

No. _____

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

OFFICER ROBERT MAHONEY, et al.,

Petitioners,

v.

THE CITY OF SEATTLE, including the Seattle
Police Department; ED MURRAY, individually and in
his official capacity, former Mayor of the City of Seattle;
JENNY DURKAN, in her official capacity, Mayor of the
City of Seattle; and PETER HOLMES, individually
and in his official capacity, Seattle City Attorney,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the “core” right of self-defense guaranteed by the Second Amendment extend to police officers?
2. Can a public employer require its employees regularly to confront volatile, dangerous, life threatening subjects and circumstances, and at the same time regulate its public employees in a manner that unreasonably burdens and defeats their ability to defend themselves and innocent bystanders?
3. Is intermediate scrutiny a sufficient standard by which to measure a law enforcement agency’s use of force policy requirements that unreasonably burden and effectively destroy police officers’ ability to protect the lives of officers and the public they defend?
4. Did the Ninth Circuit misapply pleading standards of *Bell Atlantic v. Twombly* to uphold a use of force policy, in reliance on a scattershot recitation of policy provisions, at the same time disregarding the Officers’ detailed factual allegations demonstrating how the policy overall, and its contradictory and conflicting provisions, unreasonably burdens and effectively destroys officers’ right of self-defense?
5. Does the fundamental right of self-defense articulated in *Heller* and *McDonald* include the right of Officers to reasonably defend themselves and the public from life threatening dangers for purposes of substantive due process under the Fourteenth Amendment?

**PARTIES TO THE PROCEEDING
IN THE NINTH CIRCUIT**

PLAINTIFFS/APPELLANTS:

Officer ROBERT MAHONEY, Officer SJON C. STEVENS, Officer CLIFF BORJESON, Officer CHRISTOPHER MYERS, Officer BRIDGET HILLAN, Officer LANCE BASNEY, Officer SALVATORE DITUSA, Officer CLARKE D. CHASE, Officer JOSEPH STANKOVICH, Officer WELDON C. BOYLAND, Officer JOHN L. FARRAR, Officer DALE W. UMPLEBY, Officer GEORGE BASELEY, Officer DAVID M. HARRINGTON, Officer HENRY FELDMAN, Officer GILLES MONTARON, Officer ROBERT STEVENSON, Officer RYAN KENNARD, Officer NATHAN LEMBERG, Officer JEFF MITCHELL, Officer ERNEST T. HALL, Lieutenant DAVID FITZGERALD, Officer ROBERT BURK, Officer ADAM BEATTY, Officer TOMAS TRYKAR, Officer BRIEN ESCALANTE, Officer KAREN G. PIO, Officer MICHAEL GONZALEZ, Officer STEVE KIM, Officer ENNIS ROBERSON, Officer LEROY OUTLAW, Officer KIERAN BARTON, Officer JONATHAN REESE, Officer EUGENE SCHUBECK, Officer SEAN HAMLIN, Officer SHANNON WALDORF, Officer JEFFREY SWENSON, Officer TABITHA SEXTON, Officer MICHAEL SPAULDING, Officer STEVEN STONE, Officer LILIYA A. NESTERUK, Officer TODD M. NELSON, Officer TIMOTHY JONES, Officer NINA JONES, Sergeant ARIEL VELA, Officer MICHAEL A. LARNED, Officer DEREK B.

**PARTIES TO THE PROCEEDING
IN THE NINTH CIRCUIT – Continued**

NORTON, Officer JASON DEWEY, Officer DAVID WHITE, Officer TRENT SCHROEDER, Officer AUDI A. ACUESTA, Officer STEVE CLARK, Officer STEVEN L. BERG, Officer ERIK JOHNSON, Officer VERNON KELLEY, Officer SHELLY SAN MIGUEL, Officer CHRISTOPHER J. ANDERSON, Officer SUZANNE M. PARTON, Officer ERIC F. WHITEHEAD, Officer ALAN RICHARDS, Officer RON WILLIS, Officer A. SHEHEEN, Officer RANDALL HIGA, Officer TIM OWENS, Officer TYLER GETTS, Officer ADAM ELIAS, Officer AUSTIN DAVIS, Officer LOUIS CHAN, Sergeant PAUL PENDERGRASS, Officer AJ MARKS, Sergeant RON MARTIN, Officer RUSTY L. LESLIE, Officer TJ SAN MIGUEL, Officer JEFFREY C. PAGE, Officer RYAN ELLIS, Officer JACK BAILEY, Officer ALFRED RI WARNER, Officer MICHAEL R. WASHINGTON, Officer ANTHONY J. REYNOLDS, Officer RICHARD HEINTZ, Officer CURTIS GERRY, Sergeant JOSEPH A. MACCARRON, Officer ADOLPH TORRESCANO, Officer CURT E. WILSON, Officer JAMES G. THOMSEN, Officer RICHARD W. PRUITT, Detective DONALD L. WATERS, Officer ANTHONY J. REYNOLDS, Officer JONARD A. LEGASPI, and Officer RICH PETERSON.

**PARTIES TO THE PROCEEDING
IN THE NINTH CIRCUIT – Continued**

DEFENDANTS/APPELLEES:*

THE CITY OF SEATTLE, including the Seattle Police Department.

ED MURRAY, individually and in his official capacity, former Mayor of the City of Seattle.

JENNY DURKAN, in her official capacity, Mayor of the City of Seattle.

PETER HOLMES, individually, and in his official capacity, Seattle City Attorney.

* While the then Attorney General of the United States, Eric H. Holder, Jr. and the former Assistant United States Attorney for the Western District of Washington, Jenny Durkan, were named as Defendants in Petitioners' complaint, the United States has never made an appearance, nor been considered a party, in the ongoing proceedings. Neither were named by Petitioners in their briefs to the Ninth Circuit. Nevertheless, the Ninth Circuit included the name of the current Attorney General, Jefferson B. Sessions, III, in the case caption when issuing its opinion. Jenny Durkan is named again, as a Defendant, in the Petition for Writ of Certiorari, but in her new capacity as Mayor of Seattle, because the Mayor's office has remained a Defendant throughout the proceedings.

