

IN THE
Supreme Court of the United States

JENNIFER ROOT BANNON, AS THE
SPECIAL PERSONAL REPRESENTATIVE
OF THE ESTATE OF JUSTON ROOT,

Petitioner,

v.

DAVID GODIN, POLICE OFFICER;
JOSEPH MCMENAMY, POLICE OFFICER;
LEROY FERNANDES, POLICE OFFICER;
BRENDA FIGUEROA, POLICE OFFICER;
COREY THOMAS, BOSTON POLICE OFFICER;
PAUL CONNEELY, MASSACHUSETTS STATE
TROOPER; THE CITY OF BOSTON,

Respondents.

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

PETITION FOR REHEARING

JENNIFER ROOT BANNON (PRO SE)

*As the Special Personal
representative of the
Estate of Juston Root*

P.O. Box 920740

Needham, MA 02492

(857) 770-1342

JusticeforJuston@gmail.com



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PETITION FOR REHEARING

Pursuant to Rule 44.2, the Petitioner suggests that the *Court* authorizes a petition for rehearing based on “intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.” Jennifer Root Bannon (“petitioner” or “Bannon”) respectfully petitions this *Court* for an order (1) granting rehearing, (2) vacating the *Court*’s January 13, 2025, order denying certiorari, and (3) to address the core lynchpin of the issue before the *Court* at the heart of *Barnes v. Felix*; evaluating and weighing facts in the “reasonableness at the moment” doctrine and providing the Circuits more guidance in applying *Tolan v. Cotton*. (4) remanding to the First Circuit for further consideration in light of the *Courts* guidance.

A majority of the Circuits appear to consider the “Totality of the circumstances”; even if some only consider the “moment of threat” both methods lead to *Courts* evaluating the “reasonableness at the moment.” This doctrine is most often fact-intensive and in far too many cases before the Circuits and this *Court*, plaintiffs have demonstrated Courts are inappropriately applying *Tolan* “all facts and inferences must be viewed in the light most favorable to the nonmoving” *Tolan*; The “reasonableness at the moment” doctrine is not in unison with the precedent set in *Tolan* by the *Court*. In addition to the split among the Circuit Courts identified by the petitioners in *Barnes* and *Tolan*, the First Circuit below has now created a third approach by improperly affirming summary judgement in circumstances where there remains a significant number of disputes of material fact.

This inquiry affects all excessive force cases, by weighing evidence in fact-intensive cases without properly applying *Tolan*, essentially removing the jury's function. Juston Root ("Root") was on the ground incapacitated, covered and gurgling blood, had suffered a catastrophic car accident when police officers ran up and fired 31 shots. The First Circuit has set a precedent making this reasonable.

Recently the *Court* heard the oral argument for *Barnes*; their Petition was granted on October 4, 2024. *Bannon v. Godin*'s petition was filed September 9, 2024. While the *Court* reviews *Barnes*, contemplating the doctrine the Circuits should use: "Moment of threat" or the "Totality of the circumstances". The "Totality" should consider a change in circumstances when evaluating whether force used was "reasonable". In addition to applying the *Graham* factor.

While evaluating and making determinations on the victims' conduct, the officer's conduct is not considered. *Graham* This approach is "one-sided," By "Selectively overlooking police conduct that undercuts the reasonableness of officers' decisions risks establishing a "protected class status for law enforcement."” *Seth Stoughton*

“If qualified immunity provided a shield in all novel factual circumstances, officials would rarely” “be held accountable for their unreasonable violations of the Fourth Amendment.” *Deorle v. Rutherford*. “Otherwise, officers would escape responsibility for the most egregious forms of conduct” *Id.*

The First Circuit's eight point "reasonableness at the moment" doctrine leaves excessive force cases unchecked. This doctrine encourages judicial overreach, allowing judges to act as cherry-picking factfinders. "Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge on a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.* All facts and inferences are to be looked in the movant's favor; this "reasonableness" doctrine is not in unison with the precedent set by *Tolan*. This *Court* has denied far too many excessive force cases, this will repeat until this *Court* corrects it. In three recent cases denied by this *Court*: *Argueta v. Jaradiand*, *Scafidi v. Las Vegas Metro. Police Dep't.* and *Kelley v. O'Malley*. Each took "inherent factual questions away from the jury in an effort to resolve a complicated factual scenario as a matter of law. It not only failed to view facts in the light most favorable to the Petitioners." and "Supreme Court precedents require that, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Tolan* (quoting *Anderson v. Liberty Lobby*).

