No. 25-1062

IN THE

# Supreme Court of the United States

JESSICA PITTS, OFFICER, *et al.*,

*Petitioners,*

*v.*

TAYLOR BURKE, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF THOMAS GAY, DECEASED,

*Respondent.*

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

## BRIEF OF THE NATIONAL FRATERNAL ORDER OF POLICE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

LARRY H. JAMES
*Counsel of Record*
AMUNDSEN DAVIS LLC
500 South Front Street,
Suite 1200
Columbus, OH 43215
(614) 229-4567
ljames@amundsendavislaw.com

*Counsel for Amicus Curiae*
*National Fraternal Order of Police*

391271

COUNSEL PRESS
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## INTEREST OF THE AMICUS CURIAE[1]

The National Fraternal Order of Police ("FOP") is the world's largest organization of sworn law enforcement officers, with more than 378,000 members in more than 2,200 lodges across the United States. The FOP represents the men and women on the front lines of law enforcement—the officers who respond to welfare calls at two in the morning, who enter private residences without knowing what they will find inside, and who make split-second decisions in the most dangerous and unpredictable circumstances their communities produce. It is with the perspective of those officers that the FOP submits this brief.

The FOP has appeared before this Court on the precise question now presented. In *City of Tahlequah v. Bond*, 595 U.S. 9 (2021), we advised this Court that the Tenth Circuit's escalation approach was incompatible with *Graham v. Connor*, 490 U.S. 386 (1989) and would have a dangerous chilling effect on law enforcement. This Court reversed the Tenth Circuit. In *Barnes v. Felix*, 605 U.S. 73 (2025), we raised the same concern in a different circuit. This Court declined to resolve it. We are here a third time—not because the legal landscape has changed, but because the Tenth Circuit has not. Having been reversed

1. In accordance with Rule 37.6, the FOP and undersigned counsel make the following disclosure statements. The Office of General Counsel to the National Fraternal Order of Police authored this Brief in its entirety. There are no other entities which made monetary contributions to the preparation or submission of this Brief. Counsel of record for all of the parties received notice of amicus curiae's intention to file an amicus brief at least 10 days prior to the deadline to file the brief.

once, it formalized the very rule into binding precedent and applied it again. The FOP's position has not changed across these three appearances. What has changed are the stakes.

The FOP does not appear before this Court to relitigate settled questions or to advocate for officers who knowingly violate the law. We appear instead on behalf of the officers who are being asked to make life-or-death decisions in seconds—on welfare calls, in private residences, with intoxicated and erratic subjects in confined spaces—only to later defend every single decision, years after the fact, in federal court, under a standard that has no defined content and no workable limits. We appear because the Tenth Circuit has told us, in its own words, that binding precedent *requires* it to apply that standard—and that only this Court can change it. And we appear because the public that our members are sworn to protect is not well served by officers who hesitate, who second-guess, or who stand down because the legal consequences of acting have become impossible to navigate.

This Court has recognized that the ability of officers to make split-second decisions in tense, uncertain, and rapidly evolving circumstances is fundamental to effective law enforcement. The FOP asks this Court to reaffirm that principle with the clarity this question requires.

## SUMMARY OF THE ARGUMENT

The question of whether unreasonable pre-force police conduct that foreseeably creates the need to use force can itself render that force unconstitutional has come before this Court multiple times. Each time, this Court

has declined to endorse the theory. Yet, the Tenth Circuit has responded to each declination not with restraint, but with entrenchment. This case is the result.

In *County of Los Angeles v. Mendez*, 581 U.S. 420 (2017), this Court rejected the Ninth Circuit's provocation rule but left open whether *Graham*'s totality of the circumstances framework independently required consideration of pre-force escalation. The Tenth Circuit took that silence as authorization. In *Barnes*, this Court clarified that prior events may inform the reasonableness analysis only insofar as they bear on what a reasonable officer perceived at the moment force was used, a perception-based inquiry rather than a backward-looking liability theory. The Tenth Circuit ignored that limitation. In *Bond*, this Court summarily reversed the Tenth Circuit for defining clearly established law at too high a level of generality in a use-of-force case. The Tenth Circuit responded by formalizing its escalation rule as binding precedent in *Arnold v. City of Olathe*, 35 F.4th 778, 788 (10th Cir. 2022) one year later. In the decision now before this Court, the Tenth Circuit applied that rule again, describing it as something binding precedent *requires*. That word is an acknowledgment that this problem cannot be corrected from within. The only mechanism for correction is this Court.

