No. 23-1239

In the Supreme Court of the United States

JANICE HUGHES BARNES, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF ASHTIAN BARNES, DECEASED,

Petitioner,

v.

ROBERTO FELIX, JR.; COUNTY OF HARRIS, TEXAS,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICUS CURIAE* THE TEXAS CIVIL RIGHTS PROJECT IN SUPPORT OF PETITIONER

Daniel N. Guisbond
Counsel of Record
Danielle L. Trujillo
Nicholas J. Steverson
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street
Suite 4500
Denver, CO 80202
303.244.1800
guisbond@wtotrial.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes, Rules and Regulations

Other Authorities

INTERESTS OF *AMICUS CURIAE*

The Texas Civil Rights Project ("TCRP") is a non-profit organization made up of Texas lawyers and advocates who strive to protect and promote the civil rights of all Texans.[1] For more than thirty years, TCRP has sought to advance the rights of the state's most vulnerable populations through advocacy in and out of the courtroom. For instance, TCRP has examined the racial and economic disparities that make non-safety traffic stops—like the traffic stop that led to Ashtian Barnes's death—"more dangerous, harmful, and deadly for Black and brown drivers." The Texas Civil Rights Project, *Safe Passage: Traffic Safety & Civil Rights 2024 Update,* at 4 (forthcoming December 2024) (hereinafter, "*Safe Passage* Report").[2] TCRP also previously represented Petitioner Janice Hughes Barnes and Respondent Tommy Duane Barnes in their suit against Officer Roberto Felix, Jr., and Harris County before the district court below, but it does not represent any party on appeal.

TCRP submits this brief in support of Petitioner because the moment-of-threat doctrine routinely shields police officers from liability for the use of excessive force and, in turn, undermines the Fourth

---

[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from TCRP, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

[2] The 2023 edition of TCRP's *Safe Passage* Report is available here: https://aab91155-966e-43a7-af87-a209b39e1f8b.usrfiles.com/ugd/a4ea0d_6c3f29945a5740cd8b8c6c7f40bfd23c.pdf.

Amendment rights of the Texans for whom TCRP advocates. TCRP urges the Court to reverse the Fifth Circuit decision below to make clear the moment-of-threat doctrine has no place under the Fourth Amendment.

SUMMARY OF ARGUMENT

Deadly force violates the Fourth Amendment unless an officer has probable cause to believe a suspect poses a significant threat of death or serious physical injury to the officer or others. *Tennessee v. Garner*, 471 U.S. 1, 11 (1985). Under that standard, "the totality of the circumstances" must justify the use of deadly force. *See id.* at 9; *see also Graham v. Connor*, 490 U.S. 386, 396 (1989).

The moment-of-threat doctrine rejects those basic principles. In a minority of federal circuits—including the Fifth Circuit, which encompasses all the diverse communities across Texas that TCRP serves—the doctrine requires courts to ***ignore*** the totality of the circumstances and fixate instead on the split-second when an officer used deadly force. That doctrine is wrong, for all the reasons Judge Higginbotham recognized in his concurrence below: It "starves the reasonableness analysis by ignoring relevant facts to the expense of life" and, in so doing, contradicts this Court's mandate in *Garner*. *Barnes v. Felix*, 91 F.4th 393, 400–01 (5th Cir. 2024) (Higginbotham, J., concurring).

Eight circuits rightly reject the moment-of-threat doctrine. *See id.* at 400 n.13 (collecting cases). Yet the Second, Fourth, Fifth, and Eighth Circuits continue to adhere to the doctrine, even though it "is an impermissible gloss on *Garner* that stifles a robust examination

of the Fourth Amendment's protections for the American public." *Id.* at 401. So, in states like Texas, it does not matter whether an officer escalated an encounter or put himself in harm's way before using deadly force: Under the moment-of-threat doctrine, an officer can escape liability so long as he was "in danger" at the precise instant he fired his gun.

Unless this Court abolishes the moment-of-threat doctrine, it will continue to sanction the deaths of countless more individuals like Ashtian Barnes. In this brief, TCRP underscores two of the doctrine's many consequences for Texans seeking redress for an officer's use of excessive force—and, in turn, explains why the Court should abrogate the moment-of-threat doctrine entirely.

