No. 24-1051

IN THE

Supreme Court of the United States

MICHAEL NISSEN,

Petitioner,

v.

JAVIER AMBLER, SR., INDIVIDUALLY AND ON BEHALF OF ALL WRONGFUL DEATH BENEFICIARIES OF JAVIER AMBLER, II, THE ESTATE OF JAVIER AMBLER, II, AND AS NEXT FRIEND OF J. R. A., MINOR CHILD, *et al.*,

Respondents.

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

BRIEF OF AMICI CURIAE THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL, LOUISIANA MUNICIPAL RISK MANAGEMENT AGENCY INTERLOCAL PUBLIC LIABILITY FUND, MISSISSIPPI MUNICIPAL LIABILITY PLAN, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, TEXAS POLICE CHIEFS ASSOCIATION, COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS, AND TEXAS MUNICIPAL POLICE ASSOCIATION IN SUPPORT OF MICHAEL NISSEN'S PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICI CURIAE

Amici collectively represent thousands of local governmental entities and law enforcement agencies, and hundreds-of-thousands of police officers. *Amici* and their members are strongly interested in obtaining clear guidance from this Court relating to appropriate use of force and acceptable custody procedures following a dangerous, high-speed chase, in furtherance of community and law enforcement safety, and to enable officers to make reasonable and lawful decisions in protecting the public. *Amici* seek to assist this Court by providing insight and perspective into issues concerning law enforcement and municipal liability.

The Texas Municipal League Intergovernmental Risk Pool ("TMLIRP") is a self-insurance pool encompassing over 2,500 governmental entities in Texas, including over 930 municipalities that have law-enforcement liability coverage through TMLIRP.[1]

The Louisiana Municipal Risk Management Agency Interlocal Public Liability Fund ("LMRMAIPLF") provides Louisiana municipalities with liability coverage, including public official and law enforcement coverage.

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1. Counsel of record for all parties received timely notice under Supreme Court Rule 37.2 of *amici's* intent to file this brief. No counsel for any party in this matter and no party: (1) authored this brief in whole or in part; or (2) contributed money that was intended to fund the preparation or submission of this brief. No person, other than TMLIRP, LMRMAIPLF, MMLP, TPCA, NAPO, CLEAT, TMPA, and their members or counsel, contributed money that was intended to fund the preparation or submission of this brief. *Amici* submit this brief pursuant to Supreme Court Rule 37.

The LMRMAIPLF is funded through resources pooled together by its members to insure their protection and defense against municipal risks.

Mississippi Municipal Liability Plan ("MMLP") provides Mississippi municipalities with liability coverage, including public official and law enforcement coverage. The MMLP is funded through resources pooled together by its members to insure their protection and defense against municipal risks.

Founded in 1958, Texas Police Chiefs Association ("TPCA") promotes, encourages, and advances the professional development and high ethical standards of senior police management personnel throughout Texas. TPCA's membership of 1,550 includes the law enforcement management personnel of over 330 cities and agencies, representing a population served of more than 15 million.

National Association of Police Organizations ("NAPO") is a nationwide alliance of organizations committed to advancing the interests of law enforcement officers. Since NAPO's founding in 1978, it has become the strongest unified voice supporting law enforcement in the United States. The organization represents over 1,000 police units and associations and over 241,000 sworn officers mutually dedicated to fair and effective law enforcement.

Combined Law Enforcement Associations of Texas ("CLEAT") represents over 25,000 Police Officers, Detention Officers, and other Law Enforcement Professionals across Texas. CLEAT advocates for the fair and consistent application of the law for First Responders.

Founded in 1950, the Texas Municipal Police Association ("TMPA") represents over 33,000 state, county, and local police officers and public safety employees across Texas. TMPA promotes professionalism in law enforcement through training, education, and representation.