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Mahoney v. Sessions, 871 F.3d 873 (9th Cir. 2017).

Mandate, No. 14-35970, 9th Circuit Court of Appeals, filed Oct. 11, 2017.



JURISDICTIONAL STATEMENT

The Court has subject matter jurisdiction because the Officers brought their complaint under 42 U.S.C. § 1983. Jurisdiction is available pursuant to 28 U.S.C. § 1254(1). The Ninth Circuit filed its written opinion, for publication, on September 17, 2017. The opinion affirmed the district court’s dismissal of the Officers’ claims.



PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const. amend. II.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1 (in relevant part).

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

...

42 U.S.C. § 1983 (2006) (in relevant part).

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STATEMENT OF THE CASE

In 2011-12, the Department of Justice (“DOJ”) conducted and concluded an investigation of the Seattle Police Department (“SPD”). *See* First Amended Complaint (“FAC”) ¶9.¹ After the investigation, DOJ determined that SPD officers had *not* engaged in

¹ The FAC can be found in the Civil Docket for Case No. 2:14-cv-00794-MJP, United States District Court, Western District of Washington, filed as Document 13.

racially discriminatory policing. *Id.* Nevertheless, DOJ found that SPD officers had a pattern and practice of using excessive force in their encounters with suspects. *Id.*

This finding was disputed by the City of Seattle (“City”) even as it consented to a settlement with DOJ (“Settlement Agreement”). *Id.* The excessive force finding was discredited by an independent researcher and former DOJ statistician. FAC ¶73. However, DOJ refused all requests to provide the methods, data, or analysis it used to reach its excessive force finding. *Id.* The pattern and practice finding was contradicted by DOJ itself which expressly found that the “great majority” of SPD officers do not use excessive force, and concluded that expected oversight should focus only on the “very small number” of officers who it alleged misused force. *Id.*

Nevertheless, under the Settlement Agreement, the City agreed to revise its use of force policy (“UF Policy”) in a process to be overseen by a federal monitor (“Monitor”). FAC ¶12-13. SPD did not have meaningful input into the new policy. FAC ¶15. Neither the Officers nor their union representative, the Seattle Police Officers Guild (“SPOG”) were at the table for significant decisions regarding the UF Policy. FAC ¶16. The process resulted in a completely new, extremely lengthy and rigid, overly complicated, contradictory, and dangerously restrictive UF policy;² one that is wholly at

² The UF Policy contains twenty-three pages of principles, definitions, and categories of force types, as well as interrelated,

odds with the uncertain nature, practical realities, and everyday dangers of policing. *See, e.g.*, FAC ¶¶17, 18, 20, 34-38, 47-53.

Judge Robart approved the new UF Policy in a one-and-a-half page order. FAC ¶¶8, 11. Neither SPOG, nor the Officers, were a party to the proceedings that resulted in its approval. FAC ¶¶15, 16, 18. The UF Policy became effective January 1, 2014. FAC ¶8.

After it went into effect, the Officers continued their attempts, in writing, to identify to SPD, the City, DOJ, and the Monitor the fundamental flaws in the UF Policy, and the high potential for injury to the public and Officers as a result. FAC ¶18. These attempts were rebuffed. *Id.* Accordingly, in May 2014, over 100 Officers filed a complaint in district court, under 42 U.S.C. § 1983 and 28 U.S.C. § 1331, naming DOJ officials, the City, certain City officials, and the Monitor as defendants.

The crux of the Officers' allegations is that Respondents, through SPD's new UF Policy, fundamentally rewrite the rules regarding encounters between

multi-factored analyses, restrictions, and rules, that all must be understood, considered, and evaluated by Officers before using *any* force, including specific, detailed requirements and restrictions for ten different force tools. The UF Policy also includes an additional seventeen pages of reporting and investigation requirements with which Officers must comply. The entire UF Policy as well as the Seattle Police Manual for reviewing Use-of-Force can be found in the Civil Docket for Case No. 2:14-cv-00794-MJP, United States District Court, Western District of Washington, filed as Documents 107-3 and 107-4.

Officers and threatening suspects in ways that are unworkable, unreasonably dangerous, and effectively defeat Officers' ability to take reasonable actions in self-defense or in defense of innocent bystanders. The Officers are *not* asking to use force without limits or discipline. They are duty bound and committed to the constitutional use of force. *See* FAC ¶27. They seek a policy, however, that affirms their duty and right under the Second and Fourteenth Amendments to use timely and reasonable force options to protect themselves and the public from life-threatening dangers. *See, e.g.*, FAC ¶¶2, 63-65.

The Officers' complaint identifies specific provisions of the UF Policy that outright prohibit the use of *even* reasonable force in response to suspects' threatening behavior. *See, e.g.*, FAC ¶¶34-35, 41 (prohibiting *any* force unless *all* other options have been considered and eliminated).

Their complaint further identifies unreasonable restrictions on Officers' ability to take timely, reasonable actions in self-defense when responding to threatening and potentially deadly circumstances, *see, e.g.*, FAC ¶¶30, 32, 38, 41-45, 47 (rigid, multi-factored standards and rules – unrelated to the nature and immediacy of the threat – deprive Officers of discretion and flexibility, and keep Officers at a dangerous force deficit, throughout encounters with threatening suspects).

It further describes how the policy operates to make it virtually impossible under rapidly evolving,

dangerous circumstances for Officers to make timely and reasonable force decisions to protect the public and themselves. *See, e.g.*, FAC ¶¶32, 38, 47, 52 (requiring Officers to make “perfect” decisions to use force), FAC ¶¶41, 48, 49, 50, 51 (creating impossible standards for timely decision-making regarding use of force).

