

IN THE
Supreme Court of the United States

DONOVAN MOORE, *et al.*,

Petitioners,

v.

ASHLY ROMERO, AS PERSONAL
REPRESENTATIVE FOR THE ESTATE
OF STEPHEN ROMERO, DECEASED, *et al.*,

Respondents.

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

**BRIEF OF *AMICUS CURIAE* INTERNATIONAL
MUNICIPAL ATTORNEYS ASSOCIATION
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS CURIAE¹

The International Municipal Lawyers Association (IMLA) is the nation's oldest and largest organization devoted to the furtherance of local government law. A nonpartisan, nonprofit, professional association whose membership comprises more than 2,500 local governmental entities as represented by their chief legal officers, state municipal leagues, and individual counselors, IMLA's mission is to advance the professional practice of municipal law and to advocate on behalf of local government before federal and state appellate courts. That mission compels IMLA to speak in response to the decision in this case—a fractured holding which contradicts this Court's instruction and which, if unreversed, will infuse doubt and danger into law enforcement.

Officers across our nation respond to deadly threats and put their lives on the line on a daily basis. Their jobs demand remarkable courage, discipline and training to diffuse threats, save lives, and restore peace, all within constitutional boundaries. Too many officers fall victim to gun violence, severely injured or killed in the line of duty. The split decision by the Sixth Circuit Court of Appeals exacerbates the inherent dangers of policing by creating uncertainty and undermining the ability to consistently train and reinforce clear principles officers can apply in the performance of their duties. The decision has real-life consequences and puts officers in danger.

1. No counsel for a party authored this brief in whole or in part, and no person or entity other than amicus or their counsel has made a monetary contribution to the preparation or submission of this brief. Counsel for the parties received a notice of intent to file this brief at least ten days prior to filing.

SUMMARY OF THE ARGUMENT

One year ago, this Court unequivocally reaffirmed its longstanding instruction that, when evaluating an officer-involved shooting, focus limited to a narrow increment of the interaction is inadequate and improper. To the contrary, all nine Justices agreed that such inquiry must consider the “totality of the circumstances.” *Barnes v. Felix*, 605 U.S. 73, 80 (2025), citing *Tennessee v. Garner*, 471 U.S. 1 (1985). Contrary to the Sixth Circuit’s freeze-frame analysis in this case, *Barnes* directed that “inquiry into a use of force has no time limit.” *Barnes*, 605 U.S. at 80. While the circumstances at the precise time of the shooting will be material, “earlier facts and circumstances may bear on how a reasonable officer would have understood and responded to later ones.” *Id.* Importantly, that construct applies to either party in an excessive-force case:

Prior events may show, for example, why a reasonable officer would have perceived otherwise ambiguous conduct of a suspect as threatening. Or instead they may show why such an officer would have perceived the same conduct as innocuous. The history of the interaction, as well as other past circumstances known to the officer, thus may inform the reasonableness of the use of force. *Id.*

The decision below violated *Barnes* by “hermetically sealing” one section of a rapidly evolving encounter, then decreeing, *ipse dixit*, that the suspect was surrendering while reaching for a gun. *Barnes* 605 U.S. at 80; see *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011).

IMLA members rely on clear precedent from this Court to expend substantial financial and human capital for officer training in order to foster constitutional policing and protect the public while minimizing the risk of injury or death to police officers. The need for clarity on constitutional use-of-force principles from which police training flows is particularly acute in preparing officers for rapidly evolving deadly force encounters. Clarity is crucial: local governments must train their officers to make split-second life-or-death decisions within the confines of constitutional policing.

That training comes at a significant cost, which local governments are overwhelmingly willing to incur. Municipal police departments expend substantial money and effort continuously updating training curricula to reflect evolving legal standards so that their officers can implement them in the field. These challenges are exponentially compounded when circuit court decisions apply standards that deviate from this Court's precedent or create new standards, diminishing clear training guidelines and undermining effective officer training, particularly where clarity can make the difference between life and death. The decision below, if left standing, will make it difficult if not impossible for law enforcement agencies to develop and implement clear training standards necessary to address the real-life deadly encounters officers face on a daily basis.

The petition for a writ of certiorari should be granted, and the Sixth Circuit's judgment denying qualified immunity for the officers should be reversed.

