

In The  
**Supreme Court of the United States**

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POLICE OFFICER MATTHEW NEEDHAM,  
in his individual and official capacity,

*Petitioner,*

v.

CARMITA LEWIS, as Personal Representative  
of the Estate of Dominique Lewis, deceased,

*Respondent.*

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**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Sixth Circuit**

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**BRIEF IN OPPOSITION ON BEHALF  
OF RESPONDENT CARMITA LEWIS,  
AS PERSONAL REPRESENTATIVE OF  
THE ESTATE OF DOMINIQUE LEWIS**

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**COUNTERSTATEMENT OF  
THE QUESTION PRESENTED**

Did Petitioner establish, on the basis of a single dash-cam video, that he was entitled to qualified immunity relating to Respondent's assertion that Petitioner violated Dominique Lewis's right to be free from excessive force when Petitioner fatally shot Mr. Lewis while Mr. Lewis was fleeing a traffic stop in a vehicle?

TABLE OF CONTENTS

	Page
COUNTERSTATEMENT OF THE QUESTION PRESENTED .....	i
TABLE OF AUTHORITIES .....	iii
COUNTERSTATEMENT OF JURISDICTION ....	1
COUNTERSTATEMENT OF THE CASE.....	1
SUMMARY OF THE ARGUMENT .....	6
ARGUMENT.....	7
I. THE SIXTH CIRCUIT PROPERLY CONCLUDED, ON THE BASIS OF THIS RECORD, THAT PETITIONER IS NOT ENTITLED TO QUALIFIED IMMUNITY .....	7
A. THERE ARE GENUINE ISSUES OF MATERIAL FACT RELATING TO WHETHER PETITIONER VIOLATED MR. LEWIS'S CONSTITUTIONAL RIGHTS .....	9
B. THE RIGHT AT ISSUE IN THIS CASE WAS CLEARLY ESTABLISHED AT THE TIME OF THESE EVENTS .....	12
CONCLUSION .....	14

## TABLE OF AUTHORITIES

## Page

## CASES:

<i>Brosseau v. Haugen</i> , 543 U.S. 194 (2004) .....	9, 12
<i>Dominique v. Telb</i> , 831 F.2d 673 (6th Cir. 1987) .....	13
<i>Graham v. Connor</i> , 490 U.S. 386 (1989) .....	9, 10, 13
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800 (1982) .....	8
<i>Mullenix v. Luna</i> , ___ U.S. ___, 136 S. Ct. 305 (2015) .....	13
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009) .....	8
<i>Saucier v. Katz</i> , 533 U.S. 194 (2001) .....	8, 12
<i>Sigley v. City of Parma Heights</i> , 437 F.3d 527 (6th Cir. 2006) .....	13
<i>Tennessee v. Garner</i> , 471 U.S. 1 (1985) .....	9, 10, 13

## STATUTES AND OTHER AUTHORITIES:

42 U.S.C. § 1983 .....	1, 4
Sup. Ct. R. 14(1)(g) .....	1
U.S. Const. amend. IV .....	4, 9, 10

## COUNTERSTATEMENT OF JURISDICTION

Respondent concurs with Petitioner's Statement of Jurisdiction to the extent that Petitioner asserts that he has timely filed this petition following the Sixth Circuit's denial of his request for rehearing *en banc*. Respondent of course, however, contests Petitioner's conclusion that this petition is meritorious.



## COUNTERSTATEMENT OF THE CASE

This cause of action arises out of the fatal shooting of decedent Dominique Lewis. Mr. Lewis was shot and killed by Petitioner Matthew Needham. At the time of the shooting, Needham was an officer in the Flint Police Department, in Flint, Michigan. This cause of action pursuant to 42 U.S.C. § 1983 resulted.

Respondent is cognizant that pursuant to Sup. Ct. R. 14(1)(g), Petitioner was obligated to provide this Court with a recitation of facts that are material to the petition before the Court. As a result, Petitioner's arguments thus far have been entirely based on video footage captured from a police cruiser camera [Pet. App. D]. While there are numerous witnesses to the events captured in that video, none of them, including Petitioner, have ever testified about the events at issue in this case.

With the limitations noted above in mind, Respondent will briefly provide a counterstatement of the case

in light of the way in which Petitioner has characterized the evidence. In the early evening of July 16, 2014, Mr. Lewis was a rear passenger in a white Chevrolet Impala that was being driven by Kenisha Williams. Mr. Lewis and Ms. Williams were joined in the vehicle by Kawan Lewis, who was in the front passenger seat, and Da'Zyria Williams (Kenisha's young daughter), who was also a rear passenger.