When a policy is overly rigid, complicated and contradictory, it also creates opportunities for unreasonable disciplinary action, based on post-hoc, second-guessing of Officers’ use of force, that is inconsistent with split-second decision-making in the face of life-threatening dangers. *See, e.g.*, FAC ¶¶51, 53, 56-58, 61. The result has been that the Officers daily face a Hobson’s choice: either protect public and personal safety with timely and reasonable use of force at the expense of their job, or fail to timely use reasonable force at the expense of public and personal safety. *See, e.g.*, FAC ¶¶2, 22-24.

The Officers allege that being required to consistently face unreasonable risk to their lives and livelihoods is itself a constitutional injury. FAC ¶75. The Officers also allege significant increases in incidents where Officers, due to the new policy, failed to use, or delayed or stopped using, reasonable force where force was the appropriate response for Officer and public safety. FAC ¶60. Because of delay and hesitation in the use of reasonable force, a significant increase in injuries to, and assaults on, Officers has resulted. FAC ¶22.

In response to the City’s Motion to Dismiss, the district court, in October, 2014, held that the Second Amendment does not provide public employees, and police officers in particular, a right of self-defense. App. 34. It also found that the Officer’s use of his or her service weapon in self-defense has “no relation” to the individual rights recognized in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). App. 35. The decision held that no independent right of self-defense exists anywhere under the Constitution. App. 36. By the district court’s reasoning, self-defense is not a right *on par* with the right to marry or to vote, *id.*, nor does it “shock the conscience” if police officers are restricted or even denied the ability to use force against resisting, i.e., threatening, suspects. App. 39.³

On September 19, 2017, the Ninth Circuit upheld the district court’s dismissal. It reversed, however, on the Second Amendment issue, assuming instead that the UF Policy implicates the Officers’ right of self-defense. App. 11. Nevertheless, it determined that the burden on these rights was not severe or substantial. App. 12-14. Thus, applying intermediate scrutiny, it found that the City had a significant interest in ensuring public safety and there was a reasonable fit between the UF Policy and the City’s asserted objective. App. 17-20. It also upheld the dismissal of the Officers’

³ The district court also ruled on the Monitor’s separate Motion to Dismiss that the Monitor was entitled to “absolute quasi-judicial immunity.” App. 31. The Officers did not challenge this ruling on appeal.

substantive due process claim on the basis that there is no “freestanding” fundamental right of self-defense. App. 21.

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**REASONS TO GRANT
THE WRIT OF CERTIORARI**

I. INTRODUCTION

The issue of constitutional policing has been in the forefront of the Nation’s consciousness since recent controversial shootings of black suspects by white officers, the rise of the Black Lives Matter movement, and the previous administration’s efforts by DOJ to fundamentally alter use of force policies of local law enforcement agencies through its “pattern and practice” jurisdiction under 42 U.S.C. § 14141. What has been lost in this debate is the lives and safety of police officers and the public they defend.

Police officers routinely engage with volatile, dangerous, and threatening suspects, often who are armed, and officers must make life or death decisions, in dangerous, rapidly unfolding circumstances to protect the lives of innocent bystanders and themselves. DOJ has mandated and imposed “de-escalation,” “delay,” and other minimal force tactics on a broad range of local law enforcement agencies and practices without sufficient, if any, regard for the life-threatening dangers faced by police officers and the public.

The Officers fully support police reform, even as they accept the dangers required of their job. They

bring this Writ to ensure that such efforts are not permitted to make their job *unreasonably* dangerous in violation of their fundamental right of self-defense. This is a matter of life and death. The Officers respectfully ask the Court to reverse the dangerous precedent set by the Ninth Circuit, and ensure that use of force policies, under which the Officers must daily carry out their sworn duties, operate so as to reasonably protect Officers and the public.

II. SUMMARY

The Ninth Circuit “assumed” the UF Policy burdened conduct falling within the scope of the Second Amendment. It is critical to Officer and public safety for the Court to affirm that use of force policies are subject to constitutional constraints and that police officers have the same fundamental right of self-defense as other citizens. In so doing, the Court would affirm that the holdings of *Heller* and *McDonald*, regarding the “fundamental,” “basic,” “deeply rooted,” “ancient,” and “natural” right to self-defense, extend to the public sphere, an issue currently in dispute among the circuit courts.

The Ninth Circuit also determined that because the new UF Policy represented the City’s attempt to protect public safety, and since under the language of the policy, Officers “may” sometimes use force, it was appropriate to apply only intermediate scrutiny. It upheld the policy on that basis. There has been confusion and inconsistency in the circuit courts regarding

the appropriate standards for reviewing Second Amendment challenges. In particular, determining which type of restrictions, including whether related to home versus public self-defense, can be considered to have effectively “destroyed” the “core” right of self-defense, such that no level of scrutiny can save the policy or regulation under the reasoning of *Heller* and *McDonald*.

This case offers the Court an opportunity to make clear that public employees are not relegated to a watered down version of self-defense. Indeed, such a holding is nonsensical, as watered-down self-defense is no defense at all. The Ninth Circuit incorrectly applied the Court’s case law regarding employee’s constitutional rights, in order to discount the type of, and significant dangers created by, the restrictions at issue. In addition, the circuit court, as well as the district court, wholly disregarded the officers’ factual allegations regarding how the UF policy operates, specifically, and overall, to effectively defeat Officers’ fundamental right of self-defense. This allowed the circuit court to minimize the otherwise significant handicaps imposed by the UF Policy – ostensibly to keep in place a concededly well-meaning, though dangerously flawed policy – and apply an incorrect, intermediate scrutiny standard.

Finally, the Ninth Circuit reached the contradictory conclusion that even though the Officers’ conduct, as regulated by the UF Policy, is assumed to be protected under the Second Amendment’s core right of self-defense, such a right is not “fundamental” so as to protect the Officers’ conduct under the Fourteenth

Amendment's substantive due process clause. This holding significantly undercuts the protections afforded citizens by *Heller* and *McDonald*, and should be corrected by the Court.