The Tenth Circuit's mandatory escalation rule is the Ninth Circuit's provocation rule in all but the name. Both require courts to look backward at officer conduct preceding the use of force. Both permit an otherwise reasonable use of force to be found unconstitutional based on what came before it. Both replace *Graham*'s reasonableness-at-the-moment standard with a backward-

looking liability theory that has no defined starting point and no workable content. This Court rejected the provocation rule in *Mendez*. It should reject its functional equivalent here.

The practical consequences of that rule are most acute and—most dangerous—in the mental health crisis context. A dispatch to assist with an individual experiencing a mental health crisis is among the most volatile, unpredictable, and legally treacherous category of call in modern policing. They are the number one officer safety concern according to the most recent national survey of law enforcement officers. They carry the risk of suicide by cop, a phenomenon present in up to 36% of all police shootings, where the subject is actively trying to provoke a lethal confrontation. And they carry a growing layer of ADA liability, with federal courts increasingly holding that officers must reasonably accommodate mental disabilities during crisis response regardless of whether a weapon is present. Under the Tenth Circuit's framework, every tactical decision an officer makes from the moment of dispatch on one of these calls becomes potential evidence of constitutional liability. There is no safe path forward. The officer is "damned if they do, and damned if they don't."

Qualified immunity exists precisely to prevent this outcome. It gives officers breathing room to make reasonable judgments about open legal questions without fear of personal civil liability. But the Tenth Circuit's approach applies a mandatory escalation rule and then relies on general excessive force principles to clearly establish the law, denying officers that protection. The cases the Tenth Circuit relied upon to clearly establish the

law governing both the tasing and the shooting involved facts materially different from the rapidly evolving, confined encounter Officers Pitts and Lewis actually faced. General principles about taser use and deadly force do not place the specific constitutional question beyond debate in these circumstances. This Court reversed the Tenth Circuit in *Bond* for making that same error. It should do so again.

The FOP respectfully urges this Court to grant the petition, reverse the judgment below.

## ARGUMENT

### I. The Tenth Circuit's Mandatory Escalation Rule Conflicts With This Court's Precedent, Cannot Be Corrected From Within, and Places Every Officer in the Tenth Circuit in an Impossible Position.

#### A. The FOP Has Warned This Court About This Rule Before and the Tenth Circuit Has Responded by Entrenching It.

The FOP has appeared before this Court three times to address this very question. In *Bond*, we expressed concern to this Court about the Tenth Circuit's escalation approach and the chilling effect it would have on officer response:

> In short, encouraging officers to look backwards during quickly-evolving, high-stakes encounters to consider their tactical decisions leading up to a confrontation will have an undesirable chilling effect on policing.

Brief for National Fraternal Order of Police as Amicus Curiae Supporting Petitioners at 14, *City of Tahlequah v. Bond*, 595 U.S. 9 (2021). This Court reversed. In *Barnes*, we raised the same concern in a different circuit:

> Officers do not have the benefit of pausing to reflect on how they got there. And in many instances, they do not even have a second to hesitate. They must be laser-focused on the immediate threat they are facing and the safety of those in the immediate vicinity.

Brief for National Fraternal Order of Police as Amicus Curiae Supporting Petitioners at 4, *Barnes v. Felix*, 605 U.S. 74 (2025). This Court again declined to resolve it. We return here for a third time—this time because the Tenth Circuit transformed openness into doctrine. Having been reversed once, it formalized the very rule this Court left open into binding precedent and has now applied it as such. The FOP's position has not changed. What has changed is the urgency.

Officers Pitts and Lewis were dispatched on a welfare call. They had dispatch information that Thomas Gay was intoxicated and erratic and his father wanted him removed from his home. They entered a private residence, encountered Mr. Gay in a confined space, and made the tactical decisions that officers make in those circumstances—decisions measured in seconds, not minutes, and under conditions no court can replicate. The Tenth Circuit held that those decisions, viewed in hindsight, constituted reckless escalation that rendered the subsequent use of force unconstitutional. That holding is not an isolated error. It is the product of a mandatory

circuit rule that this Court has never authorized, that directly conflicts with *Graham* and that the FOP has warned about in two prior appearances before this Court. The circuit was reversed once. It responded by doubling down. This Court must act.