First, the moment-of-threat doctrine allows officers to escalate routine, non-safety traffic stops into deadly confrontations without liability. Indeed, that is the exact result of the doctrine here: "A routine traffic stop has again ended in the death of an unarmed black man" with no liability for the officer who used deadly force. *Id.* at 398. Every year, police across the country stop tens of millions of drivers for traffic violations. Susannah N. Tapp & Elizabeth J. Davis, *Contacts Between Police and the Public, 2020,* U.S. DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, 4 (2022). These routine stops disproportionately involve—and disproportionately turn deadly for—Black and Latino drivers. *Id.* at 11. Unless this Court reverses the Fifth Circuit's decision below, the moment-of-threat doctrine will continue to shield officers from liability for their unjustified use of force in many of those deadly situations.

Second, the moment-of-threat doctrine extends beyond traffic stops. Every day, police respond to calls to help citizens suffering from mental health crises. But the moment-of-threat doctrine allows police to ***escalate*** these welfare checks to the point of violence and then escape liability by arguing that their violence was justified at the exact second they fired their weapons. Absent this Court's intervention, the moment-of-threat doctrine will continue to sanction the deaths of those within this vulnerable population.

This Court should reverse the decision below and make clear the moment-of-threat doctrine has no place under the Fourth Amendment, in the Fifth Circuit or anywhere else.

ARGUMENT

I. THE MOMENT-OF-THREAT DOCTRINE ALLOWS POLICE TO TRANSFORM ROUTINE TRAFFIC STOPS INTO DEADLY ENCOUNTERS IN VIOLATION OF THE FOURTH AMENDMENT.

Traffic stops are one of the most common interactions people have with the police each year. Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NAT. HUM. BEHAV. 736, 736 (2020). Indeed, police officers conduct an estimated 20 million traffic stops per year. *Id.* As Judge Higginbotham recognized in his concurrence below, however, the existing Fourth Amendment jurisprudence on the use of pretext in traffic stops has already "brought fuel to a surge of deadly encounters between the police and civilians." *Barnes*, 91 F.4th at 398–99 (Higginbotham, J., concurring).

Unfortunately, "traffic stops and the use of deadly force are too often one and the same—with Black and Latino drivers overrepresented among those killed . . . ." *Id.* at n.5.

The moment-of-threat doctrine only furthers that disturbing pattern. By "blinding [courts to] an officer's role in bringing about the 'threat' precipitating the use of deadly force," *id.* at 398, the doctrine sanctions police officers' unreasonable use of force, often to the detriment of the Black and Hispanic drivers impacted the most.

A. The application of the moment-of-threat doctrine in the traffic-stop context contravenes this Court's existing Fourth Amendment jurisprudence.

Under the Fourth Amendment, courts must consider the nature of a suspect's underlying crime in determining whether an officer's use of force was constitutional. Indeed, *Graham*, 490 U.S. at 396, instructs courts to consider "the severity of the crime at issue" when determining whether the force used to effect a particular seizure is reasonable, while *Garner*, 471 U.S. at 11, directs courts to look to whether there was probable cause to believe that the suspect committed a crime involving the infliction of serious physical harm when analyzing the constitutionality of the use of deadly force against a fleeing suspect.

For courts that have adopted the moment-of-threat doctrine, however, "the moment of threat is the ***sole determinative factor***" in the reasonableness analysis. *See Barnes*, 91 F.4th at 401 (Higginbotham, J., concurring) (emphasis added). This means that it is

of no matter whether police stopped the suspect for an innocuous (or even manufactured) crime—so long as the officer was in danger when he used deadly force, the moment-of-threat doctrine permits deadly intervention. *But see Garner*, 471 U.S. at 15 (recognizing that the common-law rule "forbids the use of deadly force to apprehend a misdemeanant, condemning such action as disproportionately severe").

Below, Judge Higginbotham recognized that the foregoing framework "starves the reasonableness analysis by ignoring relevant facts to the expense of life." *Barnes*, 91 F.4th at 400 (Higginbotham, J. concurring). Indeed, he continued, Petitioner's case is paradigmatic of the doctrine's shortcomings. *See id.* Specifically, instead of considering Officer Felix's decision to (1) jump onto the door sill of a moving vehicle and (2) in the span of two seconds, begin shooting inside of the vehicle, the district court could only consider whether Officer Felix was in danger at the moment of the threat that caused him to use deadly force. *See Barnes v. Felix*, 532 F. Supp. 3d 463, 471 (S.D. Tex. 2021), *aff'd*, 91 F.4th 393 (5th Cir. 2024). Because "the moment of the threat" occurred after Officer Felix had jumped onto the door and while he was "still hanging onto the moving vehicle" he believed "would run him over," the district court concluded that his use of deadly force against Ashtian Barnes was not excessive. *Id.* at 471.

