

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

---

CHRISTOPHER SCHURR,

*Petitioner,*

v.

PETER LYOYA, AS THE PERSONAL REPRESENTATIVE  
FOR THE ESTATE OF PATRICK LYOYA,

*Respondent.*

---

**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Sixth Circuit**

---

**BRIEF OF CRIMINAL DEFENSE COUNSEL  
FOR PETITIONER AS *AMICI CURIAE*  
IN SUPPORT OF PETITIONER**

---

MATTHEW G. BORGULA  
MIKAYLA S. HAMILTON  
KATHRYN M. SPRINGSTEAD  
SBBL LAW, P.L.L.C.  
60 Monroe Center St., N.W.  
Suite 500  
Grand Rapids, MI 49503  
(616) 458-5500  
matt@sbbllaw.com  
mikayla@sbbllaw.com  
kathy@sbbllaw.com

MARK DAVID DODGE  
*Counsel of Record*  
DODGE & DODGE, P.C.  
200 Ottawa Ave., N.W.  
Suite 401  
Grand Rapids, MI 49503  
(616)459-3850  
dodgepc@dodgepc.com

April 15, 2025

*Counsel for Amici Curiae*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
INTEREST OF THE AMICUS CURIAE .....	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	4
CONCLUSION .....	9

## TABLE OF AUTHORITIES

### CASES

<i>Anderson v. Creighton</i> , 483 U.S. 635 (1987).....	7
<i>Graham v. Connor</i> , 490 U.S. 386 (1989).....	2, 3, 5, 6, 8, 9
<i>Malley v. Briggs</i> , 475 U.S. 335 (1986).....	6
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009).....	4
<i>People v. Schurr</i> , No. 365104, 2024 WL 292922 (Mich. Ct. App. Jan. 25, 2024) .....	2, 5
<i>Rogers v. Tennessee</i> , 532 U.S. 451 (2001).....	8

### CONSTITUTIONAL PROVISIONS

US Const, Am V .....	8
----------------------	---

## INTEREST OF THE AMICUS CURIAE

Amici curiae Mark Dodge, Dodge & Dodge, P.C., along with Matthew G. Borgula, Mikayla S. Hamilton, and Kathryn M. Springstead, of SBBL Law, P.L.L.C., serve as criminal defense counsel for Petitioner Christopher Schurr in *Michigan v. Schurr*, a second-degree murder prosecution pending in the 17<sup>th</sup> Circuit Court, Kent County, Michigan, arising from the same use-of-force incident at issue in the civil petition before this Court. As criminal defense counsel, Amici have a substantial interest in the Court's consideration of the constitutional questions presented in the petition for certiorari, as the resolution of these questions will directly impact the criminal proceedings against Petitioner.

Amici file this brief to inform the Court of recent developments in the criminal case that underscore the urgent need for this Court's guidance on the applicability of constitutional standards to law enforcement use of force in the criminal context.<sup>1</sup>

---

<sup>1</sup> Counsel for Petitioner aided in the initial draft of this brief due to time constraints of the criminal defense given the impending trial date (jury selection begins April 21, 2025, and trial begins April 28, 2025) but did not contribute financially to its filing. The filing of the petition is funded by the Police Officer's Research Association of California Legal Defense Fund ("PORAC LDF"), made a monetary contribution intended to fund the preparation or submission of the brief.

## SUMMARY OF THE ARGUMENT

This case presents a rare opportunity for the Court to address a question of exceptional importance that impacts both civil and criminal proceedings: the proper application of the "objectively reasonable officer" standard established in *Graham v. Connor*, 490 U.S. 386 (1989), to determine the constitutionality of law enforcement use of force. Recent developments in Petitioner's parallel criminal prosecution highlight the pressing need for this Court's guidance.

On March 27, 2025, the Michigan trial court issued a ruling that—for the first time in Petitioner's criminal proceedings—acknowledged that the "objectively reasonable officer" standard applies to the criminal case. The Michigan Court of Appeals previously ruled that “[t]he reasonableness of the force used must be judged in the light of the circumstances as they appeared to the officer at the time he acted, and the measure is generally considered to be that which an ordinarily prudent and intelligent person, with the knowledge and in the situation of *the* arresting officer, would have deemed necessary under the circumstances.” *People v. Schurr*, No. 365104, 2024 WL 292922, at \*16 (Mich. Ct. App. Jan. 25, 2024).