Amici collectively represent hundreds-of-thousands of law enforcement officers who daily face safety concerns in connection with police chases, traffic stops, and arrests. Here, Officer Nissen did not use lethal force but the *Ambler* majority employs 20/20 hindsight to interpret Nissen's use of soft, empty-hand control as deadly force. The *Ambler* majority then sets aside the question of law before it and makes no decision on qualified immunity. Instead, the majority claims there is a fact issue. This is, effectively, a denial of qualified immunity.

Amici submit this brief to emphasize the exceptional importance of the questions presented in the petition for writ of certiorari and to urge the Court to grant this petition.

SUMMARY OF THE ARGUMENT

The Court should grant Officer Michael Nissen's petition for writ of certiorari because the Fifth Circuit has decided important federal questions in ways that: (1) conflict with decisions of this Court; (2) conflict with decisions of other circuit courts of appeals; (3) disregard the need for officer safety following a "Hollywood Style" police chase; and (4) create dangerous uncertainty for police officers and the public in preventing felonious criminal activity.

The Fifth Circuit judges split eight to nine against rehearing *Ambler v. Nissen* en banc. The *Ambler* panel's decision was split two to one, with a vigorous dissent. The *Ambler* majority went beyond the three *Graham v. Connor* factors in weighing Officer Nissen's entitlement to qualified immunity. The majority erred by inserting a subjective factor into this Court's objective test. Moreover, the *Ambler* majority got it exactly backwards with their improper subjective test by asking what was going through the mind of the suspect rather than the mind of the police officer. This backwards approach by the *Ambler* majority would have been wrong even under this Court's ancient subjective standard that was rejected in *Harlow v. Fitzgerald*. The *Ambler* majority requires police officers to be mind-readers and doctors in addition to making split-second, life-and-death decisions in the most dangerous of conditions.

The *Ambler* majority's decision reflects a pronounced split among the circuit courts in how to interpret this Court's decision in *Scott v. Harris*. Did *Scott* abrogate the use of special standards in deadly-force cases and reinstate "reasonableness" as the inquiry? The Second, Third, Fourth, and Tenth Circuits say, "Yes." The *Ambler* majority, however, applied an additional special standard. The *Ambler* majority asked whether probable cause existed in that split-second "to believe that the suspect pose[d] a threat of serious physical harm." The Sixth, Eighth, Ninth, and Eleventh Circuits agree with the Fifth Circuit that this special probable-cause standard should still be used post-*Scott*.

More fundamentally, the *Ambler* majority uses the vision of 20/20 hindsight to unfairly conclude that Officer

Nissen used deadly force. The *Ambler* majority looks back and concludes there is a fact question solely because Mr. Ambler died. What force did Officer Nissen use after an adrenaline-spiking, high-speed chase? According to both the *Ambler* majority and the dissent, there was clear video from Officer Nissen's body-worn camera. Officer Nissen "spent about a minute controlling Ambler's hand—without touching any other part of his body—and then no more than 20 seconds applying pressure to Ambler's upper back and head." 116 F.4th at 365. "Precisely the type of controlled and measured response we expect from police reacting to a manifestly dangerous suspect." *Id.*

The *Ambler* majority's decision injects confusion into the legal analysis. It also makes it practically impossible for a police officer to use even the most minimal amount of force for fear that a suspect may later die. According to the *Ambler* majority, empty-handed pressure may equate to deadly force if the suspect later dies. With such a rule, how are officers supposed to place a felony suspect into custody? What are police academies supposed to teach officers? The *Ambler* majority sows seeds of confusion into the demands of an already difficult, dangerous, and demanding job. *Amici* urge this Court to grant the petition for writ of certiorari to address these important issues which concern police safety, public safety, police recruitment and training, and law enforcement policies throughout the country.

REASONS FOR GRANTING THE PETITION

A. The *Ambler* Opinion Conflicts with Decisions of this Court Regarding the Objective Inquiry Necessary in Reviewing an Officer's Decision to Put a Felonious Suspect in Custody.