Too many excessive force cases end prematurely because of the lack of this Court's much-needed guidance. I urge the *Court* to create uniformity among the Circuits by answering these questions:

1. What weight/relevance should a subject or suspect's incapacitation/physical condition be considered in part of the "Totality of the Circumstances" analysis when weighing the reasonableness at the moment?

2. When evaluating what a “reasonable police officer” would do at the moment, what weight and consideration should police practices and norms in law enforcement give to the reasonableness inquiry analysis?
3. What weight should be given to the possibility that the officer created the danger in the reasonableness inquiry?

The First Circuit considers the “reasonableness at the moment” doctrine by the following the eight points listed below.

“[1] [w]hether a reasonable officer on the scene could believe that the suspect pose[d] an immediate threat to police officers or civilians”

- This question is for the jury because it’s unreasonable and a constitutional violation to shoot an incapacitated person. Holding that “deadly force is not justified ‘[w]here the suspect poses no immediate threat to the officer and no threat to others’ *Tennessee v. Garner*. The First Circuit “fail[ed] to address evidence that, when viewed in the light most favorable to the plaintiff” *Tolan*, that the officers conduct would be unreasonable.
- What happened to Root “shocks the conscience.” “Recognizing that a right might be clearly established in the absence of on-point case law if the conduct giving

rise to the violation is” “so egregious that a constitutional right was clearly violated” *Fuqua v. Turner*. In addition, he was in shock from a catastrophic car accident. A reasonable jury could conclude that he was physically and cognitively impaired. The car had multiple wheels missing and was heavily smashed.

- Based on Officer David Godin’s (“Godin”) radio dispatch, other responding officers were informed that he discharged his firearm (referred to as a 303), that the suspect had been shot and that he “probably hit a car”. Before Godin leaves his cruiser in Brookline, he put over the radio “we got the hooligan” (Audio_4400314.wav). Officers did not know that the hospital Valet had been shot until 2 minutes after they shot 31 bullets from point-blank range at Root, almost hitting the samaritan as she ran away. At no time did Godin say the suspect was still armed and dangerous. He failed to relay critical information over the radio that the suspect pulled a gun on him, that he saw Root pull the trigger, and mistakenly thought Root had shot at him. A reasonable officer would share this and warn his colleagues to keep them out of harm’s way. He did not report this during his interview five days after the shooting. It wasn’t until almost two years later that he made this claim. In Boston, Godin shot the unloaded 12-inch clear plastic paintball marker in half, leaving a small clear handle in Root’s

right hand. A reasonable jury could conclude that walking right up to Root, getting within within 3ft. of a perceived dangerous gunman that the officer did not act reasonably.

“[2] [w]hether a warning was given before the use of force and whether the suspect complied with this command,”

- In Brookline, the officers yelled conflicting and unintelligible commands, and within seconds, with no warning they shot Root 31 times while he was incapacitated on the ground. In *Stewardson v. Titus* officers “had ample opportunity – a reasonable jury could conclude – to warn” as the officers did with Root. A reasonable jury could conclude that it was unreasonable for the officers to expect a person in Root’s incapacitated condition to be able to comply and or respond, and especially within a couple of seconds. Godin and Officer Joseph McMenamy were certified EMT’s prior to becoming police officers, this was also not considered. Failing to give a warning before using deadly force “exacerbates the circumstances, further confirming that use of deadly force was objectively unreasonable” *Cole v. Hutchins*.
- Based on the facts pleaded (and reasonable inferences) here, a reasonable officer would have known that if in fact Root reached, this would have been in compliance with the commands to drop the gun. “Five of the officers gave evidence that each, independently, saw Root reach into his jacket as if to reach for a weapon, despite commands to show his hands, drop the gun, etc., in the seconds

before the shooting. “*Bannon v. Godin* (1st, Cir.). “Holding that shooting a compliant suspect is “so inherently violative of the Fourth Amendment that it should be obvious to any reasonable officer that this conduct was unlawful” even without pre-existing case law” *Perez v. Suszczyński*. This would be “so obviously an attempt to comply with [Ellison’s] commands to drop the [gun] that a reasonable officer would have known that opening fire would constitute excessive force” *Partlow v. Stadler*.