However, the trial court fails to recognize that the “generally accepted police practices” proposed by the Prosecution’s experts—a law professor from South Carolina—does not consider Michigan law or even constitutionally recognized standards in the Sixth Circuit or this Court. Specifically, the trial court applies his “officer-created jeopardy” theory, which is inconsistent with Michigan law and Sixth Circuit precedent. The trial court's application of this standard threatens to undermine fundamental due process protections by permitting prosecution experts to testify about what the law “should be” rather than what it is, effectively

forcing Petitioner to testify in his own defense to rebut these non-standard legal theories.

This Court should grant the petition to clarify that: (1) the *Graham* standard applies with equal force in criminal prosecutions of law enforcement officers; (2) officers cannot face criminal liability for conduct that would be constitutionally protected under *Graham*; and (3) courts must resolve constitutional questions at the earliest possible stage to provide clear guidance to law enforcement. Failure to address these issues now risks creating an untenable situation where officers have greater protection in civil proceedings than in criminal proceedings where their liberty is at stake.

## **ARGUMENT**

### **I. THE PETITION PRESENTS CRITICAL CONSTITUTIONAL QUESTIONS THAT IMPACT BOTH CIVIL AND CRIMINAL PROCEEDINGS AGAINST LAW ENFORCEMENT OFFICERS**

This case sits at the intersection of civil liability and criminal prosecution of law enforcement officers, presenting a unique opportunity for this Court to provide much-needed clarity on the constitutional standards that govern both contexts. The Sixth Circuit's avoidance of the constitutional question in the civil case below contradicts this Court's guidance in *Pearson v. Callahan*, 555 U.S. 223 (2009), which emphasized that courts should decide constitutional questions to develop the law and provide guidance to officers.

The civil and criminal cases against Petitioner are inextricably linked, as both turn on the same fundamental question: whether Petitioner's use of force was objectively reasonable under the circumstances as they appeared to him at the time. Yet these parallel proceedings are now applying divergent standards that risk criminalizing constitutionally protected conduct.

### **II. RECENT DEVELOPMENTS IN THE CRIMINAL CASE HIGHLIGHT THE URGENT NEED FOR THIS COURT'S INTERVENTION**

On March 27, 2025, the Kent County Circuit Court issued a ruling on motions *in limine* in Petitioner's criminal case that will be impacted by the constitutional issues before this Court. For the first time in the criminal proceedings, the trial court acknowledged that the "objectively reasonable officer" standard applies. However, the court's application of this standard raises serious due process concerns.

Specifically, the trial court will allow the prosecution's expert, Professor Seth Stoughton, to testify about what he believes the law "should be" regarding police use of force, without being constrained by precedent issued by this Court and the Sixth Circuit, the two courts that control in regards to the constitutional boundaries of the Fourth Amendment.

Previously, the Michigan Court of Appeals held that the Fourth Amendment standards regarding the use of force are inapplicable in Petitioner's criminal case. That Court held that in determining whether force was reasonable, the standard is "that which an ordinarily prudent and intelligent person, with the knowledge and in the situation of *the* arresting officer, would have deemed necessary under the circumstances." *People v. Schurr*, No. 365104, 2024 WL 292922, at \*16 (Mich. Ct. App. Jan. 25, 2024) (emphasis added). The trial court's recent ruling shifted that standard, in recognition of the constitutional constraints on an officer's use of force. Yet, the ruling also allows the prosecution to disregard the precedent regarding such constraints.

### **III. OFFICERS SHOULD NOT FACE CRIMINAL LIABILITY FOR CONDUCT THAT WOULD BE CONSTITUTIONALLY PROTECTED UNDER GRAHAM V. CONNOR**

This Court has consistently held that the Fourth Amendment's "reasonableness" standard governs claims that law enforcement officers used excessive force. *Graham*, 490 U.S. at 395. This standard requires judging the reasonableness of force "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396.