ARGUMENT

I. The Decision Below Puts Officers' Lives at Risk by Creating Uncertainty in Use-Of-Force Encounters.

Late on December 1, 2023, Officers Donovan Moore and Jeffrey Kurtz responded to an emergency domestic violence call. The emergency escalated as the officers received word while en route that a husband had shot his wife. Their body-worn cameras captured the scene as they raced up a driveway to encounter a man standing next to an open driver's side car door, with a woman seated behind the steering wheel. The officers ran toward the suspect and took command of a volatile situation, acting swiftly in an attempt to restore order and protect life.

The officers' response required the instantaneous balancing of public safety, the suspect's constitutional rights, and, lastly, their own well-being. Only twenty seconds elapsed from the time they engaged Mr. Romero by shining a bright flashlight at him and ordering him to show his hands until the final shots rang out. The man standing before them was an armed suspect of unknown capabilities. Like countless officers nationwide, Officers Moore and Kurtz were duty-bound to address an armed suspect while protecting the victim and public and putting their own lives at risk.

Too often, these types of encounters end in loss of officers' lives, as amply documented in numerous sources. The FBI maintains a database of information collected from participating agencies related to law enforcement officers killed and assaulted while on duty. Sixty officers were killed in the line of duty in 2023. *See* U.S. Dep't. of

Just. Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted: Officers Killed and Assaulted in the Line of Duty, 2023 Special Report*, p. 1, (May 2025), <https://cde.ucr.cjis.gov/LATEST/resources/reports/Officers%20Killed%20and%20Assaulted%20in%20the%20Line%20of%20Duty%2C%202023.pdf>. From 2021 to 2023, more officers were killed (one hundred ninety-four) than in any other consecutive three-year period in the previous twenty years (seventy-three officers in 2021, sixty-one officers in 2022, and sixty officers in 2023). *Id.* at 4.

According to the reporting agencies, “79,091 officers were assaulted in 2023, marking the highest officer assault rate in the past ten years. Most officer assaults occurred when responding to simple assaults against a non-officer (6,783 incidents), followed by drug/narcotic violations (4,879).” *Id.* Additionally, “[t]he number of officers assaulted and injured by firearms has climbed over the years, reaching a ten-year high in 2023 with approximately four hundred sixty-six officers assaulted and injured by firearms.” *Id.*

In 2024, the number of officers feloniously killed in the line of duty rose to sixty-four, of which forty-six had gunshot wounds. U.S. Dep’t. of Just. Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted: Officers Killed and Assaulted in the Line of Duty, 2024 Special Report*, p. 1, (May 2025), 1 <https://cde.ucr.cjis.gov/LATEST/resources/reports/Officers%20Killed%20and%20Assaulted%20in%20the%20Line%20of%20Duty%2C%202024%20Special%20Report.pdf>

The leading circumstance resulting in felonious attacks on officers was responding to unlawful or

suspicious activity. *Id.* at 3. The number of officers feloniously killed in the line of duty decreased in 2025 to fifty-three, of which forty-three were killed with a firearm. U.S. Dep't. of Just. Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted: Officers Killed and Assaulted in the Line of Duty, 2025*, p. 2 (May 2026), <https://cde.ucr.cjis.gov/LATEST/resources/reports/Officers%20Killed%20and%20Assaulted%20in%20the%20Line%20of%20Duty%2C%202025.pdf>.

These fatalities arise in a general climate of attack on police. The number of non-fatal assaults against law enforcement officers has been on the rise since 2021, and firearms have been used in more than three hundred assaults against law enforcement officers each year since 2020. *Id.* “In 2025, 12,144 agencies employing 653,044 officers reported 90,178 officer assaults on victim officers, indicating a rate of 13.8 assaults per 100 officers.” *Id.* at 11. The data demonstrates a growing rate of officer assaults, and 2025 marked the highest rate in the past ten years. *Id.*

Against this background, officers are entrusted by the public to make difficult policing decisions under rapidly evolving circumstances. Responding to the call of duty in situations requiring the use of force, particularly deadly force, demands decisions in the moment when the safety of the community and officer safety are immediately at risk. Time for deliberation can be exceptionally limited when the stakes are extraordinarily high, and officers need to rely on their training and clarity of law to make split-second choices. A moment of hesitation can result in the loss of officers' lives. All too often, officers encounter situations that start benign but rapidly escalate into deadly interactions.