Police officers learn *Graham* at the police academy. Before they are assigned their first patrol, officers understand that if circumstances arise which necessitate using force, it must be *objectively reasonable* for them to do so in that moment and under those circumstances. *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id*. The *Ambler* majority's opinion retreats from this objective analysis. It turns the clock back over 40 years and completely disregards Supreme Court precedents along the way.

This Court's holdings make it abundantly clear that "[q]ualified immunity is 'an immunity from suit rather than a mere defense to liability.'" *Pearson v. Callahan*, 555 U.S. 223, 237 (2009) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (emphasis deleted)). Thus, "[i]n resolving questions of qualified immunity, courts are required to resolve a 'threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry.'" *Scott v. Harris*, 550 U.S. 372, 377 (2007) (quoting *Saucier v. Katz*, 533

U.S. 194, 201 (2001)). The wrinkle is that when, as here, videotape captures the events, the court views the events "in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." *Id.* at 380. The *Ambler* majority, faced with video evidence that the *Ambler* dissent characterizes as "multiple, clear videos of what happened," ignores the threshold qualified-immunity question. *Ambler*, 116 F.4th at 365.

The *Ambler* majority recognizes that courts "cannot disregard clear video footage when available: If events in dispute are recorded, as they are here, we do not accept any facts that are '*blatantly* contradicted by the record." *Id.* at 356 (citations omitted). Nonetheless, the *Ambler* majority admits that Officer Nissen's body-worn camera shows Officer Nissen using his hands to

> "appl[y] force to Ambler's arms and the back of his head, pushing it into the pavement … The officers then handcuffed Ambler, who appeared limp. Less than thirty seconds later, the officers raised Ambler to a seated position and checked for a pulse. They felt nothing."

Id. at 355–56. The *Ambler* dissent characterizes this soft, empty-hand control to place a felonious suspect into custody as "precisely the type of controlled and measured response we expect from police reacting to a manifestly dangerous suspect" in the immediate wake of a twenty-minute highspeed chase "involving three crashes and triple-digit speeds." *Id.* at 365.

Instead of engaging with qualified immunity's threshold question, the *Ambler* majority dodges it. In doing so, the majority manufactures a fact issue involving

the subjective mind-set of the *suspect*. The *Ambler* majority asks what looks, at first glance, to be an objective question, "'whether a reasonable officer would believe that [Ambler] … was subdued [or] an immediate threat to safety when Nissen began helping handcuff him.'" *Ambler*, 116 F.4th at 358. The *Ambler* majority is actually asking a subjective question regarding the *suspect's* mindset. The real question the *Ambler* majority is asking is: Was Ambler resisting when he put one arm on the ground to hold himself up or was this an instinctive move to help him breathe? *Id*. at 359.

This question is subjective because it asks Officer Nissen—in the midst of a tense, uncertain, and rapidly evolving event—to assess Ambler's (the suspect's) mind to determine whether Ambler is actually in medical distress. Again, the video shows Ambler crash three times and after the first two crashes he continues to flee. What makes the majority think that Officer Nissen must know that this time Ambler was actually giving up? The majority described the question as: "Perhaps Ambler was indeed refusing to submit to the officers by pulling his body away from the ground, and perhaps [Officer] Nissen responded in a reasonable manner. But … it is just as believable that [Plaintiffs'] allegations are correct, and Ambler was in a struggle for his life." *Id*. at 359. The majority's answer is surely based on the 20/20 hindsight that Ambler dies. There are two errors in this analysis.

First, before *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), qualified immunity contained both an objective and a subjective element. *Id*. at 815. However, because of the subjective element, qualified immunity was often ineffective in resolving insubstantial suits against

government officials before trial. *Id.* at 815–16. To balance the need to allow plaintiffs to vindicate constitutional rights on the one hand with shielding public officials to be able to perform their duties without being subjected to baseless claims, this Court adopted an objective test to determine whether qualified immunity applies. Thus, when government officials are performing discretionary functions, they will not be held liable for their conduct unless their actions violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 818.