Officer Janelle Stokes of the Flint Township Police Department was on routine patrol traveling westbound on Flushing Road near Ballenger Highway when she observed Ms. Williams's vehicle, which was also traveling westbound on Flushing Road. Officer Stokes initiated a traffic stop of the vehicle near the intersection of Flushing and Eldorado Roads. Ms. Williams pulled her vehicle over to the side of the road without incident.

Officer Stokes approached the vehicle, spoke to Ms. Williams and obtained her driver's license. Officer Stokes then returned to her vehicle and ran the driver's license and found that Ms. Williams was clear, valid and free from any tickets, liens or warrants. After running the driver's license, Officer Stokes called for backup as she wanted to search the vehicle because she allegedly smelled marijuana inside the vehicle. Petitioner Needham responded to the call for backup. He arrived at the scene a few minutes later and pulled his vehicle behind Officer Stokes's patrol car.

Officers Stokes and Needham together approached the vehicle and asked Ms. Williams for consent to search

her vehicle, which she granted. As Officer Stokes began the process of getting the occupants out of the vehicle, Petitioner Needham was standing near the passenger's side rear quarter panel of the Williams vehicle. Officer Stokes first had Ms. Williams step from the vehicle and then patted her down. Officer Stokes next had Ms. Williams take her young daughter Da'Zyria out of the left rear passenger seat. Officer Stokes instructed Ms. Williams and Da'Zyria to stand on the grass by the passenger side of the vehicle while she continued to remove the remaining occupants from the vehicle.

Officer Stokes next had the front seat passenger, Kawan Lewis, step from the vehicle. Officer Stokes began patting Kawan down. Petitioner Needham was standing to the right of Officer Stokes at that time. While Officer Stokes was patting down Kawan, she saw that Dominique Lewis, the right rear passenger, was moving about the interior of the vehicle. Dominique climbed into the driver's seat.

As Petitioner Needham was standing near the right front quarter panel of the Williams vehicle, Dominique Lewis started the car. Upon hearing the engine, Petitioner Needham pulled his weapon and ran directly in front of the moving car and yelled "Stop! Police!" Needham then ran completely around the front of the car and positioned himself on its driver's side as the car was driving forward. Then, Petitioner Needham shot his firearm multiple times through the driver's side door and/or window. Dominique was struck

by multiple bullets. He remained conscious for a period of time before ultimately succumbing to his wounds.

Following the events described above, Mr. Lewis's estate filed this cause of action pursuant to 42 U.S.C. § 1983, in which it alleged that Petitioner violated his Fourth Amendment right to be free from excessive force. Petitioner then filed a motion for summary judgment in which he asserted that he was entitled to qualified immunity. Petitioner contended that the video footage of the shooting established that his use of force was justified as a reasonable officer in his position would have concluded that deadly force was necessary.

Before the deadline for the response to the motion passed, the district court held a status conference. At that status conference, the court instructed the parties that they were to proceed with discovery before the court considered the merits of Petitioner's motion. Petitioner then filed his notice of appeal. After two different motions were filed in the Sixth Circuit, that Court ultimately stayed the trial proceedings and determined that Petitioner was entitled to a determination regarding qualified immunity prior to any further proceedings in the district court.

After the parties filed their briefs below, the Sixth Circuit issued its opinion without a hearing. In a 2-1 opinion, the Court held that Petitioner was not entitled to qualified immunity at this stage of the litigation [Pet. App. 2]. In reaching that conclusion, the majority found that there were genuine issues of material fact relating to whether the use of force was excessive and



further found that the constitutional right at issue in this case was clearly established at the time of these events.

Regarding whether the use of force was excessive, the majority noted that at the time that Petitioner fatally shot Mr. Lewis, Petitioner was standing on the side of the vehicle and was no longer in a position of danger [Pet. App. 8-9]. The majority stressed that there was no evidence that others were in immediate danger or that Petitioner's interactions with Mr. Lewis could have led him to believe that he would inevitably harm someone else [Pet. App. 11-14].

Regarding whether the right at issue in this case was clearly established, the majority described how the contours of the right had been set forth in previous holdings within the circuit. The majority explained that it was clearly established that an officer could not use fatal force to stop an individual from fleeing from a traffic stop if that individual did not pose a threat at the time the force was used [Pet. App. 14-17]. Thus, the denial of the motion for summary judgment was affirmed.

Following the issuance of the Court's opinion, Petitioner filed his Petition for Rehearing En Banc [Pet. App. 34-35]. That petition was denied, and Petitioner then timely filed the present Petition for Writ of Certiorari.