Domestic incident calls, as in the case below, are amongst the most dangerous scenarios officers encounter and can often turn deadly. An analysis of law-enforcement fatalities from 2010 to 2016, funded by the United States Department of Justice, concluded: “[C]alls related to domestic disputes and domestic-related incidents represented the highest number of fatal types of calls for service” Nick Bruel & Desiree Luongo, *U.S. Dep’t of Just., Making It Safer: A Study of Law Enforcement Fatalities Between 2010-16*, at 7 (Dec. 2017). The most recent data demonstrates that domestic disturbance-related calls continue to be amongst the most dangerous for officers. See Nat’l Law Enf. Mem. & Museum, *2025 End-Of-Year Law Enforcement Officers Fatalities Report 4* (January 6, 2026).

For example, Officer Kendall Corder from the Milwaukee Police Department died on June 29, 2025, from gunshot wounds when he and his partner were ambushed responding to a domestic violence call. The call was upgraded to shots fired while they were en route to the scene. When they exited their vehicle and approached an alley, they were fired upon at least sixteen times by the subject. Officer Down Memorial Page, <https://www.odmp.org/officer/27430-police-officer-kendall-isaiiah-corder> (last visited June 17, 2026).

Apparently compliant subjects can suddenly and unpredictably ambush officers. Deputy Sheriff Brandon Ray Sikes with the Columbia County Sheriff’s Office in Georgia was shot and killed during an attempted traffic stop. He and three other officers were attempting to serve a domestic violence protective order on the subject. At first, the subject was compliant and non-threatening but,

when deputies turned away, he sprayed them with bullets. Deputy Sikes died from his injuries on April 26, 2025, while another officer was injured with a gunshot wound to the face. Officer Down Memorial Page, <https://www.odmp.org/officer/27384-deputy-sheriff-brandon-ray-sikes> (last visited June 17, 2026).

Likewise, attempts to subdue an armed suspect with non-deadly force can turn fatal to the officers. On June 8, 2025, Officer Gabriel Facio of the Apache Junction Police Department in Arizona died after being shot in the face by a driver who was pulled over for “allegedly” brandishing a gun in a road-rage incident and threatening others with the weapon. The driver was cooperative until he was asked to step out of his vehicle. He became aggressive, retrieved a gun from the glove compartment, and exited the vehicle. Officers ordered him to stop and attempted to subdue him with non-lethal force, but the subject fired the gun at the officers, striking Officer Facio in the face. Officer Facio was hospitalized in critical condition for six days before succumbing to his injuries. Officer Down Memorial Page, <https://www.odmp.org/officer/27417-police-officer-gabriel-facio> (last visited June 17, 2026).

Detective Timothy Jones of the Park Forest Police Department in Illinois died on December 3, 2025 from gunshot wounds. He and other officers attempted to subdue an armed suspect in connection with a report of a suspicious vehicle at a residence. After having been tackled, tased, and surrounded by law enforcement officers, the suspect pulled out a gun and fired upon officers striking Detective Jones, leaving him paralyzed and suffering from seizures before he succumbed to his injuries. Officer Down Memorial Page, <https://www.odmp.org/officer/27417-police-officer-gabriel-facio>

[org/officer/27580-detective-timothy-jones](https://www.odmp.org/officer/27580-detective-timothy-jones) (last visited June 17, 2026).

Suspects may feign incapacity to gain an upper hand to ambush police. Officer Jamal Mitchell of the Minneapolis Police Department was shot and killed on May 30, 2024, responding to a shooting call at an apartment. Upon arrival, Officer Mitchell and other officers were fired upon, and a gunfight ensued. Officer Mitchell stopped to render aid to a person he believed to be wounded: the man he was assisting shot the officer multiple times. Officer Mitchell died from his injuries, an innocent bystander was shot, and another officer and firefighter were wounded by a suspect who appeared to be incapacitated. Officer Down Memorial Page, <https://www.odmp.org/officer/27055-police-officer-jamal-mitchell> (last visited June 17, 2026).

The decision below ignores the effect it will have upon the real-time life-and-death circumstances officers confront in the field. The panel majority concluded that the suspect was no longer a threat when he was lying on the ground, wounded. But as the example of Officer Mitchell above underscores and Judge Griffin succinctly stated in his partial dissent,

[t]oday's decision endangers the lives of all law enforcement officers in the Sixth Circuit. It egregiously misapplies the law of self-defense and qualified immunity to the extent that few, if any, police officers would voluntarily assume such a high level of personal risk and potential financial liability.