The relevant legal sequence is straightforward. In *Mendez*, this Court rejected the Ninth Circuit's provocation rule as incompatible with *Graham* but declined to resolve whether *Graham*'s totality of the circumstances framework itself required consideration of unreasonable pre-force conduct that foreseeably created the need to use force. *Id.* at 428 n.*. The Tenth Circuit took that silence as room to operate. In *Barnes*, this Court again declined to resolve the escalation question but made clear that prior events may inform the reasonableness analysis only insofar as they bear on what a reasonable officer would have *perceived* at the moment force was used—a perception-based inquiry, not a liability theory built on prior tactical decisions. In *Bond*, this Court summarily reversed the Tenth Circuit for defining clearly established law at too high a level of generality in a use-of-force case.

The FOP appeared in *Bond* and noted that the Tenth Circuit's escalation approach was incompatible with *Graham*. This Court agreed. But rather than retreat, the Tenth Circuit institutionalized the very approach this Court rejected. One year later, the Tenth Circuit reaffirmed its escalation rule as binding precedent in *Arnold v. City of Olathe*, 35 F.4th 778, 788 (10th Cir. 2022). In the decision now before this Court, the Tenth Circuit was explicit: "[B]inding Tenth Circuit precedent *requires* us to consider whether the officers' alleged reckless conduct created the need to use deadly force."

*Burke v. Pitts*, 157 F.4th 1326, 1348, n. 12 (10th Cir. 2025) (emphasis added).

The word *requires* tells the story. It is not an interpretation of *Graham*. It is not an application of *Barnes*. It is a mandatory circuit rule that displaces both. It is something that this Court has never endorsed, and the Tenth Circuit's use of that word is an acknowledgment that only a higher authority can change it. For the 378,000 boots-on-the-ground men and women the FOP represents, that acknowledgment is not an abstract legal concession. It is a statement that every officer in the Tenth Circuit who responds to a welfare call, enters a residence, or makes a split-second decision in a confined space with an erratic subject will do so under a rule that guarantees hindsight review of every tactical decisions—without any guidance on what the Constitution affirmatively requires in real time and no prospect of relief from within the circuit. There is no workable standard to follow, only liability to avoid. The rule does not clarify conduct, it chills it. That is not a constitutional standard. And it is not one this Court should permit to stand.

### B. The Tenth Circuit's Rule Is the Provocation Rule by Another Name—and It Leaves Officers Responding to Mental Health Crisis Calls With No Safe Course of Action.

The Tenth Circuit's escalation rule and the Ninth Circuit's provocation rule this Court rejected in *Mendez* are, in operational effect, the same doctrine. Both require courts to look back at officer conduct preceding the use of force. Both permit an otherwise reasonable use of force to be found unconstitutional based on what came before it.

Both sever the constitutional analysis from the moment force was used and from the officer's reasonable perception of threat at that moment.

This Court identified the core defect in the provocation rule in *Mendez*: it "instruct[ed] courts to look back in time to see if there was a different Fourth Amendment violation that is somehow tied to the eventual use of force," allowing "[t]hat distinct violation, rather than the forceful seizure, [to] serve as the foundation of the plaintiff's excessive force claim." *Mendez*, 581 U.S. at 429. The Tenth Circuit's rule commits the same error. By requiring courts to assess whether officers' reckless pre-force conduct created the need to use deadly force, the rule makes the foundation of the excessive force claim the tactical decisions that preceded the force, not the force itself. The Tenth Circuit would argue that it proceeds under *Graham*'s totality of the circumstances rather than a freestanding provocation rule. That distinction does not hold. *Graham*'s totality of the circumstances has always informed the reasonableness of force at the moment it is used, not created a separate liability theory based on prior conduct. The Tenth Circuit's rule does not apply *Graham*. It displaces it.

What does that displacement look like for the officer in the field? The court below held that a reasonable officer would have known that immediately drawing weapons, issuing a single command, and confining Thomas in a bedroom during a welfare-type encounter could escalate the situation. Under that framework, every tactical decision an officer makes from the moment of dispatch becomes potential evidence of constitutional liability. Approach with weapons drawn? Escalation. Issue commands? Escalation. Enter the premises? Escalation. Confine the

subject? Escalation. The rule does not tell officers what to do instead. It offers no affirmative standard – only retrospective condemnation. Whatever the officer does, the analysis guarantees that a theory of liability can be constructed after the fact.