## SUMMARY OF THE ARGUMENT

Petitioner has done nothing to show that the Sixth Circuit's holding in this case amounts to error, nor that the very fact-specific question involved in this case necessitates this Court's consideration. He has not shown that there are any disagreements among the Circuits regarding any point of law at issue in this case, just as he has not shown that this unpublished opinion will have any meaningful impact on an issue of legal importance.

In arguing that the Sixth Circuit erred, Petitioner first asserts that there are no genuine issues of material fact regarding whether the use of force in this case was excessive and that the Sixth Circuit essentially ignored irrefutable evidence regarding that point. Instead, it is apparent that the Sixth Circuit did exactly what this Court has historically instructed our Circuit Courts to do: it viewed the evidence in the light most favorable to the non-moving party, drew *reasonable* inferences in favor of the non-moving party, and then asked whether a reasonable finder of fact could conclude that the use of force was excessive. In light of the evidence that Petitioner was standing next to the vehicle when he fired the fatal shots, and not in its path, that conclusion was correct.

Just as the majority correctly determined that there were genuine issues of material fact relating to whether there was a constitutional violation, so too did the majority properly determine that the right at issue was clearly established at the time of these events. In

arguing otherwise, Petitioner contends that the majority relied on case law that was issued after the events in this case occurred and that the majority relied on case law that was factually inapplicable to the circumstances Petitioner faced. That is simply not accurate. Instead, the majority cited case law that predated the events of this case, which established the constitutional right at issue. Petitioner was thus on notice that his conduct was not constitutionally permissible at the time of his actions, thus precluding him from invoking the defense of qualified immunity.



## ARGUMENT

### **I. THE SIXTH CIRCUIT PROPERLY CONCLUDED, ON THE BASIS OF THIS RECORD, THAT PETITIONER IS NOT ENTITLED TO QUALIFIED IMMUNITY.**

At the outset of this opposition to the petition for writ of certiorari, Respondent must emphasize what will likely be very apparent to this Court: this Petition does little more than question the merits of the Sixth Circuit's opinion affirming the denial of summary judgment, instead of explaining why this particular decision carries broad legal significance. Petitioner has failed to explain why a factbound, unpublished opinion in the Sixth Circuit necessitates this Court to exercise its discretion and grant this petition. In reality, Petitioner does nothing more than argue that the lower court should have ruled in his favor, as nearly every party who does not prevail in court believes. Mere

disagreement with a conclusion that arose out of the application of binding legal authority is not unique or sufficient grounds on which to seek certiorari.

With it noted that Petitioner has failed to show the jurisprudential significance of the Sixth Circuit's decision, Respondent will proceed to address the arguments presented to this Court. Government officials may invoke qualified immunity as a defense only "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 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Questions of qualified immunity are determined under a two-step inquiry. When viewing the evidence in the light most favorable to the Plaintiff, a court must first decide whether the officer's conduct violated the Plaintiff's constitutional right. If the answer to that question is "yes," the Court must then determine whether the right that was violated was "clearly established" at the time of the misconduct. *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

Petitioner now argues that the Sixth Circuit erred regarding each of the prongs discussed above and that the error necessitates this Court's review. To the contrary, as Respondent will discuss in turn, the Court properly determined that 1.) there were genuine issues of material fact relating to whether Petitioner violated Mr. Lewis's constitutional rights and 2.) that the right at issue was clearly established at the time of these events.

**A. THERE ARE GENUINE ISSUES OF MATERIAL FACT RELATING TO WHETHER PETITIONER VIOLATED MR. LEWIS'S CONSTITUTIONAL RIGHTS**

The right to be free from excessive force is guaranteed by the Fourth Amendment's protections against unreasonable seizures. See U.S. Const. amend. IV; see also *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). In *Tennessee v. Garner*, this Court established that a police officer's use of deadly force is a "seizure" within the meaning of the Fourth Amendment and that claims alleging the use of such force are evaluated under the Fourth Amendment's reasonableness standard. *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). Under that standard, "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them[.]" *Graham*, 490 U.S. at 397.

As this Court has stated, "[t]he use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable." *Garner*, 471 U.S. at 11. Instead, it is the circumstances, not the mere occurrence of a flight, that determines reasonableness. Only "[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force." *Brosseau v. Haugen*, 543 U.S. 194, 203 (2004).

Determining whether the use of force is "reasonable" requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth

Amendment interests against the countervailing governmental interests at stake.” *Garner*, 471 U.S. at 8. This Court has instructed that courts should weigh “the severity of the crime at issue, whether the suspect pose[d] an immediate threat to the safety of the officers or others, and whether he [was] actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396 (citing *Garner*, 471 U.S. at 8-9). The factors set forth above do not constitute an exhaustive list and the ultimate inquiry is “whether the totality of the circumstances justifies a particular sort of seizure.” *Id.* Thus, the assessment for reasonableness under the Fourth Amendment “is not capable of precise definition or mechanical application” and “its proper application requires careful attention to the facts and circumstances of each particular case[.]” *Graham*, 490 U.S. at 396 (citing *Garner*, 471 U.S. at 8-9).

