

IN THE
Supreme Court of the United States

JONATHAN GRANADO,
Petitioner,
v.

JUANITA RAMIREZ, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF ESTEVAN RAMIREZ,
Respondent.

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

**BRIEF OF *AMICI CURIAE* TEXAS ASSOCIATION
OF COUNTIES, TEXAS ASSOCIATION OF
COUNTIES RISK MANAGEMENT POOL, NATIONAL
ASSOCIATION OF POLICE ORGANIZATIONS,
TEXAS CONFERENCE OF URBAN COUNTIES,
TEXAS MUNICIPAL LEAGUE, TEXAS CITY
ATTORNEYS ASSOCIATION, TEXAS MUNICIPAL
POLICE ASSOCIATION, TEXAS FRATERNAL
ORDER OF POLICE, AND TEXAS POLICE CHIEFS
ASSOCIATION, IN SUPPORT OF JONATHAN
GRANADO'S PETITION FOR WRIT OF CERTIORARI**

LAURA O'LEARY
2717 State Street
Dallas, TX 75204

FRANCISCO J. VALENZUELA
Counsel of Record
MARTIN, DISIERE, JEFFERSON &
WISDOM, LLP
9111 Cypress Waters Boulevard,
Suite 250
Dallas, TX 75019
(214) 420-5500
valenzuela@mdjwlaw.com

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*

Amici collectively represent thousands of local governmental entities and law enforcement agencies, hundreds-of-thousands of police officers, and tens-of-thousands of citizens. *Amici* and their members are strongly interested in obtaining clear guidance from this Court concerning potential liability when officers use force in connection with their duties. *Amici* believe that judicial decisions which recognize the realities of policing in high-stress encounters involving the use of deadly force will increase safety for law enforcement officers, suspects, and citizens. *Amici* seek to assist this Court by providing insight from the perspective of law enforcement officers and their employing agencies.

Texas Association of Counties (“TAC”) is a non-profit corporation with all of the 254 Texas counties as members. The TAC Board of Directors represents the interests of elected and appointed officials including associations of County Judges and Commissioners, District and County Attorneys, Sheriffs, Justices of the Peace, Constables, District and County Clerks, and Auditors.¹

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

TAC Risk Management Pool (“RMP”) is an intergovernmental risk pool which provides risk coverages to its 212 county members, 174 special district and other local government entity members, and their officers, employees, and volunteers.

National Association of Police Organizations (“NAPO”) is a nationwide alliance of police units and organizations committed to advancing the safety and working conditions of law enforcement officers and their families, as well as the organizations which represent them. Since NAPO’s founding in 1978, it has become the strongest unified voice supporting law enforcement in the United States. The organization represents over 1,000 police units and organizations, some 241,000 sworn officers, and thousands of citizens concerned about fair and effective law enforcement.

Texas Conference of Urban Counties (“CUC”), is a non-profit association of 34 Texas counties, comprising approximately 80% of the state’s population. CUC provides advocacy and educational services to its members.

Texas Municipal League (“TML”) is a non-profit association of over 1,170 incorporated cities that provides legislative, legal, and educational services to its members. Over 13,000 persons consisting of city mayors, council members, city managers, city attorneys, and department heads are member officials of TML by virtue of their respective cities’ participation. The TML legal defense program was established to monitor major litigation that affects municipalities and to file *amicus* briefs on behalf of its members in cases of special significance to cities and city officials.

Texas City Attorneys Association (“TCAA”), an affiliate of TML, is an organization of over 600 attorneys who represent Texas cities and city officials in the performance of their duties.

Founded in 1950, Texas Municipal Police Association (“TMPA”) represents over 31,000 state, county, and local police officers and public safety employees across Texas. TMPA promotes professionalism in law enforcement through training, education, and representation.

Texas Fraternal Order of Police (“Texas FOP”) represents 14,000 active and retired officers and their families. For more than 36 years, Texas FOP has empowered Texas law enforcement professionals by providing legal, legislative, labor, and educational services.

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

The hundreds-of-thousands of law enforcement officers *amici* collectively represent face safety concerns daily in connection with their duties. This Court recognizes the dangers police officers routinely encounter and understands that the Constitution permits them to use lethal force when they reasonably believe that a suspect poses a threat of serious harm to officers or others.

In *Ramirez*,² a sharply divided panel of the Fifth Circuit denied qualified immunity to an officer who made a split-second decision to shoot a noncompliant suspect who: was a few feet away; was part of a group described as armed and dangerous; had resisted physical restraint from another officer; and was holding a gun in his hand.³ The panel decision contravenes multiple aspects of this Court's Fourth Amendment and qualified immunity jurisprudence.