III. ARGUMENT

A. The Second Amendment Must Apply When Regulating Officers' Use of Force.

The Ninth Circuit held that “[b]ecause the UF Policy resembles none of the presumptively lawful measures identified in *Heller*, and the parties have adduced no evidence that the UF Policy imposes a restriction on conduct that falls outside the historical scope of the Second Amendment right to use a firearm for self-defense, we assume the UF Policy ‘is subject to a Second Amendment protection.’” App. 11, quoting *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016).

The Officers believe this holding is correct. It assumes that the fundamental right of self-defense extends beyond the home and into the public sphere. Such a holding, the Officers argue, would also require that strict scrutiny be applied where restrictions effectively destroy this fundamental right. These have been contentious and conflicting issues of law in the circuit courts in the wake of *Heller*.

The District of Columbia Circuit recently struck down the District's handgun law. *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017). The law at issue, in addition to prohibiting open carry, banned concealed carry by the general public without a showing

of “good reason.” *Id.* at 655. The *Wrenn* court held that such a restriction could not stand, after *Heller*, because under the Second Amendment, “carrying beyond the home, even in populated areas, even without special need, falls within the Amendment’s coverage, *indeed within its core.*” *Id.* at 664 (emphasis added).

The Seventh Circuit previously reached a similar conclusion. *Moore v. Madigan*, 702 F.3d 933, 940-42, 937 (7th Cir. 2013). It struck down Illinois’s flat ban on carrying a gun in public, noting the *Heller* Court’s inference that “eighteenth-century English law recognized a right to possess guns for resistance, self-preservation, self-defense, and protection against both public and private violence.” *Id.* at 937, citing *Heller*, 554 U.S. at 594.

The Second Circuit, by contrast, upheld New York’s good cause requirement for concealed carry, despite that open carry is also prohibited in New York. It found that under *Heller*, the “core” protection of the Second Amendment, and the only protection subject to strict scrutiny, relates to restrictions on self-defense in the home. *Kachalsky v. County of Westchester*, 701 F.3d 81, 93-94 (2d Cir. 2012), citing *Heller*, 554 U.S. at 634-35.

The Ninth Circuit, in an *en banc* decision, similarly upheld California’s law requiring good cause for concealed carry. *Peruta v. City of San Diego*, 824 F.3d 919 (9th Cir. 2016), *cert. denied*, ___ U.S. ___, 137 S. Ct. 1995 (June 26, 2017). It held more broadly, that “in any degree,” *id.* at 939, the Second Amendment does not

protect “the right of a member of the general public to carry concealed firearms *in public*.” *Id.* (emphasis added). The Ninth Circuit avoided the issue of whether the restriction amounted to a “total ban,” on handgun use in public, *see Heller*, 554 U.S. at 629 (striking down rules that amount to a total ban on handguns), by distinguishing, and declining to answer, the issue of whether there existed a Second Amendment right to carry a firearm openly in public. *Peruta*, 824 F.3d at 939.

The Fourth Circuit also upheld Maryland’s “good and substantial reason” requirement for obtaining a handgun permit. *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013). It assumed though, by contrast, that the protections of the Second Amendment extend beyond the home, *id.* at 876, and that Maryland’s requirement infringed upon that right. *Id.* The court also conceded that even a significant government interest in public safety could not save a similar restriction on the right of self-defense in the home. *Id.* at 877-78. Nevertheless, the *Woollard* court made a home versus public distinction that allowed it to use intermediate, rather than strict, scrutiny and uphold the restrictive public carry permit based on the same government interest expressly rejected in *Heller*. *Id.* at 878.

The Third Circuit similarly upheld New Jersey’s requirement that applicants demonstrate a “justifiable need” to publicly carry a handgun for self-defense. *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013). It too “assum[ed], that the Second Amendment confers upon individuals some right to carry arms outside the home.”

Id. at 434. Nevertheless, it concluded that a “justifiable need” requirement for public carry, even though not grounded in clear historical evidence, was a “presumptively lawful, longstanding licensing provision,” identified in *Heller* as categorically outside the scope of the Second Amendment. *Id.* at 432-34.

Interestingly, the District of Columbia Circuit in *Wrenn* expressly criticized its sister circuits for failing to undertake the historical analysis required by *Heller*. It quoted approvingly, by way of contrast, the historical rigor applied in the Ninth Circuit panel’s previous decision in *Peruta* (overturned by the *en banc* proceedings), which concluded that “carrying weapons *in public* for the lawful purpose of self-defense is a *central* component of the right to bear arms.” *Wrenn*, 864 F.3d at 664 (emphasis added).

In light of this confusion and conflict, the Officers believe it is critical for the Court to make clear that the “core” protection of the Second Amendment “extends to publicly carrying guns for self-defense,” *Wrenn*, 864 F.3d at 657; *see also id.* at 659 (“the Amendments core generally covers carrying in public for self-defense”). In other words, it is a “right to possess *and carry* weapons in case of confrontation,” *id.* at 658 (emphasis in original), wherever that confrontation arises. A clear and direct analogy can be drawn to the “sacred” right, *Terry v. Ohio*, 392 U.S. 1, 9 (1968), citing *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891), of “personal security,” *id.*, which, under the Fourth Amendment, the Court has held “belongs as much to the citizen on the

streets of our cities as to the homeowner closeted in his study.” *Terry*, 392 U.S. at 9.

Moreover, the Court must ensure that in the public sphere, as much as in the home, well meaning public policy choices cannot be used to ban, or otherwise burden a fundamental right so as to “effectively destroy” it. As the *Wrenn* court noted, *Heller* “closed off the possibility that courts would erroneously find some [public safety] benefits weighty enough to justify other *effective* bans on the right to keep common arms.” *Wrenn*, 864 F.3d at 665 (emphasis added).