Absent from that analysis is any consideration of the fact that Officer Felix had originally stopped Mr. Barnes due to outstanding toll tag violations—which, under the Texas Transportation Code, is a misdemeanor punishable by a fine not to exceed $250. *See*

Barnes, 91 F.4th at 399 & n.6 (Higginbotham, J., concurring) (citing TEX. TRANSP. CODE ANN. § 370.177). This non-moving traffic violation, like a citation for expired tags or inspection stickers, is "not tied to public safety but more so connected to collecting fines and fees." *Safe Passage* Report, at 10. Still, the moment-of-threat doctrine applies all the same—giving Officer Felix the same level of deference for using deadly force following a traffic stop for an unpaid toll violation as it would have if Mr. Barnes had been pulled over for suspicion of a violent crime.

Thus, a court's application of the moment-of-threat doctrine in the context of traffic stops, specifically, is plainly inconsistent with this Court's precedent—the doctrine disregards the underlying severity of a suspect's crime and, in certain circumstances, may allow an officer to use deadly force to apprehend a suspected misdemeanant. Unfortunately, in practice, this means that individuals like Mr. Barnes who are stopped for innocuous traffic offenses in states where the moment-of-doctrine applies are entitled to fewer protections against the use of unreasonable force during a traffic stop than those stopped for the very same conduct across state lines.

B. The moment-of-threat doctrine denies recourse to those already disproportionately affected by police violence during traffic stops.

By failing to impose liability on police who escalate everyday traffic stops into deadly situations, the moment-of-threat doctrine has a greater impact on those already disproportionately affected by police violence.

Social scientific research on traffic stop data suggests that traffic stops are more deadly, harmful, and impactful on Black and Brown drivers. For example, in a 2020 analysis of approximately 100 million traffic stops conducted by state patrol agencies and municipal police departments over a ten-year span, researchers found "that decisions about whom to stop and, subsequently, whom to search are biased against black and Hispanic drivers." Pierson et al., *supra*, at 740–41. Specifically, researchers noted that "among state patrol stops, the annual per-capita stop rate for black drivers was 0.10 compared to 0.07 for white drivers; and among municipal police stops, the annual per-capita stop rate for black drivers was 0.20 compared to 0.14 for white drivers." *Id.* at 737.

Race also impacts the outcomes of traffic stops. In studies analyzing nationwide traffic stop and survey data, researchers found that Black and Hispanic drivers are (1) more likely to be searched than their white counterparts, *see id.* at 737–38; (2) more likely to experience some type of police action during traffic stops, Tapp & Davis, *supra*, at 11; (3) more likely to experience police misconduct during contact with the police, *id.* at 10; and (4) more likely than white drivers to experience the threat or use of force, *id.* at 11.

These patterns are borne out at the local level, as well. For example, despite accounting for only 22% of Houston's population, Black drivers accounted for 38% of the non-safety traffic stops the Houston Police Department conducted in 2023. *Safe Passage* Report, *supra*, at 4 (analyzing data from Traffic Stops, City of Houston Police Transparency Hub, https://mycity.maps.arcgis.com/apps/dashboards/8e62e67b

8855477b993cfdc48a94ca17 (last visited Nov. 10, 2024)). What's more, Black drivers accounted for 55% of all searches, 49% of arrests, and 52% of those who suffered physical force. *Id.* (analyzing data from Use of Force, City of Houston Police Transparency Hub, https://mycity.maps.arcgis.com/apps/dashboards/21eac904178c4d12a7dd8e29c0ee238e (last visited Nov. 10, 2024)). Latino drivers were the second most represented group in each of the foregoing categories, accounting for 31% of non-safety stops, 27% of traffic stop arrests, 23% of searches, and 23% of uses of physical force. *Id.*