- A genuine dispute as to whether Root was reaching for a gun is a question for the jury. A jury could find that Root did not reach and “was not grasping the trigger” or “aiming his weapon” at the officer when he was shot, *Brandenburg v. Cureton*. The certified EMT bystander was kneeling beside Root cradling his face when the officers told her to run. A jury could conclude it was unreasonable for an officer to not have assessed the situation.

“[3] [w]hether the suspect was armed . . . at the time of the encounter or whether the officers believed the suspect to be armed,”

- Besides Godin, the other responding officers reasonably believed Root was armed. Godin had information unknown to the other officers on the scene. Godin was the closest to Root in Brookline and shot Root an additional 8 times. (Boston: Godin shot him 5 times and Officer St. Peter took cover from a short distance and shot 10 bullets).

- The Police receive “person with a gun” dispatches frequently in and around the area of the Hospital. Officers are trained on how to approach tense situations. Godin responded and immediately closed the space between himself and Root while his back was to him, no conversation and no de-escalation. This encounter happened after Root was in the middle of the road at Godin’s cruiser driver-side window while Root held the enormous clear plastic paintball marker in his right hand. A security guard witness stated that he knew it was a toy from 60 ft away. Godin aimed and fired at his target and shot the paintball marker, leaving only a small handle in Root’s hand. Root sustained 2 grazed shots to his right wrist in Boston. He got to his car with the plastic handle intact in his right hand; that means that the four shots to his right hand occurred in Brookline, so nothing was in his hands.

“[4] [t]he speed with which officers had to respond to unfolding events, both in terms of the overall confrontation and the decision to employ force,”

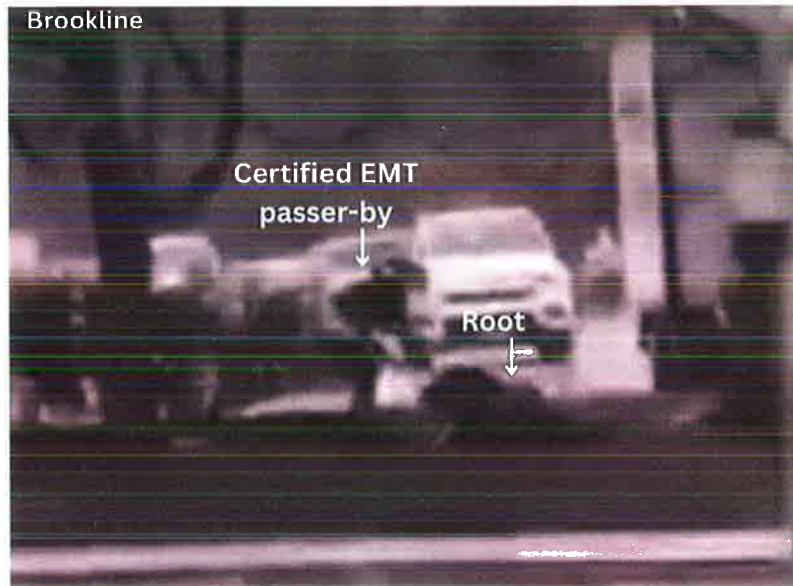
- There was ample time, distance and cover between the incidents. “If the officer took cover, called for backup, or tried to talk with or calm the individual, the jury may consider this conduct in assessing the reasonableness of the officer’s use of force.”
Cynthia Lee

After shooting he said “I killed the Mother F*cker”. Root was known to the Police and they knew he had a mental illness because they had sectioned him in March 2019 because of this incident, Mr. Root was FOied,

meaning that the information the BPD learned as a result of this incident was added to the BPD's Field Interrogation and Observation database. They would have known this had they simply ran his plate.