Nowhere is that more dangerous than on the mental health crisis call—the most volatile, unpredictable, and legally treacherous category of call in modern policing. According to Police 1's 2025 "What Cops Want" survey, mental health calls ranked as the number one officer safety concern, surpassing domestic violence, active shooter threats, and traffic stops. Police1, *On demand: What cops want in 2025 — Safer, smarter responses to mental health calls*, https://www.police1.com/what-cops-want/webinar-what-cops-want-in-2025-safer-smarter-responses-to-mental-health-calls. The danger is structural. Whether the individual is intoxicated, in psychiatric crisis, or involved in a domestic dispute, the rationality of the encounter collapses. Indeed, the U.S. Department of Justice has reported that 40% of fatal calls from 2010 to 2016 were domestic violence related. U.S. Dep't of Justice, Office of Community Oriented Policing Services, *Making It Safer: A Study of Law Enforcement Fatalities Between 2010 and 2016 (2018)*, cited in Domestic Violence Calls Proven to Be Most Dangerous for Responding Law Enforcement Officers, KHOU (Dec. 9, 2019), https://www.khou.com/article/news/local/domestic-violence-calls-proven-to-be-most-dangerous-for-responding-law-enforcement-officers/285-c7fef991-320d-4d4d-9449-2ede67c10829. These are not routine welfare checks. They are among the most dangerous and least predictable situations officers face.

The danger is compounded by a phenomenon the Tenth Circuit's framework never accounts for: suicide by cop. Studies estimate its prevalence at between 10% and 36% of all police shootings. Ralph H. de Similien, M.D. and Adamma Okorafor, M.D., *Suicide by Cop: A Psychiatric Phenomenon*, 12 Am. J. Psychiatry Residents' Journal, No. 1 (2017). In those encounters, the subject is actively trying to manufacture a lethal confrontation. The officer cannot know, in the moment, whether the behavior in front of them is the product of crisis or calculation. Backward-looking escalation analysis is particularly inappropriate in that context—it penalizes officers for responding to what they reasonably perceived while ignoring the possibility that the subject intended exactly that response.

And layered on top of all of this is a growing body of federal law holding that the ADA requires officers to reasonably accommodate mental disabilities during arrest and crisis response. A majority of federal courts have recognized this obligation. Cong. Rsch. Serv., *The Americans with Disabilities Act (ADA) and On-the-Street Police Encounters*, Report No. LSB10606 (2021). For example, in *Estate of LeRoux v. Montgomery County*, officers spent 30 to 40 minutes containing an armed, unresponsive subject, called for a crisis negotiator, and still faced ADA liability when force ultimately became necessary. No. 8:22-cv-00856-AAQ, 2025 U.S. Dist. LEXIS 209481 (D. Md. Oct. 24, 2025). The court found that their crisis intervention training was evidence of what they should have known and done differently. *Id.* at *34-35. The court further held that the presence of a weapon alone did not create exigent circumstances sufficient to eliminate ADA obligations. *Id.* at *48-49.

The officer responding to a behavioral health crisis therefore arrives carrying three layers of legal exposure simultaneously: liability for how they used force, liability for the tactics they employed before force was used, and potential ADA liability for failing to accommodate a disability they may not have been able to diagnose. As Justice Kavanaugh observed in *Barnes*, none of the options available to an officer in a rapidly evolving encounter avoid danger, and all of them require life-or-death decisions made in seconds under highly stressful and unpredictable circumstances. 605 U.S. at 84 (2025) (Kavanaugh, J., concurring). That observation applies with full force to traffic stops. It applies with even greater force to the behavioral health crisis call.

Officers are not permitted to ignore these calls. They are legally obligated to respond—and the family members who call 911 in these situations demand it, as was the case here. But the Tenth Circuit's framework offers no safe path forward. Holstering weapons in the presence of an armed, intoxicated, erratic individual is how officers are killed. Issuing no commands is how scenes lose control. Failing to contain a subject is how bystanders, including the family members who called for help, are killed. And as *LeRoux* demonstrates, even containing the subject and calling for specialized resources may not be enough. Once again, the officer is "damned if they do, and damned if they don't."

