted Respondents' Daubert motion, granted Respondents' motion for summary judgment, and denied Petitioners' motion for partial summary judgment. *Pet. App. 47a & 119a*. The district court concluded that the officers were entitled to qualified immunity and that the municipal-liability claims failed. *Pet. App. 105a-118a*.

Petitioners filed a notice of appeal on September 17, 2025. *Dist. Ct. R. 92*.

3. Court of Appeals Proceedings

Petitioners requested oral argument on November 25, 2025. *Ct. App. R. 21-1, pg. viii*. Oral argument was scheduled for April 29, 2026. *Ct. App. R.*

33. On April 20, 2026, the court cancelled oral argument and submitted the case on the briefs. Ct. App. R. 36.

On May 5, 2026, the Sixth Circuit issued an unpublished opinion affirming. *Pet. App. 1a*. The panel held that the officers were entitled to qualified immunity on the firearm-pointing claims and on the deadly-force claim. *Id.* The panel reasoned that Petitioners had not identified clearly established law with sufficient specificity and distinguished **Smith v. Cupp**. *Pet. App. 17a-19a*. The panel also affirmed the rejection of municipal liability and held that any error, excluding Dr. Hunter’s report was harmless. *Pet. App. 20a-22a*. Petitioners filed a petition for rehearing en banc which was denied. *App. 24a-25a*.

E. REASONS FOR GRANTING THE WRIT

I. The decision below conflicts with *Barnes v. Felix* and presents an important question about how lower courts must apply the totality-of-the-circumstances rule after *Barnes*.

This Court’s decision in *Barnes v. Felix* rejected a narrow “moment-of-threat” rule in Fourth Amendment use-of-force cases. *Barnes v. Felix*, 605 U.S. 73 at *74 & *82 (2025). The Court made clear that the totality-of-the-circumstances inquiry has no artificial time limit. *Id. at 74*. Events leading up to the shooting may matter because they may affect how a reasonable officer would

understand and respond to the later use-of-force moment. *Barnes at 73.*

The Sixth Circuit's decision recited the totality standard but did not meaningfully apply it. The panel emphasized the compressed timing of the final seconds: only thirty seconds between the first rear encounter and the shooting, and approximately five seconds between the van's forward acceleration and the shots. *App. 8a-18a.* The panel's operative analysis centered on those seconds and credited the officers' later descriptions of danger. *Id.*

But the circumstances before those seconds were critical. *Barnes at 74.* The original call did not identify an armed person or a violent crime. *Pet. App. 3a.* It involved lights, silhouettes, and a supposedly vacant building. *Id.* Petitioners' evidence showed that the family had a lawful reason to be at the apartment and that the police department had been informed that family members would be cleaning it out. *Pet. App. 2a-3a.* The officers saw lights, heard voices, knew, or discussed that the "old lady" had died, and considered ordering the occupants out through the open window. *Pet. App. 3a-4a, 94a.* They did not do so. They did not announce themselves. *Pet. App. 4a.* They moved toward the rear with weapons drawn. *Pet. App. 5a.*

A jury could find that these facts eroded any burglary suspicion and made the officers' escalation unreasonable. A jury could also find that the officers' own conduct contributed to the danger that they later invoked to

justify deadly force.

The decision below leaves lower courts uncertain about what *Barnes* requires in practice. If a court may recite *Barnes* but still decide the case based primarily on the final seconds before shots are fired, the rejected moment-of-threat rule will survive in substance. This Court should grant review to clarify that *Barnes* requires meaningful consideration of prior events, including failure to identify as police, failure to de-escalate, erosion of suspicion, and officer conduct that foreseeably creates or intensifies the asserted threat.

II. The decision below conflicts with summary-judgment principles requiring courts to draw reasonable inferences for the nonmovant.