While *Graham* arose in the civil context, its constitutional standard must apply with equal or greater force in criminal prosecutions. As *Graham* recognized, "*all* claims that law enforcement officers have used excessive force



— deadly or not — in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard. . . .” *Id.* at 395. The Constitution cannot simultaneously protect an officer from civil liability while exposing him to criminal punishment for the same conduct. As this Court observed in *Malley v. Briggs*, 475 U.S. 335, 341 (1986), qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law.” It follows that criminal liability—which requires a higher standard of proof and triggers greater liberty interests—should attach only to conduct that falls outside constitutional boundaries.

The Michigan criminal proceedings threaten to upend this principle by allowing Petitioner to be convicted based on theories that contradict established constitutional standards. If permitted to stand, this approach would create the perverse result that officers have more protection in civil proceedings than in criminal proceedings where their liberty is at stake.

#### **IV. COURTS MUST ADDRESS CONSTITUTIONAL QUESTIONS AT THE EARLIEST POSSIBLE STAGE TO PROVIDE CLEAR GUIDANCE TO LAW ENFORCEMENT**

The Sixth Circuit's failure to address the constitutionality of Petitioner's conduct at the pleadings stage has contributed to the current state of uncertainty. This Court has emphasized that “qualified immunity questions should be resolved at the earliest possible stage of litigation.” *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987). Early resolution is especially critical in cases involving law enforcement use of force, where officers must make split-second judgments in tense, uncertain, and rapidly evolving circumstances.

By failing to resolve the constitutional question in the face of clear video evidence, the Sixth Circuit has allowed Petitioner to face criminal prosecution without a definitive

ruling on whether his conduct violated clearly established law. This undermines the very purpose of qualified immunity: to ensure that officers can perform their duties without fear of personal liability or criminal punishment for actions that reasonable officers would take.

## **V. THE CRIMINALIZATION OF POLICE WORK BASED ON UNCLEAR LEGAL STANDARDS RAISES SERIOUS DUE PROCESS CONCERNS**

The criminal proceedings against Petitioner raise serious due process concerns by inconsistency among the Michigan trial courts about what standards apply to police officers, which leaves room for innovative prosecutors to take advantage of the uncertainty and make room for judges to make mistakes of law that propose serious due process or equal protection claims. Since the inception of Petitioner's criminal case, the legal standard has changed several times. As of the date of this filing, it is still unclear what law the trial court will apply, merely weeks before Petitioner's criminal case is set to begin trial on April 28, 2025. The prosecutor is now proposing—for the first time—that the objectively reasonable officer standard applies to police officers in criminal cases but applies that standard inconsistently with how the Michigan Court of Appeals ruled in their January 25, 2024 Opinion. The prosecution has indicated that his expert will opine on “generally accepted police practices” that include the *ipse dixit* standards of his expert, i.e., “officer-created jeopardy,” which is not applicable under Michigan law or Sixth Circuit precedent.

Due process requires fair notice of what conduct is prohibited. *Rogers v. Tennessee*, 532 U.S. 451, 459 (2001). Yet Petitioner faces the prospect of criminal conviction based on expert testimony about what the law "should be" rather than what it was at the time of the incident. This approach

effectively forces Petitioner to testify in his own defense to rebut theories that go beyond his knowledge and training—creating an intolerable burden on his Fifth Amendment rights.

The prosecution's approach would allow police officers to be indicted, tried, and convicted based on after-the-fact determinations of what the standard of care "should have been," rather than whether their actions were objectively reasonable under the circumstances known to them at the time. This fundamentally contradicts *Graham's* rejection of hindsight-based evaluations of police use of force.

## CONCLUSION

The petition presents questions of exceptional importance that affect not only the civil liability of law enforcement officers but also their potential criminal liability for the same conduct. Recent developments in Petitioner's criminal case underscore the urgent need for this Court's guidance on the application of *Graham v. Connor* to criminal prosecutions. The Court should grant the petition to clarify that the constitutional standards governing police use of force apply with equal force in both civil and criminal contexts, and that officers cannot face criminal liability for conduct that would be constitutionally protected under *Graham*.

Respectfully Submitted,

/s/ Mark David Dodge

MARK DAVID DODGE

*Counsel of Record*

DODGE & DODGE, P.C.

200 Ottawa Ave., N.W.

Suite 401

Grand Rapids, MI 49503

(616)459-3850

[dodgepc@dodgepc.com](mailto:dodgepc@dodgepc.com)