"[5] [w]hether the suspect was advancing on the officers or otherwise escalating the situation,"

- A reasonable jury could conclude it was unreasonable for an officer to expect an incapacitated person to advance on them. Root was covered in blood, on the ground incapacitated, clutching his chest due to massive blood loss. One of the responding EMT's, reported that there was an estimated 2000cc of blood in his carseat, clearly he was covered in blood. This turns "in large part on what Salazar-Limon did just before he was shot, it should be obvious that the parties' competing accounts of the event preclude the entry of summary judgment" *Salazar-Limon v. City of Houston* 581 U.S. Sotomayor, J., dissenting "can shoot first and think later".
- Root was incapacitated on the ground, covered in blood, he was incapable of advancing or escalating the situation. Officer McMenamy advanced with no fear for his life and got within arm's reach, kicking Root over instead of apprehending him. He was a certified EMT prior to becoming a police officer only a few years prior to this incident. A reasonable jury would conclude that the officer did not act reasonably under the circumstance; this strains credulity.



Root collapsed to the ground.



Root was incapacitated and was not advancing on the officers, the officers surrounded him, this picture was one second before they started firing.

“[6] [t]he suspect’s physical proximity to the officers at the time of the use of force, such as whether the individual was within range to injure the officers at the time they fired seriously,”

- What needs to be asked here, is why the officers ran to their imminent threat? They are not trained to do that, this would be against best policing practices.

“[7] [w]hether multiple officers simultaneously reached the conclusion that a use of force was required, and”

- This prong depends on prong 1 however to conclude this prong the Court cherry picked facts, weighed evidence and made credibility determinations. This type of inquiry too easily becomes one sided. Despite the fact that the Court is supposed to “view the evidence and draw all reasonable inferences in favor of the non-movant” *Tolan*. “It is not for a judge to resolve these “differing versions of the truth” on summary judgment,” *First Nat. Bank*; “that question is for a jury to decide at trial.” In addition the First Circuit denied our motion to submit newly discovered evidence, which was required to be provided by the City of Boston during discovery. Despite the City of Boston omitting this critical evidence that supports that the Police had issues and recommendations for training their officers to avoid and not engage in contagious fire.
- The officers’ statements were “tainted” due to meeting together and discussing the shooting prior

to their interviews 5 days after the shooting. The afternoon on the day of the shooting there was a press conference. Police Superintendent-in-chief Gregory Long (“Long”) shared with the public, the (https://youtu.be/Vew9Lk_4WBs?si=k6ACrTaaNDJVSPzc&t=61) “suspect was given multiple commands to drop the gun, which he produced again so the officers discharged their firearms.” The audio from the only body worn camera recording does not support hearing anyone saying drop the gun, or yelling gun. Long, did not say anything about Root “reaching” or “reached” for what appeared to be a firearm inside his jacket. The new narrative seems to have been developed when they met prior to their interviews. The First Circuit concluded without considering the supplemental brief we filed in May, 2023 that because the 6 officers fired around the same time, this supported the judges position that shooting is what a reasonable officer would do, this is not what a reasonable jury could conclude. However two officers admitted they fired because they heard gunshots. Godin said that the reason he shot was because he “heard multiple officers” to his “left yell, Gun”. The audio on record from Officer Figueroa’s body worn camera does not corroborate this assertion. Godin was standing close to Figueroa so it would have been recorded. The City of Boston neglected to provide the 2014 report that was written after the Marathon Bombing with recommendations to address the known issue of contagious fire. The First Circuit denied our supplemental filing of the new evidence uncovered, it was critical for them to consider “contagious fire”. (*After Action Report for the Response to the*

2013 Boston Marathon Bombings". Government of Massachusetts. Executive Office of Public Safety and Security. December 2014. Retrieved October 10, 2017. Improvement Area 4, Lack of Weapons Discipline, page 114)

"[8] [t]he nature of the underlying crime."

- Root had mental illness and was in the midst of a crisis, escalated by the unarmed hospital security guards who started following him and subsequently by Godin. The incident occurred with 3 other mental health facilities steps away. Godin was very familiar with the area because he frequently worked at the hospital on detail shifts. Root was delusional and yelled to Godin twice, that he was with law enforcement. Instead of de-escalating, or having a conversation Godin made the decision not to take cover and to close the space on the sidewalk and get within 3ft. of Root. Godin took out his firearm, while Root's back was to him. The other Police officer on the scene, did what a reasonable officer would do, took cover by his vehicle and held his firearm in a shooting stance.