The *Ambler* majority injects a subjective question into the mix and, thereby, violates this Court's precedents. The *Ambler* majority questions Ambler's intent. It asks, what was Ambler's mindset. Asking the subjective question is error in the first place—subjective analysis has been rejected since 1982. Moreover, the *Ambler* majority's subjective test is exactly backwards. Even in pre-*Harlow* cases, the subjective question regarded the public official's mindset. Here, the *Ambler* majority finds a fact question based on the *suspect's* mindset. Effectively, the *Ambler* majority seeks to add the jobs of "mind reading" and "physician" to an officer's already difficult, dangerous, and demanding job.

Second, the *Ambler* majority uses the 20/20 vision of hindsight to interpret that Ambler was actually in medical distress as opposed to resisting. This Court has consistently held that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Kisela v. Hughes*, 584 U.S. 100, 103 (2018) (quoting *Graham*, 490 U.S. at 396). The

Ambler majority states that from an objective perspective, "Ambler's pleas for help, coupled with his arguably obvious medical distress, *may* have alerted a reasonable officer to intervene in the ordeal to stop the tasing and continued use of force." *Ambler*, 116 F.4th at 362 (emphasis added).

The *Ambler* majority disregards this Court's precedent and replaces the objective analysis with a new subjective analysis. And the *Ambler* majority gets the ancient and long-rejected, subjective analysis exactly backwards by focusing on the mindset of the *suspect* instead of the officer. Finally, the *Ambler* majority uses the vision of 20/20 hindsight to interpret the subjective intent of the suspect. The *Ambler* majority virtually eliminates the purpose and effectiveness of qualified immunity by rejecting this Court's objective standard.

B. There is a Circuit Split Regarding the Scope of *Scott v. Harris* and Whether Additional Factors Must be Analyzed in Deadly-Force Situations.

There is a well-developed and broad circuit split regarding the application of *Scott v. Harris*. The circuit split is more pronounced than described on pages 22–24 of Officer Nissen's Petition. There, Officer Nissen explains that a conflict exists among the Circuits regarding the effect of *Scott v. Harris*. The split is at least five to four. With the Fifth, Sixth, Eighth, Ninth, and Eleventh Circuits on one side and the Second, Third, Fourth, and Tenth Circuits on the other.

In *Scott*, this Court rejected the Eleventh Circuit's interpretation that "*Garner* prescribes certain preconditions that must be met before [a police officer's]

actions can survive Fourth Amendment scrutiny." *Scott*, 550 U.S. at 381–82. One of the preconditions the Eleventh Circuit used was that "[t]he suspect must have posed an immediate threat of serious physical harm to the officer or others." *Id*. This Court rejected the Eleventh Circuit's position and held that *Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute deadly force." *Id*. at 382 (cleaned up).

In *Johnson v. City of Philadelphia*, the Third Circuit explained that *Scott* eliminated these preconditions that some circuits were employing and returned the inquiry to "reasonableness":

> Before proceeding, it is necessary to clarify our Fourth Amendment standard in deadly-force cases. Following the Supreme Court's lead in *Tennessee v. Garner*, we have previously suggested than an officer's use of deadly force is justified under the Fourth Amendment only when (1) the officer has reason to believe that the suspect poses a "significant threat of death or serious physical injury to the officer or others," and (2) deadly force is necessary to prevent the suspect's escape or serious injury to others. In *Scott v. Harris*, however, the Supreme Court clarified that "*Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute 'deadly force.'" Rather, *Garner* was "simply an application of the Fourth Amendment's 'reasonableness' test to the use of a particular type of force in

> a particular situation." ***Scott*** **abrogates our use of special standards in deadly-force cases and reinstates "reasonableness" as the ultimate—and only—inquiry.**