The *Wrenn* court rejected the District’s arguments that the “good-reason” requirement was not a total ban on the use of guns in public, “but [was] a mere hurdle for individuals to clear,” *id.* at 664, in order that the District can reduce crime and “injury to innocents.” *Id.* at 656. *Wrenn* held correctly, instead, that, notwithstanding important public policy objectives at stake, *see id.* at 667 (“the District has understandably sought to fight this scourge [of handgun violence]”), “at a minimum . . . the Second Amendment must *enable* armed self-defense by commonly situated citizens: who possess common levels of need and pose only common levels of risk.” *Id.* at 664 (emphasis added). This core requirement of “enabled,” self-defense, i.e., the genuine ability to timely and effectively use objectively reasonable means for self-defense, is all the more relevant and necessary when the category of citizens is police officers, who possess a high level of need and pose a low level of risk: Police officers are sworn to protect the public; are trained how, and permitted, to use force only when objectively reasonable; and are required

by their job to face high levels of life-threatening risk everyday.

B. The Job of Law Enforcement Uniquely Places Officers' Responsibilities and Conduct Within the Core of Second Amendment Protections.

The Ninth Circuit misreads Supreme Court jurisprudence regarding the special circumstances of government employees in order to apply a lesser than appropriate degree of scrutiny to the challenged UF policy.

The Ninth Circuit found that because the City of Seattle has a significant policy interest in regulating its employees' use of force, the right of self-defense claimed by the officers must be sufficiently removed from the "core" Second Amendment right to give the City "flexibility" to justify its restrictions on that use of force. App. 14. This is backward reasoning, and directly contradicts the core holding of *Heller*, which precludes public policy, no matter how compelling, from effectively destroying reasonable means of self-defense. *See Heller*, 554 U.S. at 636 ("the enshrinement of constitutional rights necessarily takes certain policy choices off the table").

When evaluating the constitutional rights of public servants versus private citizens, the key distinguishing factor for the Court is whether or not the asserted right "implicates the basic concerns of the relevant constitutional provision *or* whether the claimed right can more readily give way to the requirements of

the government as employer.” *Engquist v. Oregon Dept. of Agriculture*, 553 U.S. 591, 598 (2008) (emphasis added).

Thus, the exact opposite reasoning to the Ninth Circuit’s should apply in this case: When the claimed right *is* the core protection guaranteed by the constitutional right – here Officers claim a public employer that requires employees consistently to encounter violent and volatile suspects, in dangerous, uncertain and rapidly evolving circumstances, cannot deny those employees the ability timely to use all objectively reasonable force options to protect the public and themselves – then no amount of balancing or flexibility by the government can be permitted to water down this right. See *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967) (government employees cannot be relegated to a “watered-down version of constitutional rights”).

The Ninth Circuit was wrong to analogize Officers’ allegations as claims against their employer acting as “proprietor” managing its “internal operation[s].” See App. 13, citing *Cafeteria & Rest. Workers Union v. McElroy*, 367 U.S. 886, 896 (1961). Notwithstanding that the City, through SPD, issues firearms to its Officers, see App. 13, requiring them to consistently engage with the public in unpredictable circumstances and with dangerous suspects cannot be characterized as mere internal operations.

The Ninth Circuit’s reliance on *Engquist* is also misplaced. That case involved a public employee’s claim, under the equal protection clause, that she alone was treated differently in being unreasonably fired. *Engquist*, 553 U.S. at 597. The Court rejected the lawsuit because her unprecedented claim conflicted with congressional mandates, and long-standing “familiar doctrine[s],” regarding at-will employment. *Id.* at 606-07.

The Officers, by contrast, challenge the unreasonable restriction on the long-standing, “core,” fundamental, constitutional right to take timely, reasonable actions in self-defense. Citizens cannot be “deprived of fundamental rights by virtue of working for the government.” *Connick v. Myers*, 461 U.S. 138, 147 (1983). Section 1983 prohibits the City from implementing unconstitutional policy, *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978). The Court has made clear that § 1983 is intended to protect employees of the government as much as citizens served by the government, *Collins v. Harker Heights*, 503 U.S. 115, 120 (1992).

Unlike the novel claim in *Engquist*, this Court has specifically addressed, and has long upheld, employees’ – including police officers’ – rights of self-defense. In *New Orleans and Northeastern R.R. Co. v. Jopes*, the Court held “that the rules which determine what is self-defence are of universal application, and are not affected by the character of the employment in which the [employee] is engaged.” 142 U.S. 18, 23 (1891) (spelling as in original). In fact, an employee with a duty to protect others (in that case, passengers,

because the employer was a common carrier), may have an enhanced right of self-defense. *Id.* at 25. In another case, the Court held that a public employee, working on the construction of a federal post office, had the same rights of self-defense as other citizens. *Brown v. United States*, 256 U.S. 335, 344 (1921). In *Terry v. Ohio*, the Court’s justification for an officer’s right to “frisk” a suspect for weapons, is, in essence, a recognition of the officer’s right of self-defense:

When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and ***to neutralize the threat of physical harm.***

392 U.S. at 24 (emphasis added); *see also Plakas v. Drinski*, 19 F.3d 1143, 1146 (7th Cir. 1994) (expressly articulating an officer’s right of self-defense, citing *Tennessee v. Garner*, 471 U.S. 1, 3 (1985) and *Graham v. O’Connor*, 490 U.S. 386, 396 (1989)).

The circuit court cases relied on by the Ninth Circuit are inapposite. *Bonidy* involved a private citizen – not a public employee that is by the nature of his or her employment necessarily placed in dangerous situations – who challenged, under the Second Amendment, his local post office’s restrictions on bringing guns into the post office or its parking lot. *Bonidy v. United States Postal Service*, 790 F.3d 1121, 1123 (10th Cir. 2015). However, since the *Heller* court expressly stated

that its holding “[does] not cast doubt on such long-standing regulatory measures such as prohibitions on . . . laws forbidding the carrying of firearms in sensitive places such as schools and public buildings,” *Heller*, 554 U.S. at 626, the *Bonidy* court had little difficulty upholding the restriction as a regulation outside the core protections of the Second Amendment. 790 F.3d at 1124-25.