These figures are all the more concerning given the apparent rising prevalence of these pretextual and disproportionate traffic stops. In 2023, for instance, the Houston Police Department conducted approximately 90,000 more traffic stops than it had the year prior—representing an increase of 27% for all traffic stops and 49% of non-safety stops, specifically. *Id.* Given the financial benefit the city of Houston receives from the fines and fees associated with such traffic stops—over $2.25 million in 2023 alone—there is little reason to believe that this pattern will change absent significant policy reform. *See id.* This means that Black and Brown drivers will continue to bear the brunt of pretextual traffic stops and their attendant deadly consequences.[3]

---

[3] Traffic stop data from the San Antonio Police Department, Dallas Police Department, and McAllen Police Department show that non-safety traffic stops increased in all jurisdictions. *Id.* at 5–7.

For Texans of color, who already suffer a disproportionate risk of being stopped for a traffic violation and having that stop turn deadly, the application of the moment-of-threat doctrine means they are afforded fewer constitutional protections than their white counterparts. *See, e.g.*, *Barnes*, 91 F.4th at 398 (Higginbotham, J., concurring) (recognizing that the moment-of-threat doctrine again cloaked an officer with immunity following a routine traffic stop ending in the death of an unarmed Black man).

II. THE MOMENT-OF-THREAT DOCTRINE LESSENS THE PROTECTIONS AFFORDED TO INDIVIDUALS EXPERIENCING MENTAL HEALTH CRISES.

A. Mental health crises lead to one in five legal intervention deaths.

The moment-of-threat doctrine has deadly consequences in non-traffic-stop contexts, as well. In Texas and nationwide, police serve as front line responders to persons experiencing mental health crises. *See* Sarah DeGue et al., *Deaths Due to Use of Lethal Force by Law Enforcement: Findings from the National Violent Death Reporting System, 17 U.S. States, 2009–2012*, 51 AM. J. PREVENTATIVE MED. S173, S179 (2016); *see also* Ashley Abramson, *Building Mental Health into Emergency Responses*, 52 MONITOR ON PSYCH. 30, 30–32 (2021) (discussing the role of police in responding to mental health crises in Texas and elsewhere). Indeed, up to 20% of all calls for police intervention involve a mental health or substance abuse crisis. Abramson, *supra*, at 30. Often, these calls are initiated by someone who is concerned about the safety of

the person in crisis and only wants to get that person help. *See* DeGue et al., *supra*, at S180.

Yet a substantial number of encounters between police and persons experiencing a mental health crisis end in the use of deadly force. A study of legal intervention deaths between 2009 and 2012 found that ***21.7%*** of the surveyed deaths "were directly related to issues with the victim's mental health or substance-induced disruptive behaviors." *Id.* That percentage remains high today: Between January 2015 and November 2024, ***20%*** of fatal police shootings nationwide involved a person experiencing a mental health crisis. *Police Shootings Database*, THE WASH. POST, https://www.washingtonpost.com/graphics/investigations/police-shootings-database/?itid=lk_inline_manual_3 (last visited November 7, 2024) (choose "Mental illness crisis" from the dropdown menu) (reflecting that police killed 2,015 people experiencing a mental health crisis in that time period). And Texas is no exception; a study of police-related shootings in North Texas found that at least one in three people killed by Dallas-Fort Worth area police were experiencing a mental health crisis. *See* Nichole Manna, *Killed in Crisis: How North Texas Cities Have Failed People in Mental Distress*, FORT WORTH STAR TELEGRAM, https://www.star-telegram.com/news/politics-government/article254828547.html (last visited Nov. 7, 2024).

So far in 2024, police nationwide have killed 136 persons experiencing a mental health crisis. *Id.* (choose "Mental illness crisis" and "2024" from the

dropdown menu).[4] At the time of writing, Texas police alone have killed seventeen such persons since the turn of the year. *Id.* (choose "Mental illness crisis," "2024," and "Texas" from the dropdown menu).

The Fourth Amendment should provide all these persons the same fundamental protection: Police cannot use deadly force when responding to a mental health crisis unless, under the totality of the circumstances, the suspect poses a significant threat of death or serious physical injury to the officers or others. *See Garner*, 471 U.S. at 9, 11. And if an officer breaches that protection, Section 1983 should provide the victim's family with recourse. But in Texas and other states within moment-of-threat doctrine Circuits, that is not the case.