837 F.3d 343, 349 (3rd Cir. 2016) (internal citations omitted) (emphasis added). Similarly, additional circuits have recognized that interpreting *Garner* to add preconditions when an officer uses deadly force is a misapplication of *Garner*. *See* Pet., at 22 (citing *Terranova v. New York*, 676 F.3d 305, 307 (2d Cir. 2012); *Cansler v. Hanks*, 777 Fed. App'x 627 (4th Cir. 2019); *Estate of Armstrong ex rel. Armstrong v. Village of Pinehurst*, 810 F.3d 892 (4th Cir. 2016)); *see also Palacios v. Fortuna*, 61 F.4th 1248 (10th Cir. 2023) (using *Graham* factors in fatal shooting during police chase and employing *Larsen* framework to *Graham*'s second factor) (citing *Est. of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008)).

In contrast, the *Ambler* majority ignores this Court's decision in *Scott*. The *Ambler* majority held that "whether a use of force is 'deadly' is a question of fact." 116 F.4th at 360. Furthermore, the majority declared that when deadly force is used, there is an "added layer" to the *Graham* analysis. *Id.* at 359. The majority held that in addition to objective reasonableness, a court must consider: (1) "whether the force constituted deadly force"; and (2) "whether the subject posed a threat of serious harm justifying the use of deadly force." *Id.* at 360. Similarly, other Circuits are employing a framework that asks whether "the officer has probable cause to believe that the suspect poses a threat of severe physical harm." *Campbell v. Cheatham County Sheriff's Dept.*, 47 F.4th 468 (6th Cir. 2022) (applying additional standard in shooting

case); *Lankford v. City of Plumerville*, 42 F.4th 918 (8th Cir. 2022) (applying probable cause to believe suspect posed serious threat in vehicle pursuit and citing *Scott* as establishing probable cause); *see also* Pet., at 23 (citing *Scott v. Smith*, 109 F.4th 1215 (9th Cir. 2024) and *Bradley v. Benton*, 10 F.4th 1232 (11th Cir. 2021)).

The Fifth Circuit more fully explained its rejection of *Scott* in *Aguirre v. City of San Antonio*:

> The Supreme Court held in *Scott* that there is no "magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute 'deadly force[.]'" … Nevertheless, we have long held that the use of "deadly force" is unreasonable where the officer does not have "probable cause to believe that the suspect pose[d] a threat of serious physical harm, either to the officer or to others."

995 F.3d 395, 412–13 (5th Cir. 2021) (internal citations omitted).

Accordingly, there exists general confusion and a pronounced split among the circuits. On one hand, the Second, Third, Fourth, and Tenth Circuits appear to read *Scott* as rejecting rigid preconditions when an officer employs deadly force. On the other, the Fifth, Sixth, Ninth, Eighth, and Eleventh Circuits add to the *Graham* factors a requirement that probable cause exists to believe the suspect is a threat of serious physical harm. Against this circuit split, police officers learn the *Graham* factors in the police academy but have little direction as to whether soft, empty-hand control will constitute deadly force when attempting to place a felonious suspect in custody.

C. The *Ambler* Opinion Disregards the Government's "Legitimate and Weighty" Interest in Officer Safety Following a Dangerous, 20-Minute Chase Involving Three Crashes and Triple-Digit Speeds.

One important—and necessary—purpose of qualified immunity is to enable law enforcement officers to protect one another, and the public, without fear of exposure to crippling damages claims. *E.g.*, *Wyatt v. Cole*, 504 U.S. 158, 167–68 (1992) (qualified immunity protects government's ability to perform its traditional functions and, by safeguarding government, protects the public at large). Because of this mandate, the doctrine of qualified immunity is broadly interpreted to shield from liability "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986); *City of Tahlequah v. Bond*, 595 U.S. 9, 12 (2021) (per curiam) (citing *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018) (quoting *Malley*, 475 U.S. at 341). Under *Ambler*, the factual outcome—in this case Ambler's death—strips the officer of the protection of qualified immunity even when an officer uses only a modicum of force to complete the process of placing the suspect in custody.