Ramirez is the latest in a long series of cases demonstrating that the Fifth Circuit's qualified immunity analysis in use-of-force cases is broken in a way that the Fifth Circuit itself cannot, or will not, repair.⁴ Uncertainty in this area undermines a core function of qualified immunity—fair notice of unconstitutional conduct—constraining law enforcement officers and endangering the public by encouraging timidity in response to suspects' noncompliance.

Amici submit this brief to emphasize the *exceptional* importance of the questions presented in the petition for writ of certiorari, which broadly affect police safety, public safety, police recruitment and training, and law enforcement policies.

2. *Ramirez v. Granado*, 163 F.4th 204 (5th Cir. 2025); Pet. App. 1a-35a.

3. ROA.932-935 [App. 430, 440, 441 (:01-:14), 431 (15:28-15:37), 433 (15:54-16:24), 435 (14:35-17:00), 436 (15:15-15:40), 437 (15:15-15:40)].

4. The Fifth Circuit denied en banc review in *Ramirez* by a 9 to 8 vote. *Ramirez v. Granado*, 167 F.4th 807, 808 (5th Cir. 2026); Pet. App. 45a.

SUMMARY OF THE ARGUMENT

The Court should grant Officer Granado’s petition for writ of certiorari because the Fifth Circuit has decided an important federal question in a way that: (1) conflicts with multiple decisions of this Court; (2) undermines core functions of qualified immunity; and (3) disregards the realities that law enforcement officers confront when deciding whether to use force against noncompliant suspects.

Amici share the frustration of the six Fifth Circuit judges who forcefully disagree with the *Ramirez* panel’s qualified immunity analysis and bemoan the uncertainty that has long marked the Fifth Circuit’s decisions in use-of-force cases.⁵ The Court should heed the concerns of multiple sitting Fifth Circuit judges and grant review, reverse the panel decision, and repair the confusion the Fifth Circuit has created through its incorrect application of Fourth Amendment standards and its conflicting decisions about qualified immunity in cases involving officers’ split-second decisions to use force.

Alternatively, the Court should grant the petition, vacate the panel decision, and remand for reconsideration in light of this Court’s recent decision in *Zorn v. Linton*⁶ because the *Ramirez* panel decision makes the same serious error this Court addressed in *Zorn*.

5. Pet. App. 46a-47a (Ho, J., and Oldham, J., dissenting from the denial of en banc review, joined by Jones, Smith, Duncan, and Engelhardt, JJ.) (Richman and Wilson, JJ. also voted for rehearing en banc. Pet. App. 45a.).

6. *Zorn v. Linton*, __ U.S. __, 146 S.Ct. 926 (2026) (per curiam).

REASONS FOR GRANTING THE PETITION

A. The *Ramirez* Opinion Conflicts with Multiple Decisions of this Court Concerning Important Issues of Federal Law.

The petition presents important issues affecting officer safety and public safety. This Court characterizes the government’s interest in officer and public safety as “legitimate and weighty”⁷ and recognizes that police officers may use lethal force when they reasonably believe that a suspect poses a threat of serious physical harm to officers or others.⁸ This Court understands that officers approaching individuals seated in an automobile face significant danger⁹ and that officer safety is imperiled if weapons are within drivers’ or passengers’ reach during an arrest.¹⁰ How much more legitimate and weighty is the safety concern when, as in *Ramirez*, a passenger bursts out of an automobile after

7. *Arizona v. Johnson*, 555 U.S. 323, 331 (2009) (citation omitted).

8. *Brosseau v. Haugen*, 543 U.S. 194, 197-98 (2004) (per curiam).

9. *Adams v. Williams*, 407 U.S. 143, 148, n.3 (1972) (“According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile.”); *see also, e.g., Maryland v. Wilson*, 519 U.S. 408, 413 (1997) (“the fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer”).

10. *See, e.g., New York v. Belton*, 453 U.S. 454, 460 (1981); *Chimel v. California*, 395 U.S. 752, 762-63 (1969).

a high-speed chase at 2:30 a.m. while actually holding a gun in his hand? *Supra*, n.3.

1. Qualified Immunity Provides Key Protections to Officers Who Must Make Split-Second Decisions to Use Force.

One important—and necessary—purpose of qualified immunity is to enable law enforcement officers to protect one another and the public without fear of exposure to crippling damages claims.¹¹ The Fifth Circuit’s flawed qualified immunity analysis in this case threatens to upset the “balance between vindication of constitutional rights and government officials’ effective performance of their duties” that qualified immunity is designed to protect.¹²

11. *E.g.*, *Wyatt v. Cole*, 504 U.S. 158, 167-68 (1992) (qualified immunity protects government’s ability to perform its traditional functions and, by safeguarding government, protects the public at large); *Mitchell v. Forsyth*, 472 U.S. 511, 525-26 (1985) (the public interest is served when officials act with independence and without fear of consequences, such as distraction from governmental duties, inhibition of discretionary action, and deterrence of able people from public service). Qualified immunity provides officers immunity from civil suit but not from other consequences of their conduct, like criminal prosecution. *See, e.g.*, *Collins v. Bauer*, No. 3:11-CV-887-B, 2012 U.S. Dist. LEXIS 10180 (N.D. Tex. Jan. 27, 2012).