It's been 8 years since Justice Sotomayor's dissent in *Salazar-Limon*. "'The failure for this *Court* to not "correct the error made by the courts" "leaves in place a judgment that accepts the word of one party over the word of another." "The erroneous grant of summary judgment in qualified-immunity cases imposes no less harm on "society as a whole" We took one step to-ward addressing this asymmetry in *Tolan*." "We take one step back today"' id.

I urge the *Court* to take steps forward to “correct the error made by the courts” id., by answering the questions before you to protect the Fourth Amendment.

CONCLUSION

The petitioner requests that the Court grant the petition for rehearing.

Respectfully submitted,

JENNIFER ROOT BANNON (PRO SE)

As the Special Personal

representative of the

Estate of Juston Root

P.O. Box 920740

Needham, MA 02492

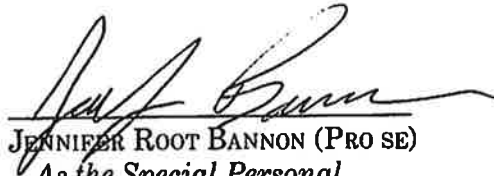
(857) 770-1342

JusticeforJuston@gmail.com

CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this Petition for Rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court and is presented in good faith and not for delay.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer Root Bannon", is written over a horizontal line.

JENNIFER ROOT BANNON (PRO SE)

*As the Special Personal
representative of the
Estate of Juston Root*

P.O. Box 920740

Needham, MA 02492

(857) 770-1342

JusticeforJuston@gmail.com

SUPREME COURT OF THE UNITED STATES

No. 24-287

-----X

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POLICE OFFICER; PAUL CONNEELY, MASSACHUSETTS STATE TROOPER;
THE CITY OF BOSTON,

Respondents,

-----X

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the
document contains 2,948 words, excluding the parts of the document that
are exempted by Supreme Court Rule 33.1(d).

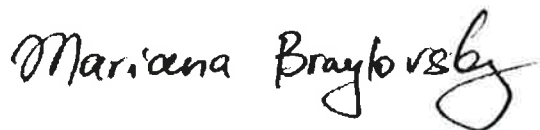
I declare under penalty of perjury that the foregoing is true and
correct.

Executed on this 7th day of February, 2025.



Ann Tosel

Sworn to and subscribed before me
on this 7th day of February, 2025.



MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935

Qualified in Richmond County
Commission Expires March 30, 2026



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SUPREME COURT OF THE UNITED STATES

No. 24-287

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REPRESENTATIVE OF THE ESTATE OF JUSTON ROOT,

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THOMAS, BOSTON POLICE OFFICER; PAUL CONNEELY,
MASSACHUSETTS STATE TROOPER; THE CITY OF BOSTON,

Respondents,

-----X
STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, Ann Tosel, being duly sworn according to law and being over the age
of 18, upon my oath depose and say that:

I am retained by Counsel of Record for Petitioner.

That on the 7th day of February, 2025, I served the within *Petition for
Rehearing* in the above-captioned matter upon:

Daniel J. Moynihan Jr.
Counsel of Record
Law Office of Daniel J. Moynihan,
PC
271 Main Street, Suite 302
Stoneham, MA 02180
(781) 438-8800
moynihanlaw@verizon.net

Edward Francis Whitesell Jr.
Counsel of Record
City of Boston Law Department
1 City Hall Square
Boston, MA 02201
(617) 635-4045
edward.whitesell@boston.gov

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by sending three copies of same, addressed to each individual respectively, through Priority Mail. An electronic version was also served by email to each individual.

That on the same date as above, I sent to this Court forty copies of the within *Petition for Rehearing* and two hundred dollar filing fee check through the Overnight Next Day Federal Express, postage prepaid. In addition, the brief has been submitted through the Court's electronic filing system.

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of February, 2025.

Ann Tosel

Ann Tosel

Sworn to and subscribed before me
this 7th day of February, 2025.

Mariana Braylovsky

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