Neither does *Nordyke* involve a government employee placed in dangerous situations. In that case, gun sellers contested regulations that required certain physical restraints on guns sold at county fair grounds to prevent their unauthorized use. *Nordyke v. King*, 681 F.3d 1041 (9th Cir. 2012). The Ninth Circuit found that such minimal restrictions in limited places did not violate the Second Amendment. *Id.* at 1044-45. The District of Columbia Circuit, in *Wrenn*, similarly noted that “when a state bans guns merely in particular places . . . a person can preserve an undiminished right of self-defense by not entering those places.” *Wrenn*, 864 F.3d at 662, citing *Moore v. Madigan*, 702 F.3d at 940. The Officers have no such luxury. Their job, and sworn oath, requires them to routinely encounter volatile and dangerous suspects and life-threatening circumstances.

C. The Ninth Circuit Failed to Consider Allegations Regarding the Severity of Restrictions Imposed on Officers’ Decision-Making to Justify its Misuse of the Intermediate Scrutiny Standard.

The Officers allege, in detail, the ways in which the UF Policy specifically, and overall, severely and unreasonably limits and restricts their ability to defend

themselves and the public from life-threatening dangers, effectively destroying their right of self-defense. *See* FAC ¶¶31-62.

Neither the Ninth Circuit, nor the district court, asserted that the Officers' factual allegations were not well-pled, i.e., "naked assertions," "formulaic," or "legal conclusions couched as factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Moreover, "when there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 678-79. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*, citing *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007). Importantly, "Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations." *Twombly*, 550 U.S. at 556, citing *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989).

Nevertheless, the Ninth Circuit failed, entirely, to address the Officers' well-pled allegations. Instead, it cherry-picked isolated provisions from the policy to reach its own conclusions that the UF Policy merely restricts the "manner" in which the Officers use force, App. 14, that the policy "does not impose a substantial burden on the [Officers'] rights," App. 16, and thus, the UF Policy could be evaluated under intermediate scrutiny. *Id.*

The Ninth Circuit determined, for example, based on an ostensibly cursory glance at the UF Policy, that since: Officers “may” draw their firearms, App. 15, Officers “may” use their firearms in self-defense, including using deadly force, App. 16, and, the policy acknowledges that “sometimes the use of force is unavoidable,” *id.*, the policy did not impose a substantial burden on the Officers’ right of self-defense. *Id.*

The Officers, by contrast, demonstrate, in detail, how these provisions work, in fact, to unreasonably defeat the Officers’ rights of self-defense. For example, while Officers “may” display their firearm in life-threatening circumstances, that reasonable action can then be turned against them in disciplinary proceedings, if, in hindsight, those who were not on the scene, nor facing the threat, decide it was “unnecessary.” FAC ¶59.

Moreover, the use of deadly force requirements fails to make allowance for the reasonable, though, mistaken, use of deadly force. *See* FAC ¶¶31-32. Under the policy, life-threatening danger is defined **only** to apply to suspects that have the *actual* means, **and** opportunity, **and** ability to cause deadly harm. UF Policy § 8.100.5. If an officer uses deadly force against a suspect that he or she reasonably believes to be armed, or reaching for a weapon, but who, in fact (determined in hindsight), did not have an operable weapon, or could not have reached the weapon, the Officer is not protected by the UF Policy. This is not genuine self-defense.

The Court has long recognized reasonable actions taken in self-defense cannot be subject to post-hoc

second guessing. *See, e.g., Brown v. United States*, 256 U.S. 335, 343 (1921) (“detached reflection cannot be demanded in the presence of an uplifted knife”). Moreover, it has long held that citizens have the right to self-defense in the face of apparent, though mistaken, threats. *See, e.g., New Orleans and Northeastern R.R. Co. v. Jopes*, 142 U.S. 18, 23 (1891) (the law of self-defense justifies an act done in honest and reasonable belief of immediate danger); *Allison v. United States*, 160 U.S. 230 (1895) (self-defense can include a reasonable belief that one is in deadly danger even if, in fact, the alleged assailant was not armed at the time); *Acers v. United States*, 164 U.S. 388, 392 (1896) (apparent, though not actual, danger can be the basis for self-defense where there is an overt act that would give a reasonable man ground to believe he faced life-threatening danger).

As another example, the Ninth Circuit identified repeatedly and approvingly, the language in the “principles” and “definitions” sections of the UF Policy stating that de-escalation is required only where “safe” and “feasible.” *See* UF Policy §§ 8.000, 8.050, respectively.⁴ At the same time, the Ninth Circuit wholly disregarded Officers’ allegations that such language can only be intended to make the policy *appear* reasonable when, in fact, the *principles* conflict with the complex de-escalation *requirements* mandating de-escalation

⁴ The Ninth Circuit incorrectly asserts that Officers also need not consider the required, lengthy list of factors before using force unless safety and time permit. In fact, the “using force” provisions contain no such “feasability” qualification. *See* § 8.200.

when suspect's behavior is clearly unsafe for everyone involved.

For example, the UF Policy requires that Officers use de-escalation (i.e., non-force) tactics based on an evaluation of, and granting consideration to, among multiple other factors, a suspect's impaired mental or physical state, or the suspect's reaction to drugs – even when the suspect is failing to comply with officer instructions. UF Policy § 8.100.3. Yet, non-compliance, in and of itself, can be an indicia of life-threatening danger to the officer and innocent bystanders. Moreover, therefore, such refusals to comply with Officers' requests can be highly dangerous for innocent bystanders and Officers regardless of the cause of a suspect's unwillingness to comply.

The de-escalation requirements are, thus, fundamentally in conflict with the law of self-defense. Officers, who as this Court repeatedly recognizes “are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving,” *Graham*, 490 U.S. at 397, must first diagnose mental illness, as well as evaluate an array of other factors *unrelated to the immediacy of the threat*, before they may use force to protect themselves and others. FAC ¶¶44-46. Yet, unreasonable delay in responding to threatening behavior can make the crucial difference in whether or not innocent lives can be protected. As the Court has noted, encounters between police officers can turn from friendly, to deadly, in an instant. *See Terry v. Ohio*, 392 U.S. at 13. The crucial factors in deciding the reasonableness of force are the nature and

immediacy of the threat encountered. *See, e.g., Chew v. Gates*, 27 F.3d 1432, 1441 (9th Cir. 1994) (holding the most important factor in deterring the reasonableness of force used, under *Graham*, is “whether the suspect poses an immediate threat to the safety of the officers or others”).