12. *Reichle v. Howards*, 566 U.S. 658, 664 (2012).

2. The *Ramirez* Decision Contravenes This Court’s Qualified Immunity Jurisprudence in Non-Trivial Ways.

As Petitioner explains,¹³ the *Ramirez* decision conflicts with this Court’s decisions in *Barnes v. Felix*,¹⁴ *Scott v. Harris*,¹⁵ and *Mullenix v. Luna*.¹⁶

Additionally, the *Ramirez* opinion violates this Court’s longstanding precedent and imposes unrealistic and dangerous expectations on police officers by second-guessing an officer’s on-scene assessment of danger. This Court has characterized as a “wise admonition” the proposition that “judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation.”¹⁷ This is sensible in part because officers’ specialized training and experience enables them to make inferences and deductions that “might well elude an untrained person.”¹⁸

13. Pet. at 18-25.

14. *Barnes v. Felix*, 605 U.S. 73, 80-83 (2025) (courts must consider events prior to the use of force as part of the totality of the circumstances analysis).

15. *Scott v. Harris*, 550 U.S. 372, 380 (2007) (courts must not credit versions of events that video evidence blatantly contradicts).

16. *Mullenix v. Luna*, 577 U.S. 7, 12-13 (2015) (per curiam) (plaintiffs must demonstrate a violation of clearly established law defined with specificity).

17. *Ryburn v. Huff*, 565 U.S. 469, 477 (2012) (per curiam).

18. *U.S. v. Arvizo*, 534 U.S. 266, 273 (2002) (citation omitted); see also, e.g., *Ornelas v. U.S.*, 517 U.S. 690, 699 (1996) (“a police officer views the facts through the lens of his police experience and expertise”); see also *infra*, §§B1-B2.

Courts “recognize that the decision to shoot can only be made after the briefest reflection, so brief that ‘reflection’ is the wrong word” and note that there is too little time for the officer to consider alternatives “and too much opportunity to second guess that officer.”¹⁹ This is certainly true in the case at bar, in which Officer Granado had but seconds to react when Ramirez and three other men burst out of a car after a dangerous high-speed chase, and Ramirez—gun in hand—tussled with an officer and attempted to evade arrest. *Supra*, n.3.

The *Ramirez* decision also conflicts with this Court’s precedent addressing the clearly established law prong of the qualified immunity analysis, which requires plaintiffs to identify a rule specifically prohibiting the officer’s conduct in the particular circumstances the officer faced.²⁰ Thus, this Court has “stressed the need to ‘identify a case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment’”²¹ and summarily reversed a Fifth Circuit decision which denied qualified immunity after defining the clearly established law too broadly.²²

19. *Plakas v. Drinski*, 19 F.3d 1143, 1149 (7th Cir. 1994) (relying, in part, on *Graham v. Connor*, 490 U.S. 386, 396-97 (1989)).

20. *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018); see also, e.g., *Brosseau*, 543 U.S. at 198; Pet. App. 31a (Oldham, J., dissenting).

21. *Wesby*, 583 U.S. at 64 (quoting *White v. Pauly*, 580 U.S. 73, 79 (2017) (per curiam)); see also, e.g., *Zorn*, 146 S.Ct. at 930.

22. *Mullenix*, 577 U.S. at 12-15, 19.

The panel majority in *Ramirez* contravened this Court’s precedent by relying on *Lytle* to find a violation of clearly established law, explaining that “[i]t has long been clearly established that, absent any other justification for the use of force, it is unreasonable for a police officer to use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others.”²³ *Lytle* is incapable of serving as the basis for a violation of clearly established law because: (1) in *Mullenix*, this Court abrogated the formulation on which the *Ramirez* panel majority relied;²⁴ and (2) as two of the *Ramirez* panel judges have acknowledged, *Lytle* did not find a constitutional violation, so it could not clearly establish law.²⁵

23. Pet. App. 13a (quoting *Lytle v. Bexar County, Tex.*, 560 F.3d 404, 417 (5th Cir. 2009)).

24. *Mullenix*, 577 U.S. at 12 (rejecting the formulation “that a police officer may not use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others”) (citation omitted); *see also Baker v. Coborn*, 170 F.4th 988, 994 (5th Cir. 2026) (“To the extent that courts continue to cite *Lytle* for the very formulation of clearly established law in the context of officer-involved shootings that *Mullenix* overruled, that is error.”).