When arguing that the Sixth Circuit erred in finding a genuine issue of material fact regarding whether Petitioner’s use of force was excessive, Petitioner falsely asserts that the majority unreasonably drew inferences in Respondent’s favor, which were inconsistent with the video evidence available to the Court. To the contrary, as this Court will see, the majority examined the video footage in great detail and explained the ways in which a reasonable person could interpret that evidence. The majority noted that the video footage showed that Petitioner had lowered his weapon prior to firing, presumably because he was no longer in a position of danger, and that the footage showed Petitioner firing his weapon from a position on the side of

the vehicle. The majority also noted the general nature of the scene where these events occurred, as captured by the video, focusing on whether any other vehicles or people were in Mr. Lewis's path as he fled the traffic stop.

After examining the video footage in great detail, the majority held that a reasonable jury could conclude that Petitioner was acting in self-defense and was thus justified in his use of force, but that it could also determine that Petitioner purposefully shot Mr. Lewis at a time where he did not pose a threat to Petitioner or anyone else. In other words, the Court recognized that the video footage was not, by itself, determinative of whether Petitioner's use of force was legally justified.

Petitioner has not offered any case that holds that the existence of video footage requires a Court to conclusively state whether a use of force was or was not reasonable. That there have been previous instances where a use of force was deemed reasonable on the basis of video footage does not mean that the video in *this* case establishes that *this* use of force was justified. The case law establishes that the Court was obligated to answer the question of reasonableness through the lens of the video footage, and it did. That Petitioner finds the majority's ruling unfavorable is not by itself a basis for invoking this Court's jurisdiction. Instead, because the Sixth Circuit accurately applied the controlling precedent, this petition must be denied.

**B. THE RIGHT AT ISSUE IN THIS CASE WAS CLEARLY ESTABLISHED AT THE TIME OF THESE EVENTS**

In addition to asserting that the majority failed to properly consider the video footage of this fatal shooting, Petitioner also contends that the majority improperly defined the constitutional right at issue. Petitioner asserts that the majority defined the constitutional right in an overly broad manner, ignoring this Court's directive to ensure that the right at issue be specifically defined. Petitioner urges that there was no clearly established right established prior to the events in this case that would have placed Petitioner on notice that his conduct violated Mr. Lewis's rights. The argument, unfortunately, is entirely premised on a selective and misleading reading of the majority's opinion.

“The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Saucier v. Katz*, 533 U.S. 194, 202 (2001). The Supreme Court has repeatedly emphasized that this inquiry “must be undertaken in light of the specific context of the case, not as a broad general proposition.” *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (quoting *Saucier*, 533 U.S. at 201). An officer will be denied qualified immunity if he violates a statutory or constitutional right that was “so clearly established when the acts were committed that any officer in the defendant's position, measured objectively, would have clearly understood that he



was under an affirmative duty to have refrained from such conduct.” *Dominique v. Telb*, 831 F.2d 673, 676 (6th Cir. 1987).

When arguing that the constitutional right at issue in this case was not clearly established, Petitioner argues that the majority in this case violated the rule this Court set forth in *Mullenix v. Luna*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 305 (2015), in which the Court stressed that in an excessive force action, the constitutional right at issue was not the general right to be free from excessive force as discussed in *Graham* and *Garner*. Petitioner then argues that the majority failed to identify any opinion issued prior to the events of this case which would have placed Petitioner on notice that his conduct in this case was unconstitutional. That argument completely ignores the majority’s citation to *Sigley v. City of Parma Heights*, 437 F.3d 527 (6th Cir. 2006), which involved an analysis of whether an officer was constitutionally permitted to fatally shoot a suspect who was fleeing in a vehicle.

Thus, unlike in *Mullenix*, the Sixth Circuit was not simply relying on general propositions relating to excessive force, but instead located factually analogous precedent that predated the events in this case. Nothing more was required. Petitioner now relies on *Mullenix* not because the majority in this case actually ran afoul of the *Mullenix* holding, but because Petitioner is dissatisfied with the outcome of his appeal and needs some basis to call for relief.



## CONCLUSION

For the foregoing reasons, this Court should not grant this petition, as Petitioner has entirely failed to show that the Sixth Circuit committed any error and, that if it did, the error was of sufficient importance to justify this Court using its discretion to review a fact-specific, unpublished opinion.

Respectfully submitted,

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