This Court characterizes the government's interest in officer safety as "'legitimate and weighty,'"[2] and it has long recognized that "traffic stops are 'especially fraught with danger to police officers.'" *Johnson*, 555 U.S. at 330 (quoting *Michigan v. Long*, 463 U.S. 1032, 1047 (1983)); *see also*, *e.g.*, *Mimms*, 434 U.S. at 110 (rejecting the argument that "traffic violations necessarily involve less

2. *Arizona v. Johnson*, 555 U.S. 323, 331 (2009) (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (per curiam)).

danger to officers than other types of confrontations"). Indeed, this Court has long held that police officers may even briefly detain a suspect based on a reasonable suspicion of criminal activity and conduct a limited "frisk" of the suspect for concealed weapons in order to protect themselves from personal danger. *Terry v. Ohio*, 392 U.S. 1 (1968). The danger of merely approaching a suspect during a traffic stop is well established. *Adams v. Williams*, 407 U.S. 143, 148, n.3 (1972) ("'According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile.'"). The situation in *Ambler* was far more dangerous because Ambler was resisting handcuffing following a 20-minute chase involving three crashes and triple-digit speeds. *Ambler*, 116 F.4th at 355.

The FBI's data, Law Enforcement Officers Killed and Assaulted ("LEOKA"), shows that, in 2019, when Ambler took police on a high-speed pursuit through residential roads and highways, 56,034 officers were assaulted[3] and 48 officers were feloniously killed.[4] In 2019, nearly twelve percent of law enforcement officers were assaulted.[5] The danger to police officers has increased since then. LEOKA data show that from 2020–2024, an average of 60.8 officers

3. https://ucr.fbi.gov/leoka/2019/topic-pages/officers-assaulted, last visited on April 16, 2025.

4. https://ucr.fbi.gov/leoka/2019/topic-pages/tables/table-1.xlshttps://ucr.fbi.gov/leoka/2019/resource-pages/tables/table-1.xls, last visited on April 16, 2025.

5. https://ucr.fbi.gov/leoka/2019/topic-pages/tables/table-80.xls, last visited on April 16, 2025.

were feloniously killed each year.[6] Police officers face additional dangers in conducting traffic stops following a pursuit. When officers step out of their vehicles to conduct traffic stops, they are exposed to the dangers of vehicles traveling around them. Consequently, officers must split their attention between two fronts—the traffic stop and the traffic. The Emergency Safety Responder Institute ("ESRI") has been compiling struck-by-vehicle fatality data for emergency responders since 2019.[7] In 2019, eighteen police officers lost their lives in struck-by-vehicle accidents.[8] These numbers do not account for near-misses and injuries, sometimes severe, which officers suffer in connection with traffic stops.

Against this backdrop, the *Ambler* majority second-guessed Officer Nissen's split-second decision to assist the other officers in handcuffing Ambler. The *Ambler* majority also second-guessed Officer Nissen's decision to use soft, empty-hand control to overcome Ambler's resistance to being handcuffed. Then, the *Ambler* majority second-guessed Officer Nissen's decision to release that control and move Ambler to a seated position. The *Ambler* majority views the use of force "as judges from the comfort and safety of [their] chambers, fearful of nothing more threatening than the occasional paper cut as [they] read a cold record accounting of what turned out to be the facts." *Crosby v. Monroe County*, 394 F.3d 1328, 1333

6. https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/le/leoka, last visited on April 16, 2025.

7. https://www.respondersafety.com/news/struck-by-incidents/yearly-fatality-reports/, last visited on April 16, 2025.