25. *Wesby*, 583 U.S. at 64; *Dawes v. City of Dallas*, No. 22-10867, 2024 U.S. App. LEXIS 7980 at *8-9, *19 (5th Cir. April 3, 2024) (unreported, per curiam) (Oldham and Dennis, JJ., acknowledging that *Lytle* did not find a constitutional violation). In its clearly established law analysis, the *Ramirez* panel majority also made passing reference to *Baker v. Putnal*, 75 F.3d 190, 198 (5th Cir. 1996). Pet. App. 13a. This is unavailing, as the *Baker* decision also did not find a constitutional violation.

As in *Mullenix*, this Court should summarily reverse the Fifth Circuit’s unjustified denial of qualified immunity in the case at bar.²⁶

3. This Court Regularly Reverses Lower Courts’ Decisions that Improperly Deny Qualified Immunity.

This Court has “issued a number of opinions reversing federal courts in qualified immunity cases,” because “qualified immunity is important to society as a whole” and because “as an immunity from suit, qualified immunity is effectively lost if a case is erroneously permitted to go to trial.”²⁷ Indeed, this Court has not hesitated to correct circuit courts that improperly deny immunity.²⁸ The Court should do so again in the instant case.

26. *Mullenix*, 577 U.S. at 12-15, 19; Pet. App. 34a-35a (Oldham, J., opining that the *Ramirez* panel decision warrants summary reversal as did *Mullenix*).

27. *White*, 580 U.S. at 79 (citations omitted).

28. *E.g.*, *Zorn*, 146 S.Ct. 926; *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021) (per curiam); *Kisela v. Hughes*, 584 U.S. 100 (2018) (per curiam); *Wesby*, 583 U.S. 48; *City of Escondido v. Emmons*, 586 U.S. 38 (2019) (per curiam); *Mullenix*, 577 U.S. at 16-19; *Taylor v. Barkes*, 575 U.S. 822, 826-27 (2015); *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 611, n.3 (2015) (“the Court often corrects lower courts when they wrongly subject individual officers to liability”) (collecting cases); *Brosseau*, 543 U.S. at 201.

B. By Failing to Account for the Realities of Policing, the *Ramirez* Decision Undermines Core Functions of Qualified Immunity, Increases Dangers to Officers and the Public, and Threatens to Disrupt Law Enforcement Recruitment, Training, and Operations.

By denying qualified immunity to an officer who made a split-second decision to shoot an armed suspect who was attempting to evade arrest, the *Ramirez* decision undermines core functions of qualified immunity, including: 1) providing fair notice to officers of unconstitutional conduct; and 2) enabling officers to act without fear of negative consequences such as distraction from their duties, inhibition of their responses, and deterrence of able people from seeking employment in government service.²⁹

The panel opinion disregards the realities of policing, including the dangers officers face and the perceptual and memory distortions they experience during rapidly developing, high-stress encounters. Instead, the *Ramirez* opinion encourages timidity in police responses, which increases dangers to officers and the public.

This Court recognizes that “it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties.”³⁰ This is precisely what the *Ramirez* opinion requires. This Court should grant review to correct the panel’s serious errors.

29. *Infra*, §C2; *supra*, n.11; *infra*, n.44.

30. *Pennsylvania v. Mims*, 434 U.S. 106, 110 (1977) (per curiam) (citation omitted).

1. Police Officers Face Significant Dangers.

Law enforcement officers are aware that they face significant dangers in the line of duty. Indeed, the FBI annually publishes data collections entitled Law Enforcement Officers Killed and Assaulted (“LEOKA”) “to aid the law enforcement community by providing information to positively impact their training and keep them safe on the job.”³¹

The FBI’s LEOKA reports show that, in 2021, when Ramirez defied police commands and attempted to evade arrest while holding a gun, 73 officers were feloniously killed in the line of duty.³² Suspects used firearms to kill 61 of these officers, and 44 of these killings happened in the South.³³ The FBI reports that, in 2021, more than 43,000 officers were assaulted while performing their duties and nearly 80,000 assaults against law enforcement officers involved weapons.³⁴ In 2021, 11.7% of officers were assaulted while on the job. This rate has increased

31. Officers Killed and Assaulted in the Line of Duty, 2025, at 18 (2025), <https://cde.ucr.cjis.gov/LATEST/resources/reports/Officers%20Killed%20and%20Assaulted%20in%20the%20Line%20of%20Duty%2C%202025.pdf>.