The Officers allege why, and how, prioritizing factors unrelated to the threat presented by the suspect and situation has proven wholly impractical and dangerous. *See, e.g.,* FAC ¶¶26, 37, 38, 41, 43-45. Moreover, the Officers will demonstrate repeated examples where, despite the policy “principles,” Officers have been disciplined for failing to de-escalate when de-escalation and delay tactics were not feasible and would have exacerbated already dangerous circumstances.

As another example, the UF Policy requires any use of force to be “objectively reasonable,” “proportional to the threat,” *and* “necessary.” UF Policy § 8.100.1. This last requirement means that that there must be no other alternatives to the force used. UF Policy § 8.050. As this Court, and others, have recognized, such an impossible standard requires “superhuman” decision-making in the split second time frame under which police officers operate and, as such, is not required. *See Scott v. Harris*, 550 U.S. 370 (2007) (finding against a suspect severely injured by officers’ attempts to end a high speed car chase because it was not proper to second-guess an officer’s choice between two evils created by the suspect’s conduct).

As even the Ninth Circuit has previously acknowledged:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only.

Scott v. Henrich, 39 F.3d 912, 915 (9th Cir. 1994); *see also Plakas*, 19 F.3d at 1149 (holding that police officers do not need to consider alternatives before the reasonable use of deadly force because “there is too little time for an officer to do so and too much opportunity to second-guess that officer”). Nevertheless, the Ninth Circuit failed entirely to consider the Officers’ allegations regarding the life-threatening dangers created by the “necessary” requirement.

Ultimately, everything about the lengthy, overly complicated, multi-part, multi-factor UF Policy, and its goal to rigidly predict, pigeon hole, template, calibrate, and dictate, in advance, each and every situation and reaction, moment by moment, of a police encounter,⁵ renders use of force decision-making unreasonably

⁵ *See, e.g.*, FAC ¶¶51-62, which identifies in detail the many ways the overly prescriptive and inflexible UF Policy makes timely, reasonable decision-making impossible, thus putting lives unnecessarily in danger.

difficult and dangerous. This not only makes the Officers' job unreasonably dangerous as they daily face their duty to walk into unknown, uncertain, volatile, potentially life-threatening, situations and confrontations, *see, e.g.*, FAC ¶¶47-51, 53-55, 61; it runs contrary to the Court's consistent admonishment to lower courts – including the Ninth Circuit – that police conduct must be regulated by standards that reflect and accommodate the difficulties and grave dangers of their job.

For example, in *Arvizu*, the Court rejected the Ninth Circuit's attempts to narrow the reasonableness standard in order to avoid its inherent, "uncertainty and unpredictability." It can't be done. The Court held that the "totality of the circumstances" standard – in essence, the measure of whether an officer acted in an "objectively reasonable" manner in a particular situation; the equivalent measure would apply to whether an officer used reasonable, even deadly, force in self-defense in the face of a life-threatening encounter⁶ –

⁶ The Officers argued in their briefs to the Ninth Circuit that the Fourth Amendment's "objectively reasonable" analysis of Officers' use of force in the face of a suspect's threatening and violent behavior has been equated with, and can be readily borrowed to determine whether an officer had "reasonable grounds," or a "reasonable belief," *see Brown*, 256 U.S. at 343, regarding the need to use force in self-defense for purposes of the Second Amendment. *See Plakas v. Drinski*, 19 F.3d 1143, 1146 (7th Cir. 1994). Both the objectively reasonable standard, and reasonable belief standard under the laws of self-defense, provide objective, fact-based, context-specific means to evaluate an Officer's actions. Moreover, the Court has long recognized that reasonableness-based standards provide the "best," most practical and non-technical compromise

cannot be reduced to a “neat set” of rules, and must leave room for officers “to draw on their own experience and specialized training.” *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002). *See also United States v. Banks*, 540 U.S. 32, 35-36 (2003) (rejecting the Ninth Circuit’s “overlay of a categorical scheme on the general reasonableness analysis,” noting that the reasonableness analysis must avoid “protocols,” “categories,” “templates,” and “bright line rules”).⁷

Similarly, in *Scott v. Harris*, the Court, while conceding the allure of an “easy to apply” test, similarly rejected any “magical on/off switch,” or “rigid preconditions” to determine whether the use of force, even deadly force, is objectively reasonable. 550 U.S. at 383.

The Court’s admonishment against fixed protocols and bright-line rules is, in part, a reflection that it is too easy, and misguided, to second guess police officers’ judgements reasonably made in the heat of danger. *See Graham*, 490 U.S. at 396 (noting that reasonableness must be assessed from the perspective of the officer facing the threat, not based on what “may later seem unnecessary in the peace of a judge’s chambers,” citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)).

for accommodating the rights of private citizens and the needs of officers duty bound to enforce the law for the community’s protection. *Brinegar v. United States*, 338 U.S. 160, 176 (1949).

⁷ *Cf. Brinegar v. United States*, 338 U.S. at 175 (noting that the reasonableness standard for making probable cause determinations “are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act”).

SPD's inflexible and overly dense UF Policy greatly increases the likelihood that Officers will be second guessed, after the fact, for less than perfect decision-making: Within the multitude of complicated and conflicting requirements of this policy, a disciplinary board can always find that something else would have been better, something different could have been done. *See, e.g.*, FAC §§44, 46, 51, 56-58, 61. This creates fear and hesitation in Officers to use reasonable force to control a dangerous situation. This, in turn, puts Officers' lives and the lives of the public in jeopardy. It subjects the Officers to disciplinary action and dismissal even when responding with objectively reasonable force but in any way that later can be shown, in hindsight, to have been less than ideal.