Consider the inverse. An officer dispatched to a behavioral health call, mindful of escalation liability, holsters their weapon, issues no commands, and gives the subject space. The subject kills a family member. Or themselves. Or the officer. The same legal system that would have scrutinized every tactical decision the officer

made will now ask why they failed to intervene. There is no version of this encounter in which the officer is free from scrutiny. That is not a constitutional standard. It is an impossible one. And the family member who called 911 for help bears the cost.

The message sent by decisions like *LeRoux* and the one now before this Court is not "here is what you should do." The message is "whatever you did, it was wrong." Officers cannot be expected to protect the public under a legal standard that guarantees hindsight criticism regardless of the outcome.

### C. The Rule Cannot Be Corrected From Within and Training Cannot Fill the Gap This Court Must Close.

The decision below confirms how the mandatory escalation rule operates in practice. The Tenth Circuit credited an expert who opined that Officers Pitts and Lewis failed to conduct a proper preliminary investigation, failed to practice proper de-escalation, deployed tasers improperly, and that Officer Pitts's shooting was excessive and unnecessary. The court then used Officer Pitts's own testimony to further support the escalation narrative against her. Not one of these opinions addresses the question *Graham* requires courts to ask: was the force reasonable at the moment it was used? Each is a retrospective judgment about what the officers should have done differently before force became necessary. Strip away the prior tactical criticism, and what remains is the question *Graham* has always required. The Tenth Circuit never asked it cleanly because its mandatory rule does not permit that.

The broader problem is that no department can train to a standard that has no defined content. Law enforcement 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 at that moment and under those circumstances. *Graham*, 490 U.S. at 396-97. "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.* That is a standard officers can understand, internalize, and apply.

The Tenth Circuit's escalation framework provides no comparable guidance. There is no definable moment from which liability analysis begins. Is it the moment of dispatch? Arrival? Entry? First verbal command? The rule offers no answer—and cannot—because the framework is inherently backward-looking and fact-specific. That approach, and the ruling below, expect officers to have a crystal ball each time they respond to a call—to be certain, before force ever becomes necessary, that none of their prior decisions created the need for it. That expectation is directly contrary to *Graham*.

The court below did not apply *Graham*. It applied a circuit-specific rule that binding Tenth Circuit precedent, it said, required it to apply. That rule has a name. This Court rejected it when the Ninth Circuit called it the provocation rule. The Tenth Circuit retained it, formalized it in *Arnold* after this Court's reversal in *Bond*, and applied it again here. The question is no longer whether the

Tenth Circuit misunderstands *Graham*. The question is whether this Court will permit a mandatory circuit rule—one that conflicts with *Mendez*, exceeds what *Barnes* authorized, repeats the error *Bond* corrected, and leaves officers responding to mental health crisis calls with no workable standard—to govern the constitutional rights of every law enforcement officer in the Tenth Circuit.

The answer should be no.

## II. Qualified Immunity Serves an Essential Function That the Decision Below Undermines.

Qualified immunity does not protect police officers who knowingly violate the law. It does not shield them from criminal charges, internal investigations, or employer discipline. It does not apply to ministerial acts or duties. It does not prohibit suits against a city, municipality, or other governmental entity. The defense applies only when the officer's conduct does not violate clearly established rights of which a reasonable officer would have known. It protects the officer from personal civil liability only. It is not absolute, and it is not unlimited. It is available not only to police officers, but also to teachers, firefighters, city officials, and school administrators.

This Court has recognized that qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). Law enforcement officers simply want to know the rules—a "fair and clear warning" of what the Constitution requires. *Id.* at 747 (Kennedy, J., concurring) (citing *United States v. Lanier*, 520 U.S. 259, 271 (1997)). The Tenth Circuit's

mandatory escalation rule denies them that. When reasonable tactical decisions made during a volatile mental health crisis call can expose an officer to personal civil liability, hesitation is inevitable. And hesitation, measured in fractions of a second, is the difference between life and death. One study demonstrated that an officer faced with a complex decision-making process "will take an average of anywhere from .46 to .70 second(s) to begin" responding. W. Lewinski et al., *Ambushes Leading Cause of Officer Fatalities — When Every Second Counts: Analysis of Officer Movement from Trained Ready Tactical Positions*, 15 Law Enforcement Executive Forum 1, 2 (2015). A suspect can draw a weapon and fire at an officer in as little as .23 seconds, with an average time of .53 seconds. *Id.*