32. FBI Releases 2021 Statistics on Law Enforcement Officers Killed in the Line of Duty (Oct. 17, 2022), <https://www.fbi.gov/news/press-releases/fbi-releases-2021-statistics-on-law-enforcement-officers-killed-in-the-line-of-duty>.

33. *Id.*

34. FBI Releases 2021 Statistics on Law Enforcement Officers Assaulted in the Line of Duty (Oct. 18, 2022), <https://www.fbi.gov/news/press-releases/fbi-releases-2021-statistics-on-law-enforcement-officers-assaulted-in-the-line-of-duty>.

steadily, and in 2025, 13.8% of officers were assaulted in the line of duty.³⁵

Officer Granado rightly understood that Ramirez's actions created serious danger for all officers present. *Supra*, n.3. The *Ramirez* panel majority disregarded this danger. Pet. App. 1a-13a.

2. The *Ramirez* Decision Disregards Perceptual Distortions Officers Experience When Making Split-Second Decisions to Use Force.

This Court's concerns about judges second-guessing an officer's on-scene assessment of danger³⁶ are particularly valid considering the mental processes in effect during rapidly developing, high-stress encounters, such as incidents involving lethal force.

Many studies demonstrate that police officers overwhelmingly experience perceptual and memory distortions when faced with situations that led to the use of deadly force.³⁷ Officers faced with lethal force situations

35. *Supra*, n.31 at 11.

36. *Supra*, §A2.

37. *E.g.*, Alexis Artwohl, Ph.D., *Perceptual and Memory Distortions During Officer Involved Shootings*, AELE LETHAL & LESS LETHAL FORCE WORKSHOP, 2008 Update, at 19-1 through 19-6, <https://www.aele.org/law/2008FPAUG/wb-19.pdf>; *id.* at 19-4 (in a group of 157 police officers involved in shootings, 84% experienced diminished sound, 79% experienced time distortions during the events, and 52% experienced memory loss for part of the event); David A. Klinger, Rod K. Brunson, *Police Officers' Perceptual Distortions During Lethal Force Situations*, CRIMINOLOGY &

unconsciously switch to an “experiential thinking” mode, which: (1) facilitates automatic, rapid responses; (2) is oriented toward immediate action rather than reflection and delayed action; and (3) is marked by fragmented and distorted memory of the event.³⁸ Indeed, “[t]here is virtually no factor in a shooting that can’t be subject to perceptual or memory distortion.”³⁹ One researcher noted that “independent studies using different methodologies have found that memory and perceptual distortions do in fact occur to some degree in officer involved shootings and must be taken into account when second-guessing the actions and the statements of officers involved in shootings.”⁴⁰

Courts must recognize that, during deadly force encounters, reasonable officers are highly likely to experience perceptual and memory distortions and “experiential thinking” oriented toward rapid, automatic responses. The *Ramirez* panel majority disregarded these realities of policing, denying Officer Granado qualified immunity merely because, immediately after shooting the armed suspect, while in an emotionally excited state—marked by breathing heavily, pacing, repeating himself, and swearing—Granado asked another officer for

PUBLIC POLICY, Feb. 2009, 117-40 (in a group of 80 police officers involved in shootings, 82% experienced diminished sound, 51% experienced tunnel vision, and 79% experienced time distortions during the events).

38. Artwohl, *supra*, n.37 at 19-1 through 19-6.

39. *Id.* at 19-6.

40. *Id.*

confirmation of his perception, immediately prior to the shooting, that Ramirez had a gun in his hand. *Supra*, n.3.

Nobody disputes that Granado repeatedly shouted “he’s got a gun” immediately before discharging his weapon, or that Ramirez was, in fact, holding a gun and attempting to evade arrest throughout the 8-second encounter. Denying qualified immunity under these circumstances reflects a troubling and dangerous misunderstanding of officers’ experiences when making split-second decisions to use lethal force.

3. Legal Opinions Encouraging Timidity in Police Responses Increase Dangers to Officers and the Public.

The panel decision in *Ramirez*, with its vigorous dissents, and the Fifth Circuit’s narrow denial of en banc review, demonstrate the unpredictability of the Circuit’s qualified immunity jurisprudence.⁴¹ Uncertainty in the law increases the significant dangers law enforcement officers regularly face, encourages timid responses to crime, and interferes with the increasingly difficult task of hiring and retaining skilled peace officers.⁴²

41. *Infra*, §§C1-2.