B. The moment-of-threat doctrine absolves officers who unreasonably escalate mental health crises.

Contrary to the Fourth Amendment's mandate, the moment-of-threat doctrine allows Texas officers to use deadly force when responding to mental health crises even when, under the totality of the circumstances, deadly force is unjustified—and indeed, even when the officer unreasonably provokes the victim.

---

[4] Indeed, police killed 81 such people since TCRP filed its brief in support of the Petition for Certiorari in ***June of this year***. (*See* Br. of The Tex. Civ. Rights Proj. as *Amicus Curiae* in Supp. of Pet. for Cert. 12, June 24, 2024 (noting that police nationwide had killed 55 persons experiencing a mental health crisis from January to June 2024).)

Harris v. Serpas, 745 F.3d 767 (5th Cir. 2014), is paradigmatic. There, Brian Harris's wife called the police because Mr. Harris had taken an overdose of sleeping pills and locked himself in the couple's room. *Id.* at 770. Mr. Harris committed no crime, and Ms. Harris was in no danger. *Id.* She simply feared for her husband's life and "called 911 for help." *Id.*

Five officers responded. *Id.* Ms. Harris told them that her husband did not have a gun, he sometimes carried a folding knife for work, and he was overdosing in the locked room. *Id.* The officers' equipment took a series of videos capturing their actions. *Id.*

First, the officers lined up outside the bedroom door with weapons drawn, with a sergeant ordering, "I want one gun and one taser right here." *Id.* The officers then breached the door and found Mr. Harris lying on the bed, covered with a blanket and completely still. *Id.* They yelled his name, and he did not respond. *Id.* They ordered him to show his hands, and he did not respond. *Id.* An officer then pulled on the blanket, revealing a folding knife in Mr. Harris's hand. *Id.* The officers began shouting at Mr. Harris to put the knife down. *Id.* He remained lying on the bed and, apparently disoriented, crossed his arms and said, "It's not coming down." *Id.* Within seconds, an officer fired a taser at Mr. Harris. *Id.*

In the next video, which only lasted six seconds, Mr. Harris had stood up. *Id.* Another officer was actively tasing him. *Id.* At this point, Mr. Harris became agitated and flailed his arms at the taser wires; in the process, he raised the knife above his shoulder. *Id.* An officer yelled at him to drop the knife, and when

Mr. Harris responded "I'm not dropping nothing," an officer killed him with gunfire. *Id.*

Mr. Harris's family sued, arguing the officers knew that he had not threatened anyone, he had not committed any crime, and his wife had called the officers to ***save*** him. *Id.* at 772. Although Mr. Harris became agitated, this was due to the officers' actions—he was sleeping and disoriented when, in a matter of seconds, the officers breached his door, shouted commands at him, and fired multiple tasers at him. *Id.*

The Fifth Circuit acknowledged that this Court "has long held that courts must look at the 'totality of the circumstances' when assessing the reasonableness of a police officer's use of force." *Id.* at 772 (quoting *Graham*, 490 U.S. at 396). But the Fifth Circuit asserted it had "narrowed that test" and "confined" the excessive force inquiry to the moment of the threat that resulted in the officer's shooting. *Id.* (quoting *Bazan ex rel. Bazan v. Hidalgo Cnty.*, 246 F.3d 481, 493 (5th Cir. 2001)).

Applying its narrowed test (*i.e.*, the moment-of-threat doctrine), the Fifth Circuit ignored all the officers' unreasonable actions preceding the shooting—it did not matter that the officers breached the door with their guns drawn, shouted at Mr. Harris, and tasered him while he lay on the bed. *See id.* at 773. All that mattered was that Mr. Harris "was holding a knife above his head at the moment [the officer] fired his weapon." *Id.* And in that isolated moment, deadly force was justified. *Id.*

That approach disregards the totality of the circumstances, contrary to this Court's directives. The

Fifth Circuit is not permitted to "narrow" this Court's Fourth Amendment tests, but it purported to do exactly that, limiting its analysis to the ***six seconds*** when officers fired their guns. By "eliding the reality of the role the officers played in bringing about the conditions said to necessitate deadly force," *Barnes*, 91 F.4th at 399 (Higginbotham, J., concurring), the Fifth Circuit in *Harris* effectively ensured that the officers' actions appeared reasonable.