8. *Id.*

(11th Cir. 2004) (citing *Graham*, 490 U.S. at 396–97). As the *Ambler* dissent explains, "[a] police officer made an appropriate, split-second judgment about reasonable force in light of the gravity of the situation and is now tied up in a federal lawsuit, facing possible civil damages, because of it." *Ambler*, 116 F.4th at 365. The *Ambler* majority essentially jettisons qualified immunity and this Court's precedents. *Id.*

The *Ambler* majority shifts accountability from the suspect, who should be held responsible for his violent or threatening behavior, to the officer, who is now expected to predict and mitigate the suspect's unpredictable actions and escalating threats. The *Ambler* majority's opinion compounds the uncertainty officers face following a high-speed chase. There is now uncertainty in the law and among the circuits. Uncertainty in the law increases danger, encourages timid responses to crime, and interferes with the increasingly difficult task[9] of hiring and retaining skilled peace officers.

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9. *See*, *e.g.*, https://www.washingtonpost.com/national-security/2023/05/27/police-vacancies-hiring-recruiting-reform/ (law enforcement agencies throughout the country are experiencing unprecedented difficulty hiring and retaining qualified officers); https://www.policeforum.org/staffing2023 (survey of 182 law enforcement agencies shows staffing of sworn officers is down by nearly 5% since 2020, and officers are retiring faster than they can be replaced), last visited on June 26, 2023; *see also*, *e.g.*, Elliott Averett, Note, *An Unqualified Defense of Qualified Immunity*, 21 Geo. J. L. & Pub. Pol'y 241, 273-77 (2023) (exploring the disproportionate increase in crime and reduction in law enforcement staffing since Colorado repealed qualified immunity).

D. The *Ambler* Opinion Creates Dangerous Uncertainty.

This Court recognizes the importance of "ensuring that officials can reasonably anticipate when their conduct may give rise to liability for damages." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (cleaned up, citation omitted).[10] "[T]he crux of the qualified immunity test is whether officers have fair notice that they are acting unconstitutionally." *Mullenix*, 577 U.S. at 21 (citation omitted).

This Court should grant review because the inconsistent deadly-force holdings among the circuit courts leave defendants, judges, and citizens confused and uncertain. This Court has not hesitated to correct circuit courts that improperly deny immunity.[11] The Court should grant review because, given the confusing state of the law, law enforcement agencies are left uncertain about how to train their officers to deal with non-compliant suspects who remain in running vehicles during traffic stops. Should they train officers to "exercise unquestioned command of the situation" under this Court's precedent?

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10. *See also New York v. Belton*, 453 U.S. 454, 459–60 (1981) ("When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority.").

11. *E.g.*, *Mullenix v. Luna*, 577 U.S. 7, 16–19 (2015); *Taylor v. Barkes*, 575 U.S. 822 826–27 (2015); *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 611, n. 3 (2015) ("the Court often corrects lower courts when they wrongly subject individual officers to liability") (citing *Carroll v. Carman*, 574 U.S. 13, 17 (2014)); *Wood v. Moss*, 572 U.S. 744 (2014); *Plumhoff v. Rickard*, 572 U.S. 765, 765 (2014); and *Stanton v. Sims*, 571 U.S. 3 (2013) (per curiam).

Johnson, 555 U.S. at 330–31 (and cases cited therein). Should they train officers that trying to move a resisting suspect's hands behind his back to handcuff him following a high-speed chase is deadly force? Should they train officers to simply let a suspect go when the suspect is involved in high-speed chase endangering the lives of the public?

CONCLUSION

The *Ambler* majority's decision conflicts with this Court's rulings and demonstrates a pronounced circuit split regarding this Court's decision in *Scott v. Harris*. The Ambler majority's decision undermines officers' authority, and encourages timidity, rather than reasonable action in support of public safety. This Court should grant the petition to resolve the circuit split and clearly establish whether a police officer's use of force is subjected to a special standard when the suspect later dies.

Respectfully submitted,

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