42. *See, e.g.*, Int’l Ass’n of Chiefs of Police, 2024 Recruitment & Retention Survey Results, at 3, 5 (2025), https://www.theiacp.org/sites/default/files/2025-06/IACP_2024%20Recruitment%20%26%20Retention%20Survey%20Results_2.pdf (more than 70% of the law enforcement agencies responding to the IACP’s 2024 survey reported that officer recruitment had become more difficult than it was five year ago); Reis Thebault, Police Vacancies Persist as Departments Struggle with Hiring, Recruiting and Reform, *Wash. Post* (May 27, 2023), <https://www.washingtonpost.com/>

This Court has recognized that avoiding unwarranted timidity on the part of government officials is an important government interest⁴³ and has noted that

police officers . . . routinely make close decisions in the exercise of the broad authority that necessarily is delegated to them. . . . In these circumstances, officials should not err always on the side of caution. Officials with a broad range of duties and authority must often act swiftly and firmly at the risk that action deferred will be futile or constitute virtual abdication of office.⁴⁴

Officers should not be encouraged to err on the side of caution because, in the increasingly risky profession of law enforcement, officers' hesitation can be deadly to officers and civilians. Many judges have recognized the importance of interpreting the Fourth Amendment in a manner that discourages hesitation when an officer's use

[national-security/2023/05/27/police-vacancies-hiring-recruiting-reform/](#) (law enforcement agencies throughout the country are experiencing unprecedented difficulty hiring and retaining qualified officers); *see also, e.g.*, Elliott Averett, Note, *An Unqualified Defense of Qualified Immunity*, 21 GEO. J. L. & PUB. POL'Y 241, 273-77 (2023) (exploring the disproportionate increase in crime and reduction in law enforcement staffing after Colorado repealed qualified immunity).

43. *Filarsky v. Delia*, 566 U.S. 377, 389-90 (2012); *Richardson v. McKnight*, 521 U.S. 399, 408-09 (1997).

44. *Davis v. Scherer*, 468 U.S. 183, 196 (1984) (citation omitted, cleaned up); *see also Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (per curiam).

of deadly force is geared toward protecting officers and members of the public.⁴⁵

The *Ramirez* decision conflicts with this Court’s decisions counseling against unwarranted timidity and with eight Fifth Circuit judges’ concerns about the dangers of rulings that encourage hesitation in officers’ responses. Pet. App. 1a-35a.

C. The Court Should Grant Review to Address Serious Concerns that Multiple Fifth Circuit Judges Have Repeatedly Expressed About the Circuit’s Conflicting Decisions in Use-of-Force Cases.

1. The Fifth Circuit’s Qualified Immunity Decisions Are Inconsistent, Confusing, and Deeply Indeterminate.

Ramirez is the latest in a growing list of cases in which the Fifth Circuit narrowly denied en banc review of panel

45. *E.g.*, Pet. App. 46a (“I’m troubled by the decision to put police officers on trial for using reasonable force in a good faith effort to keep innocent people safe.”) (Ho, J., joined by Jones and Smith, JJ., dissenting from the denial of en banc review); *Winzer v. Kaufman County*, 916 F.3d 464, 482 (5th Cir. 2019) (Clement, J., dissenting in part) (objecting to a holding that instructs officers to delay their responses, explaining that “when a split second is all you have, waiting itself is a decision—one that may bring disastrous consequences”); *accord Winzer v. Kaufman County*, 940 F.3d 900, 901 (5th Cir. 2019) (Ho, J., joined by Smith, Clement, Engelhardt, JJ., dissenting from denial of rehearing en banc) (citing with approval Judge Clement’s prior dissent and reasoning); *Cole v. Carson*, 935 F.3d 444, 457 (5th Cir. 2019) (en banc) (Jones, J., joined by Smith, Owen, Ho, Duncan, and Oldham, JJ., dissenting) (noting that in the “increasingly risky profession of law enforcement,” “action beats reaction every time”) (citation omitted).

decisions that rejected officers’ assertions of qualified immunity in use-of-force cases.⁴⁶ Nine sitting Fifth Circuit judges have expressed dissatisfaction with the Circuit’s inconsistent holdings in this area. This Court should heed these judges’ concerns and grant review in *Ramirez* to repair the confusion the Fifth Circuit has created through its conflicting and uncertain decisions interpreting the Fourth Amendment and analyzing qualified immunity in cases involving officers’ split-second decisions to use force.

In dissenting from the denial of en banc rehearing in *Ramirez*, Judge Ho, joined by Judges Jones and Smith, stated “[i]nstability remains the state of the law in our circuit when it comes to excessive force. This instability is not just regrettable as a matter of law—it’s dangerous for the police officers and civilians of our circuit.” Pet. App. 46a.