The taser deployment in this case illustrates both errors simultaneously. Even accepting the factual assumptions adopted below—that the taser was deployed early, did not incapacitate Mr. Gay, and may have contributed to the escalation of the encounter—no decision of this Court or robust consensus of persuasive authority clearly establishes that such use of less-lethal force violates the Fourth Amendment in a rapidly evolving, confined confrontation with an intoxicated and erratic subject. This Court has repeatedly rejected efforts to impose liability based on retrospective critiques of tactical decisions or on the theory that officers created the need to use force. *Bond*, 595 U.S. 9 (2021). The decision below nevertheless treats the taser deployment as the linchpin of liability, transforming an unresolved escalation theory into clearly established law. That is the escalation rule and the clearly established law error operating together—and it is precisely the combination this Court must address.

Officers Pitts and Lewis are entitled to qualified immunity unless existing law made clear, through factually similar cases, that it was "beyond debate" that their specific conduct violated the Fourth Amendment. A law is "clearly established" when it is so clear that "every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012). That law must be "particularized to the facts of the case." *White v. Pauly*, 137 S. Ct. 548, 551-52 (2017). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Id.* at 551.

The Tenth Circuit failed that standard on both the tasing and the shooting. To clearly establish the law governing Officer Lewis's taser deployment, the court relied on *Cavanaugh v. Woods Cross City*, 625 F.3d 661 (10th Cir. 2010), and *Lee v. Tucker*, 904 F.3d 1145 (10th Cir. 2018), for the proposition that using a taser without warning on a non-resisting misdemeanant violates the Fourth Amendment. To clearly establish the law governing Officer Pitts's shooting, the court relied on *Estate of Ceballos v. Husk*, 919 F.3d 1204 (10th Cir. 2019), *Tenorio v. Pitzer*, 802 F.3d 1160 (10th Cir. 2015), and *Carr v. Castle*, 337 F.3d 1221 (10th Cir. 2003), for the general principle that an officer cannot shoot an unarmed, non-threatening suspect.

In *City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019), this Court reversed the Ninth Circuit for defining the clearly established right at too high a level of generality rather than asking whether clearly established law prohibited the officers' conduct in those specific circumstances. The Tenth Circuit committed

the same error here. The cases it cited establish general principles about taser use and deadly force. They do not place beyond debate whether those principles apply to a rapidly evolving, confined encounter with an intoxicated and erratic individual whose behavior was unpredictable and whose hands were not clearly visible. This Court reversed the Tenth Circuit in *Bond* for relying on materially distinguishable cases to clearly establish the law governing a rapidly evolving confrontation. The same error recurs here.

The FOP's concern is the broader consequence. The Tenth Circuit's approach—applying a mandatory escalation rule and then relying on general excessive force principles to clearly establish the law—eliminates the predictability qualified immunity is designed to ensure. Officers are left in the field with no workable guidance. They cannot know, at the moment of dispatch, which of their tactical decisions will later be characterized as reckless escalation. They cannot know, at the moment of force, whether the general principles the circuit applies will be deemed to have placed their specific conduct "beyond debate." That is not fair notice; it is guesswork. And it is not a standard that 378,000 members can be trained – or expected – to meet.

At minimum, summary reversal is warranted on this ground alone.

## CONCLUSION

In *Barnes*, this Court understood that Sergeant Felix did not have the luxury of pausing to evaluate his tactical decisions as the vehicle accelerated into highway traffic. Officers Pitts and Lewis did not have that luxury either—not in a confined space, not with an intoxicated and erratic subject, and not on a behavioral health call that turned deadly in moments. The Constitution does not demand perfection in those moments—it demands reasonableness. And reasonableness cannot be judged by a standard that looks backward to second-guess decisions made in real time under pressure. The legal standard that governs those critical seconds must be clear, workable, and grounded in the reality of what officers face. The Tenth Circuit's rule does the opposite.

The FOP respectfully submits that this Court should grant the petition, reverse the judgment below, and provide the guidance that the Tenth Circuit has *at least* twice refused to follow and that law enforcement officers urgently need.

Respectfully submitted,

Larry H. James
*Counsel of Record*
Amundsen Davis LLC
500 South Front Street,
Suite 1200
Columbus, OH 43215
(614) 229-4567
ljames@amundsendavislaw.com

*Counsel for Amicus Curiae*
*National Fraternal Order of Police*