This Court has repeatedly held that, at summary judgment, courts must view the evidence in the light most favorable to the nonmovant. *Brosseau v. Haugen*, 543 U.S. 194, at 197–198, 125 S.Ct. 596 (summarily reversing decision in a Fourth Amendment excessive force case “to correct a clear misapprehension of the qualified immunity standard”). In qualified-immunity cases, that rule remains vital because the constitutional inquiry often depends on fine factual distinctions. It is especially important in fatal police-shooting cases, where the decedent cannot testify.

The Sixth Circuit acknowledged that body-camera footage controls only when it blatantly contradicts the plaintiff's version. *Pet. App. 11a*. But the panel effectively credited Respondents' interpretation of the video over Petitioners' reasonable inferences. *Pet. App. 16a & 22a*.

Petitioners argued that the video and still images showed that Batts ran toward the front of the van and crossed the driveway; that the van's tires were turned away from Batts when Batts fired; that Jones fired from the passenger side while the van was passing; and that the two shooting officers were on opposite sides of the van, creating a cross-fire. *Pet. App. 7a, 16a & 22a*. Petitioners also relied on the physical evidence that Joe was shot behind the ear and that the bullet traveled back-to-front. *Pet. App. 8a*.

Those facts permit a reasonable jury to find that the van was passing or moving away, and that no officer faced an immediate threat when deadly force was used. The panel instead treated the officers' accounts as consistent with the video and accepted the view that Batts and Jones reasonably perceived imminent danger. *Pet. App. 22a*.

In *Scott*, the Court held that “[w]hen opposing parties tell two very different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for the purposes of ruling on a motion for summary judgment.”

Scott v. Harris, 550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007). This Court should grant review because the decision illustrates a recurring problem: courts resolving qualified immunity at summary judgment by treating officers' interpretations of ambiguous video as controlling. *Tolan v. Cotton*, 572 U.S. 650 at 59 (2014). When video evidence is subject to competing reasonable interpretations, the jury—not the court—must decide what happened.

III. The decision below conflicts with the clearly established rule that officers may not use deadly force against a fleeing suspect who poses no immediate threat.

Under *Tennessee v. Garner*, deadly force may not be used against a fleeing suspect unless the officer has probable cause to believe the suspect poses a threat of serious physical harm to the officer or others. *Tennessee v. Garner*, 471 U.S. 1, 1, 11 (1985). *Graham v. Connor* requires an objective reasonableness inquiry under the totality of the circumstances. , 490 U.S. 386, 396 (1989).

The Sixth Circuit has applied those principles to vehicle cases. In *Smith v. Cupp*, the court held that an officer violated clearly established law if he shot a fleeing driver after the vehicle had passed and no one faced an immediate threat. *Smith v. Cupp*, 430 F.3d 766, 774 (6th Cir. 2005). *Smith* involved

disputed testimony about whether the officer was in danger, a vehicle, a rapidly evolving event, and a fatal shot behind the ear. *Id.* at 770, 773, 774, 775 & 776 (6th Cir. 2005).

This case is materially similar when the facts are viewed in Petitioners' favor. Petitioners' evidence supported that Joe was not armed, was not committing burglary, and was attempting to leave after unidentified armed men approached without announcing themselves. *Pet. App. 4a & 6a.* The officer initially in front of the van—Warmack—moved out of the way and did not fire because he knew he could get out of the way. *Pet. App. at 6a.* Petitioners' evidence further supported that Jones and Batts fired when the van was passing, turning away, or no longer presenting an immediate threat. *Pet. App. 7a & 61a.*

The panel distinguished *Smith* by treating Joe as a burglary suspect who had already fled and nearly hit Warmack. *Pet. App. 17a-18a.* But at summary judgment, those characterizations should not have been resolved in Respondents' favor. The relevant question was whether, under Petitioners' version of the facts, the shooting violated clearly established law. Under *Garner*, *Graham*, and *Smith*, it did.

This Court should grant certiorari to prevent qualified immunity from swallowing the clearly established rule that officers may not shoot a fleeing person who does not pose an immediate threat.