In *Boyd v. McNamara*, Judge Oldham characterized the Fifth Circuit’s excessive force precedent as “deeply indeterminate” and stated, “when we are bound only by conflicting circuit precedent, it is unclear to me if and how we are bound at all.”⁴⁷ Judge Oldham worried about the

46. Pet. App. 45a (denying en banc review by a 9-8 vote in *Ramirez*); *Ambler v. Nissen*, 132 F.4th 750 (5th Cir. 2025) (per curiam) (denying en banc review by a 9-8 vote when an officer was denied qualified immunity for briefly using force to handcuff a noncompliant suspect after a lengthy high-speed car chase); *Crane v. City of Arlington, Tex.*, 60 F.4th 976, 977-79 (5th Cir. 2023) (per curiam) (denying en banc review by a 10-6 vote, when a panel denied qualified immunity to an officer who shot a noncompliant suspect who twice ran over another officer with his car).

47. *Boyd v. McNamara*, 74 F.4th 662, 673 (5th Cir. 2023) (Oldham, J., concurring).

Fifth Circuit’s “predictably unpredictable interpretations of the ‘hazy border between excessive and acceptable force.’”⁴⁸

In *Crane*, six Fifth Circuit judges disagreed with the panel’s qualified immunity analysis and expressed frustration about the Circuit’s unwillingness, as a body, to issue consistent opinions in split-second use-of-force cases.⁴⁹ Judge Oldham and his co-dissenters described the Fifth Circuit’s refusal to review the *Crane* opinion en banc as “revelatory of a general reluctance (at best) or refusal (at worst) to devote the full court’s resources to qualified-immunity cases,” which the dissenters found “imprudent.”⁵⁰ Judge Ho characterized the Circuit’s split-second excessive force opinions as “confusing to citizens and police officers,” and he saw no hope of advancing the rule of law within the Circuit.⁵¹ According to the dissenting judges and Judge Ho, “we sow the seeds of uncertainty in our [use-of-force] precedents—which grow into a briar patch of conflicting rules, ensnaring district courts and litigants alike.”⁵²

Dissenting from the denial of en banc review in *Winzer*, Judge Ho, joined by Judges Smith, Clement,

48. *Id.* (quoting *Brosseau*, 543 U.S. at 201).

49. *Crane*, 60 F.4th at 977-79.

50. *Id.* at 978 (Oldham, J., joined by Jones, Smith, Duncan, and Wilson, JJ., dissenting from denial of rehearing en banc).

51. *Id.* at 978 (Ho, J. concurring in denial of rehearing en banc, but agreeing with the dissenting judges that the panel should have granted qualified immunity).

52. *Id.* at 978-79.

and Engelhardt, expressed “deep concerns” that the Fifth Circuit’s split-second use-of-force opinions send a dangerous message to law enforcement officers— “[s]ee something, do nothing.”⁵³ This troubling message contravenes this Court’s guidance,⁵⁴ and that of multiple Fifth Circuit judges, concerning how officers should respond to emergent situations to protect the public.⁵⁵

2. The Fifth Circuit’s Irreconcilable Holdings Give Officers No Fair Warning Concerning Their Potential Liability in Split-Second Use-of-Force Cases.

This Court recognizes the importance of “ensuring that officials can reasonably anticipate when their conduct may give rise to liability for damages.”⁵⁶ “[T]he crux of the qualified immunity test is whether officers have fair notice that they are acting unconstitutionally.”⁵⁷ If the law at the time of the incident “did not clearly establish that the officer’s conduct would violate the Constitution, the

53. *Winzer*, 940 F.3d at 902-03.

54. *Supra*, §B3.

55. “In the wide gap between acceptable and excessive uses of force, however, immunity serves its important purpose of encouraging officers to enforce the law, in ‘tense, uncertain and rapidly evolving’ split-second situations, rather than stand down and jeopardize community safety.” *Cole*, 935 F.3d at 465 (Jones, J., dissenting, joined by Smith, Ho, Duncan, Oldham, and Richman, JJ.).

56. *Reichle*, 566 U.S. at 664 (cleaned up, citation omitted); *see also Belton*, 453 U.S. at 459-60.

57. *Mullenix*, 577 U.S. at 21 (citation omitted).

officer should not be subject to liability or, indeed, even the burdens of litigation.”⁵⁸ By forcing Officer Granado to trial without fair notice that his split-second decision to shoot an armed suspect attempting to evade arrest might be considered a constitutional violation, the *Ramirez* decision violates this Court’s qualified immunity holdings.⁵⁹

This Court should grant review in *Ramirez* because, given the Circuit’s starkly inconsistent qualified immunity analyses and rulings, the Fifth Circuit provides police officers with no fair notice concerning split-second decisions about using force.⁶⁰

To the extent that the Fifth Circuit continues to disregard this Court’s repeated admonitions about the particular importance of defining clearly established law

58. *Brosseau*, 543 U.S. at 198.

59. *Reichle*, 566 U.S. at 664; *Belton*, 453 U.S. at 459-60; *Brosseau*, 543 U.S. at 198.