C. The moment-of-threat doctrine will absolve more officers of liability for the deaths of people experiencing mental health crises.

Mr. Harris's case is not an anomaly—the Fifth Circuit and its district courts have applied the moment-of-threat doctrine in several similar cases.

In so doing, those courts all held that police killings of mentally ill or suicidal Texans were reasonable, but failed to conduct the full inquiry the Fourth Amendment demands. *See, e.g.*, *Rockwell v. Brown*, 664 F.3d 985, 992 (5th Cir. 2011) (ignoring whether it was reasonable for police to breach locked door into room of decedent experiencing a mental health crisis in the moments before fatal shooting); *Grigsby v. Lawing*, No. 5:16CV16-RWS-CMC, 2017 WL 9806927, at *18 (E.D. Tex. Aug. 21, 2017) (ruling there was no Fourth Amendment violation when officer killed mentally ill decedent who ran at officer holding a spoon, but declining to consider whether the officer's conduct "leading up to the moment of the threat" resulted in the shooting); *see also Sanchez v. Gomez*, No. EP-17-CV-133-PRM, 2020 WL 1036046, at *18 (W.D. Tex. Mar. 3, 2020) ("In the context of mental illness, the

Court is precluded from considering whether an officer's inadequate response to a mental health crisis provoked the victim into acting aggressively.").

Indeed, Judge DeMoss wrote separately in some of the above cases to ***acknowledge*** that officers had provoked the victim. *See Rockwell*, 664 F.3d at 996–97 (DeMoss, J., specially concurring) ("As I see it, they provoked a man they knew to be mentally ill into a violent reaction. They did not allow for any time to defuse the situation or implement the safest procedures possible to take him into custody. Preventing a possible suicide is a worthy goal, but an armed entry that heightens the risk to the potential victim's life certainly is not the best way to accomplish that goal."); *see also Elizondo v. Green*, 671 F.3d 506, 511 (5th Cir. 2012) (DeMoss, J., specially concurring) ("Forcing Ruddy's bedroom door open, yelling orders at him, and immediately drawing a firearm and threatening to shoot was a very poor way to confront the drunk, distraught teenager who was contemplating suicide with a knife."). Police departments in Texas (and across the nation) specifically train officers to use de-escalation tactics when reasonable, to avoid this precise result. *See, e.g.*, Houston Police Dep't, General Order No. 600-17, Houston Police Dep't (rev. Mar. 4, 2022), https://www.houstontx.gov/police/general_orders/600/600-17%20Use%20of%20Force.pdf (last visited Nov. 15, 2024) ("When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques in an attempt to gain voluntary compliance and to reduce or eliminate the use of physical force."); *see also* Br. for Pet. 41–42 (collecting policies). Still, under the Fifth Circuit's precedent, an officer's unreasonable actions in the moments before the use of

deadly force are "not legally actionable," even if they provoke the victim. *Rockwell*, 664 F.3d at 997 (DeMoss, J., specially concurring).

Unless this Court repudiates the moment-of-threat doctrine, the families of more mentally ill and suicidal Texans—like the decedents in *Harris*, *Grigsby*, *Rockwell*, *Elizondo*, and others—will not have access to full recourse under Section 1983 and the Fourth Amendment. Those families are entitled to an analysis of whether their loved-ones' deaths were justified under the totality of the circumstances, but the moment-of-threat doctrine starves that analysis. The Court should make clear that when an officer kills an individual undergoing a mental health crisis, the Fourth Amendment's full protections apply.

CONCLUSION

The moment-of-threat doctrine allows what the Fourth Amendment forbids: the use of deadly force when, under the totality of the circumstances, deadly force is otherwise unreasonable. As a result, the Fourth Amendment means less in the minority of jurisdictions that adhere to it—it offers less protection to those pulled over for routine traffic stops, those experiencing mental health crises, and those who come into contact with police for any other reason. The Court should reject the moment-of-threat doctrine and make clear that it has no place under the Fourth Amendment.

Respectfully submitted,

Daniel N. Guisbond
Counsel of Record
Danielle L. Trujillo
Nicholas J. Steverson
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street
Suite 4500
Denver, Colorado 80202
303.244.1800
guisbond@wtotrial.com

Counsel for Amicus Curiae

NOVEMBER 20, 2024