Pet. App. 22a. The Circuit's denial of rehearing en banc caused eight of the judges to draft or join compelling

dissents that provide little predictability as to whether the officers' conduct at issue violated clearly established law. Pet. App. 78a, 83a, 98a, 107a. Indeed, when a circuit court fractures in this way and is so divided on the question of whether the law is clearly established, it begs the question of how an officer was to know what was clearly established in the heat of the moment while facing a deadly force situation.

The decision creates dangerous uncertainty and confusion for the moments when clarity counts most. The unpredictability engendered by the majority below endangers officers in executing decisions during critical moments and undermines the training intended to prepare officers for deadly encounters, further exacerbating the dangers inherent to their duties as police officers.

II. The Decision Below Cannot Be Reconciled With Modern Use-Of-Force Training Based on This Court's Precedent.

In 1985, this Court held that an officer's use of deadly force must be evaluated under the totality of the circumstances. *Tennessee v. Garner*, 471 U.S. 1 (1985). Several state legislatures have since written that standard into law.² Police departments across the nation

2. See, e.g., Cal. Penal Code § 835a (West) ("the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and [...] the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force"); Minn. Stat. Ann. § 609.066 (West) (same); Mo. Ann. Stat. § 563.046 (West)

have incorporated the *Garner* standard into their formal policies and training programs. Each year, thousands of police recruits are taught to consider the “totality of circumstances” before deciding whether deadly force is justified. Veteran officers receive the same instruction through recurring in-service training.

Local and state governments collectively spend millions of tax dollars and devote hundreds of thousands of training hours preparing officers to assess all relevant facts, weigh the immediacy and severity of a threat, and decide whether deadly force is necessary under the circumstances confronting them. *See, e.g.,* Ohio Dep’t of Pub. Saf., *Report from the Law Enforcement Training Funding Study Commission* (March 1, 2022) <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0858-pub.pdf> (estimating that Ohio law enforcement agencies spend approximately \$1 million for each hour of mandatory in-service training and noting how, in 2021,

(“[t]he use of any physical force in making an arrest is not justified under this section unless the arrest is lawful or the law enforcement officer reasonably believes the arrest is lawful, and the amount of physical force used was objectively reasonable in light of the totality of the particular facts and circumstances confronting the officer on the scene, without regard to the officer’s underlying intent or motivation”); Mass. Gen. Laws Ann. ch. 6E, § 14 (West) (“[a] law enforcement officer shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances”); Vt. Stat. Ann. tit. 20, § 2368 (West) (“[w]hether the decision by a law enforcement officer to use force was objectively reasonable shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances”); *see also*, Wash. Rev. Code Ann. § 10.120.020 (West); 720 Ill. Comp. Stat. Ann. 5/7-5; Va. Code Ann. § 19.2-83.5 (West); Fla. Stat. Ann. § 943.1735 (West).

the Columbus Division of Police allocated more than \$20 million to officer training); Keith Calloway, Executive Dir. Illinois Law Enforcement Training and Standards Board, *Annual Report, Intergovernmental Law Enforcement Officers In-Service Training Act, Fiscal Year 2024*, <https://www.ptb.illinois.gov/media/1879/fy24-annual-governors-report.pdf> (describing how, in 2024, the State of Illinois spent over \$11 million on mobile “scenario-based training, especially in areas like Use of Force”).

Many of the nation’s largest local police departments have adopted written use-of-force policies that mirror this Court’s “totality of the circumstances” standard: New York City Police Department, Chicago Police Department, Los Angeles Police Department, and Houston Police Department.³ The Cleveland Division of Police, whose current use-of-force policy was developed under a consent decree with the U.S. Department of Justice, likewise requires officers to consider the “totality of circumstances” before deciding to use deadly force Cleveland Division of Police General Police Order, 2.01.03, (Effective Date, March 20, 2023) <https://www.clevelandohio.gov/sites/clevelandohio/files/Public%20Safety/Police/2.01.03%20Use%20of%20Force%20-%20General.pdf>.