60. *E.g.*, *cf.* Pet. App. 1a-35a (denying qualified immunity to Officer Granado when, after a high-speed car chase at 2:30 a.m., he shot a passenger who jumped out of the car, disobeyed officers’ commands, and began to run while holding a gun) *with Wilson v. City of Bastrop*, 26 F.4th 709 (5th Cir. 2022) (granting qualified immunity to an officer who shot a passenger who jumped out of a vehicle, disobeyed officers’ commands, and ran while holding a gun); *cf. Crane v. City of Arlington, Tex.*, 50 F.4th 453, 464-67 (5th Cir. 2022) (denying qualified immunity to an officer who used lethal force against a noncompliant driver of a vehicle when officers were in positions to be injured by the vehicle which, in fact, twice ran over one officer) *with Baker v. Coburn*, 68 F.4th 240, 242-44 (5th Cir. 2023) (granting qualified immunity when officers shot and killed a noncompliant driver of a vehicle when officers were in positions to be injured by the vehicle).

at a high level of specificity when analyzing split-second decisions in use-of-force cases⁶¹ and continues to issue contradictory and unpredictable opinions in this area: (1) judges, law enforcement officers, and citizens are left uncertain about constitutionally appropriate reactions; (2) officers are motivated to act with hesitancy and timidity; and (3) it will continue to be difficult to recruit able officers. This neither follows this Court's guidance nor furthers the important public purposes qualified immunity serves. The Court should take this opportunity to repair the confusion the Fifth Circuit has created by its "deeply indeterminate corpus of circuit precedent."⁶²

D. Alternatively, the Court Should Grant the Petition, Vacate the *Ramirez* Decision, and Remand the Case for Reconsideration in Light of *Zorn v. Linton*.

If the Court declines to review the *Ramirez* opinion, it should, nevertheless, grant the petition, vacate the panel's decision, and remand the matter for reconsideration in light of this Court's opinion in *Zorn*, which issued after the *Ramirez* panel decision and the Fifth Circuit's narrow denial of en banc review.⁶³

In *Zorn*, the Second Circuit relied on a broad formulation of law derived from one of its own cases to find that the relevant law was clearly established and to deny

61. *E.g.*, *Mullenix*, 577 U.S. at 12-13; *Brosseau*, 543 U.S. at 198.

62. *Boyd*, 74 F.4th at 673.

63. *Zorn*, 146 S.Ct. 926; Pet. App. 1a, 44a.

qualified immunity to an officer in a use-of-force case.⁶⁴ This Court summarily reversed the Second Circuit's decision, explaining that the lower court contravened this Court's qualified immunity principles concerning the high degree of specificity required to demonstrate that a given law was clearly established.⁶⁵ This Court concluded, "[b]ecause the Second Circuit failed to identify a case where an officer taking similar actions in similar circumstances was held to have violated the Constitution, Zorn was entitled to qualified immunity."⁶⁶

The panel majority in *Ramirez* made precisely the same error, relying on an inappropriately broad formulation of a legal principle from a Fifth Circuit case in which the officer was not held to have violated the Constitution.⁶⁷

In another recent use-of-force case in which a circuit court denied an officer's assertion of qualified immunity, this Court granted a petition for writ of certiorari, vacated a Ninth Circuit panel opinion, and remanded the case for reconsideration in light of the *Zorn* decision.⁶⁸ The Court should do the same in response to Officer Granado's petition.

64. *Zorn*, 146 S.Ct. at 929-930.

65. *Id.* at 930-31.

66. *Id.* at 931 (citation omitted).

67. *Supra*, pp. 9-11; Pet. App. 13a.

68. *Smith v. Scott*, No. 24-1099, 2026 U.S. LEXIS 1686 (April 20, 2026) (unpublished, per curiam).

CONCLUSION

The *Ramirez* decision conflicts with this Court's rulings, undermines core law enforcement functions by weakening qualified immunity, and, by disregarding the realities of policing, it increases danger to officers and the public. The Court should grant Officer Granado's petition, reverse the panel decision, and correct the Fifth Circuit's confusing and inconsistent qualified immunity jurisprudence. Alternatively, the Court should grant the petition, vacate the panel decision, and remand the case for reconsideration in light of *Zorn*.

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Respectfully submitted,

LAURA O'LEARY
2717 State Street
Dallas, TX 75204

FRANCISCO J. VALENZUELA
Counsel of Record
MARTIN, DISIERE, JEFFERSON &
WISDOM, LLP
9111 Cypress Waters Boulevard,
Suite 250
Dallas, TX 75019
(214) 420-5500
valenzuela@mdjwlaw.com

Counsel for Amici Curiae