In fact, the Officers allege, and are prepared to furnish evidence of, just such unnecessary and serious injuries to Officers caused by delay and hesitation. They have also gathered significant evidence of improper discipline taken against Officers, in the name of upholding the UF Policy and to satisfy a false goal of perfect policing, despite that Officers engaged in objectively reasonable conduct. *See, e.g.*, FAC §§2, 22-25, 46, 60. Officers' lives and livelihoods are routinely placed in jeopardy either by acting or failing to act. It is hard to imagine a more serious and "destructive" threat to their fundamental right of self-defense.

Based on these well-pled allegations, the Officers must be allowed to go forward with their case, and, with these facts established, the UF Policy must be subject to strict scrutiny.

D. Officers' Right Of Self-Defense Must be Considered a Fundamental Right Under the Fourteenth Amendment.

The Ninth Circuit held that the Officers, when undertaking their sworn duty to defend public safety, are assumed to have a right of self-defense under the Second Amendment, but they have no such right under the Fourteenth Amendment, because there is no “free-standing fundamental right of self-defense outside of the ‘right of law-abiding, responsible citizens to use arms in defense of hearth and home.’” App. 21, citing *Heller*, 554 U.S. at 635. This reasoning appears to assume that there are distinct and differing rights of self-defense, only some of which are fundamental. As such, it is a nonsensical, unsupported, and dangerous conclusion. To assume that Officers have a right under the Second Amendment to defend themselves and the public from life-threatening danger, it is necessary to assume the fundamental need for self-defense must extend beyond “hearth and home.” This is clearly the correct reading of *Heller* and *McDonald* and a contrary reading should be reversed by this Court.

The Court has expressly held the right of self-defense to be a “fundamental right,” and a “natural right,” *Heller*, 554 U.S. at 594, 612. Even though it is central to the right to keep and bear arms under the Second Amendment, it “pre-existed” it. *Id.* at 592. In fact, in order for the Court to find that this right was incorporated in the concept of due process and applied to the state, it had to be found a “basic right” that is “deeply rooted in the Nation’s history and tradition.”

McDonald, 561 U.S. at 768. Self-defense is an “ancient right,” *Heller*, 554 U.S. at 599, thus, like the right of privacy “older than the Bill of Rights.” See *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965).

Moreover, it is not a purposeless right simply to possess arms. In *Heller*, the Court looked in depth at the meaning of the phrase “keep and bear arms.” “Keep” means to possess. *Heller*, 554 U.S. at 583. “Bear,” when used with “arms,” “has a meaning that refers to carrying for a particular purpose – confrontation.” *Id.* at 584. Nor is the right limited to firearms. The Court noted the historical understanding of the right to bear arms as applying “to all instruments that constitute bearable arms,” which have been historically defined to include “weapons of offence, or armour of defense,” “anything that a man wears for his defence, or takes into his hands or useth . . . to cast at or strike another,” and “bows and arrows.” *Id.* at 581 (spelling as in original).⁸

In other words, the right to take *reasonable* actions in self-defense – whenever, wherever, and however, confronted by life-threatening dangers – is the ultimate liberty right; the ultimate freedom. Surely

⁸ Notwithstanding the Ninth Circuit repeatedly characterizing Officers’ claims as relating only to Officers’ “use of department-issued firearms,” see, e.g., App. 12, 15, the Officers’ claims relate to the use in self-defense of firearms as well as other force tools referred to by the UF Policy as “less lethal tools,” including TASER, impact weapons, beanbag shotgun, OC Spray (commonly known as pepper spray). FAC ¶39.

such a right is not limited to “hearth and home.” As the District of Columbia Circuit Court held:

[T]hat the need for self-defense is most pressing in the home doesn’t mean that self defense at home is the only right at the Amendment’s core. After all, the Amendment’s “core lawful purpose” is self-defense, [citing *Heller*, 554 U.S.] at 630, and the need for that right might arise beyond as well as within the home. Moreover, the Amendment’s text protects the right to “bear” as well as “keep” arms. For both reasons, it’s more natural to view the Amendment’s core as including a law abiding citizen’s right to carry common firearms for self defense beyond the home.

Wrenn, 864 F.3d at 657.

The right of self-defense in the home and beyond, like other substantive due process rights upheld by the Court, is “personal,” “deeply rooted,” and essential to the “concept of ordered liberty,” i.e., life itself depends upon it. *See Roe v. Wade*, 410 U.S. 113, 152 (1973) (striking down an abortion regulation as violating a personal right deemed “fundamental” or “implicit in the concept of ordered liberty”).

It would not be an unwarranted expansion of the concept of substantive due process to include the right of self-defense, both public and private. This Court has “regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition.’” *Washington v. Glucksberg*, 521

U.S. 702, 720 (1997), quoting *Moore v. E. Cleveland*, 431 U.S. 494, 503 (1977) (plurality opinion). Moreover, “all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 847 (1992), quoting *Whitney v. California*, 274 U.S. 357, 373 (1927) (concurring opinion).

◆

CONCLUSION

It is important to reiterate that the Officers are not seeking to use force without reasonable expectations and discipline. They are not advocating a new Wild West; that any employee, public or private, can use whatever force, under any circumstances. However, the fundamental constitutional right to use force in self-defense is an immediate right, based on the immediacy of the threat. The UF Policy unreasonably restricts and prohibits the timely use of a range of reasonable force options.

The Officers have a constitutional right to a UF Policy that does not consistently require them to go into dangerous encounters handicapped, and at unreasonable risk that they or innocent bystanders will be needlessly killed or injured. The Ninth Circuit conceded the Officers’ need for, and right of, self-defense. However, it failed to acknowledge or analyze the real-world, life and death application of this right in relation to the Officers’ routinely dangerous, duty-bound occupation. The Officers respectfully request a Writ of

Certiorari so that the Court can correct this dangerous ruling.

Respectfully submitted,

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