3. See, e.g., N.Y.C. Police Dep’t, Procedure No. 221-09, *Force Guidelines* (2024), <https://www.nyc.gov/html/ccrb/downloads/pdf/pg221-01-force-guidelines.pdf>; Chi. Police Dep’t, General Order G03-02, *Use of Force* (2022), https://www.chicagopolice.org/wp-content/uploads/legacy/2017/05/G03-02_Use-of-Force_TBD.pdf; L.A. Police Dep’t, Special Order No. 4, *Use of Force* (2021), <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/09/special-order4-use-of-force-revised.pdf>; Hous. Police Dep’t, General Order No. 600-17, *Use of Force*, https://www.houstontx.gov/police/general_orders/600/600-17%20Use%20of%20Force.pdf

By way of example, Cleveland police receive extensive training on that standard throughout their careers. A recruit completes roughly 1,100 hours of instruction before patrolling a single street, with dedicated instruction on constitutional law and the use of force. Cleveland Division of Police, 3-Year Training Plan, 2026-2028, <https://www.clevelandohio.gov/sites/clevelandohio/files/Public%20Safety/Police/3-Year%20Training%20Plan%202026-2028.pdf>. Officers then complete annual continuing professional training on subjects including use of force, search and seizure, and bias-free policing. *Id.* at 8, 10. The point of this training is to promote critical thinking and decision-making in “realistic scenarios”—i.e. as events unfold in real time. *Id.*

This Court has rejected the view that a police shooting can be judged at a single instant, endorsing instead the same pragmatic approach to use-of-force training and application. *Barnes*, 605 U.S. 73, 80. The Fourth Amendment requires courts to consider “all the relevant circumstances, including facts and events leading up to the climactic moment.” *Id.* at 76. Justice Kavanaugh’s concurrence made the point in practical terms. Courts cannot stop the clock and assess an officer’s conduct in isolation, because officers cannot do that in the field. *Id.* at 89-90 (Kavanaugh, J., joined by Thomas, Alito, and Barrett, JJ., concurring). They act as events unfold, under pressure, and in light of the circumstances confronting them. *Barnes*, 605 U.S. 73, 89-90.

Modern police training rests on this premise. Officers are trained to assess what a suspect has done, how the encounter is developing, and whether the danger has clearly ended. That framework, consistent with *Garner* and *Barnes*, is calibrated to the realities of police work. It

gives officers a lawful and practical method for balancing their obligations to suspects, bystanders, fellow officers, and themselves.

The panel majority's approach to police shooting cases cannot be squared with modern training standards, based upon precedent set by this Court. It asks courts to divide a fluid encounter into isolated segments, even though officers are trained—and constitutionally required—to assess force in the context of the totality of the circumstances. Pet.App.107a. But departments cannot, as a practical matter, prepare officers to evaluate the totality of the circumstances while also instructing them to disregard that totality at each perceived break in a fast-moving encounter. Nor can they teach officers that force may be justified in one second, unconstitutional in the next, and justified again after that, based on a court's arbitrary segmentation of the event from "the peace of a judge's chambers." *Id.*

Local governments and states have already invested heavily in training officers to apply *Garner's* "totality of the circumstances" standard. If the decision below remains the law in the Sixth Circuit, departments concerned about liability will be pushed to retrain officers around a rule they cannot use in the field because it endangers the lives of the community and the officers sworn to protect it. That means new policies, new lesson plans, new scenario scripts, new review standards, and new remedial training will have to be implemented. The cost of those changes will consume limited training dollars that should be spent teaching officers how to make sound decisions in real time.

“Use-of-force training does not exist in isolation.” John Klein and Ken Wallentine, *A Rational Foundation for Use of Force Policy, Training, and Assessment* (2014), <https://www.aele.org/START.pdf>. To be effective, it must be “both tethered to policy founded on the constitutional authority and framework under which police are granted authority to operate and linked to community expectations of the police. It must also be constructed with the goal of providing the safest force options for the officer and those he or she contacts.” *Id.* By separating use of force incidents from the total context, the panel majority’s approach saddles police departments with an incoherent training mandate, wastes public resources, and leaves officers a set of rules they cannot apply. Most importantly, it endangers the lives of the officers by creating an unworkable standard.

CONCLUSION

The petition for a writ of certiorari should be granted, and the judgment below denying qualified immunity for the officers should be reversed.

Respectfully submitted,

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