IV. The firearm-pointing issue independently warrants review because lower courts continue to struggle with when pointing guns at compliant individuals is excessive force.

The officers also pointed firearms at Joseph Frasure and Joe before the shooting and at Joseph Frasure after the shooting. Joseph Frasure raised his hands and repeatedly said that he was not going anywhere. *Pet. App. 5a & 8a*. After the shooting, Jones pointed a firearm and threatened, “you’re gonna get shot! On the ground!” Joseph Frasure responded, “why you gonna shoot me for?” *Pet. App. 8a*.

The Sixth Circuit held that Petitioners failed to identify clearly established law with sufficient specificity. *Pet. App. 14a*. But pointing a firearm at a compliant, nonthreatening person is a severe use of force. Lower courts have recognized that such force can be excessive where the person is compliant, unarmed, not resisting, and not posing an immediate threat.

This issue is important because firearm pointing is often treated as routine police conduct even though it communicates an immediate threat of deadly force. The Court should grant review or, at minimum, hold this petition pending any case addressing the level of specificity required to clearly establish excessive-force claims involving firearms pointed at compliant persons.

V. The Court should grant review because the case was decided without oral argument despite disputed video evidence and an intervening Supreme Court decision.

Petitioners requested oral argument. Ct. App. *R. 21-1*, pg. *viii*. The Sixth Circuit scheduled oral argument for April 29, 2026, then cancelled argument on April 20, 2026, and submitted the case on the briefs. Ct. App. *R. 33 & 36*. The panel then issued an unpublished opinion affirming summary judgment. *Pet. App. 1a*.

This case turned on body-camera footage, still-image interpretation, officer positioning, tire direction, bullet trajectory, cross-fire positioning, and the legal effect of *Barnes v. Felix*. *Pet.* Oral argument would have assisted the court in distinguishing what the video indisputably showed from what Respondents inferred from it.

The absence of oral argument does not itself create jurisdiction, but it underscores the need for this Court's review. A fatal police-shooting case involving disputed video evidence and the first applications of *Barnes* should not be resolved through an approach that permits courts to credit officer testimony and narrow the totality inquiry to the final seconds.

VI. The municipal-liability and expert issues show the broader consequences of the panel's qualified-immunity ruling.

The panel's resolution of the individual officers' qualified immunity

also affected the municipal-liability and expert-exclusion issues. Petitioners presented evidence concerning the City's training, supervision, policies, and understanding of seizures and firearm pointing. *Pet. App. 108a & 113a*. Petitioners also offered Dr. Hunter's police-practices testimony concerning use of force and de-escalation. *Pet. App. 37a-38a*.

The panel treated municipal liability as forfeited or undeveloped and treated any expert-exclusion error as harmless. *Pet. App. 20a & 22a*. But those rulings depended on the panel's view that no constitutional claim could proceed. If the deadly-force and firearm-pointing claims should have gone to a jury, then the municipal and expert issues also require reconsideration.

The case therefore presents not only a question about a single shooting, but a broader question about how qualified immunity at summary judgment can prevent juries from evaluating evidence of police practices, training, supervision, and causation in fatal-force cases.

F. CONCLUSION

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

This case presents an important and recurring question concerning the proper application of *Barnes v. Felix*, the summary-judgment standard in

qualified-immunity cases involving video evidence, and the settled rule that deadly force may not be used against a fleeing person who poses no immediate threat to officers or others. Review is warranted to ensure that lower courts do not revive, in substance, the very moment-of-threat analysis this Court rejected, and to ensure that disputed factual inferences in fatal police-shooting cases are resolved by juries rather than by appellate courts crediting officer testimony over competing record evidence.

Petitioners respectfully request that this Court grant the petition for a writ of certiorari and reverse the judgment of the United States Court of Appeals for the Sixth Circuit or vacate and remand for further proceedings consistent with this Court's decision.

Respectfully submitted,

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