No. __-____

In the Supreme Court of the United States

ALEJANDRO ESTEVIS,

Petitioner,

v.

IGNACIO CANTU; EDUARDO GUAJARDO,

Respondents.

On Petition for Writ of Certiorari to the
U.S. Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Officers Ignacio Cantu and Eduardo Guajardo should be denied qualified immunity before trial for shooting six times at Alejandro Estevis while he sat in a stopped pickup truck.

PARTIES TO THE PROCEEDINGS

Petitioner Alejandro Estevis is a natural person.

Respondent Ignacio Cantu is a natural person.

Respondent Eduardo Guajardo is a natural person.

RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Southern District of Texas:

- *Estevis v. City of Laredo*, No. 5:22-cv-22 (S.D. Tex.), denying summary judgment in part on March 27, 2024 (Pet.App.14a)
- *Estevis v. Cantu*, No. 24-40277 (5th Cir.), reversing district court and rendering judgment April 16, 2025, (Pet.App.3a) rehearing denied May 19, 2025 (Pet.App.63a)

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Alejandro Estevis respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Fifth Circuit entered on April 16, 2025.

On May 15, 2025, this Court reversed the Fifth Circuit in a different police-shooting case which, similar to this case, involved shooting an unarmed driver of a motor vehicle due to the driver's efforts to flee a traffic stop. *Barnes v. Feli*x, 605 U.S. ----, 145 S. Ct. 1353, 1360 (2025). As *Barnes* rejected the Fifth Circuit's "moment-of-threat doctrine" in police shooting cases, which was then-binding precedent in the Fifth Circuit and was critical to the result in this case, Mr. Estevis requests that this Court grant certiorari, vacate the judgment below, and remand his case for reconsideration in light of *Barnes*.

OPINIONS BELOW

The Fifth Circuit's decision (Pet.App.3a–13a) is reported at 134 F.4th 793. The district court's decision, which denied summary judgment in relevant part, is not reported but is available at 2024 WL 1313900 (Pet.App.14a–60a).

JURISDICTION

On April 16, 2025, on interlocutory appeal, the Fifth Circuit reversed the district court's partial denial of summary judgment (Pet.App.13a) and entered judgment. Pet.App.61a. Mr. Estevis sought rehearing, and, on May 19, 2025, the Fifth Circuit denied rehearing. Pet.App.63a.

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. The Fifth Circuit had interlocutory jurisdiction over legal questions pursuant to 28 U.S.C. § 1291. *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105

S.Ct. 2806, 86 L.Ed.2d 411 (1985). Petitioner contends the Fifth Circuit exceeded its jurisdiction by reviewing and reversing genuine fact disputes identified by the district court on interlocutory appeal. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case implicates the Fourth Amendment, which protects against unreasonable seizure. U.S. CONST. AMEND. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Mr. Estevis brought this private cause of action for damages arising from his Fourth Amendment rights pursuant to 42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory de-

cree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

INTRODUCTION

The Fifth Circuit Panel's decision in this case relied on an analysis steeped in the "moment-of-threat" doctrine, 29 days before this Court's decision in *Barnes v. Felix* overruled that doctrine.

Like *Barnes*, the shooting in this case began with a minor traffic stop, but, due to Officers Cantu and Guajardo's decision to escalate the encounter when Mr. Estevis posed no threat, they ultimately fired nine times at Mr. Estevis—including six shots while Mr. Estevis sat stopped in his pickup truck, boxed in by police vehicles. Like the Fifth Circuit did in *Barnes*, in this case the Fifth Circuit Panel expressly focused on the ten second time period of the shooting itself, without factoring in the preceding conduct of Mr. Estevis or the officers.

Accordingly, the Court should grant this petition for a writ of certiorari, vacate the underlying judgment, and remand for reconsideration of all three *Graham v. Connor* factors in light of the totality of the circumstances, not just the "moment-of-threat," consistent with this Court's decision in *Barnes v. Felix*.

STATEMENT OF THE CASE

Before the shooting, City of Laredo Police Department Officers Ignacio Cantu and Eduardo Guajardo pursued Alejandro Estevis as he drove his pickup truck away from police. Pet.App.14a. The chase arose from a roadside wellness check after Mr. Estevis was found sitting in his parked pickup truck. Pet.App.15a.

Although the truck had reached high speeds earlier in the night, for over fifteen minutes before the shooting Mr. Estevis only drove about five miles per hour—so both Officers Guajardo and Cantu conceded he posed no threat. Pet.App.34a, 36a. Officer Guajardo and Cantu had heard chatter over the radio suspecting that Mr. Estevis was suicidal. Pet.App.66a, 70a. When the evidence is viewed in the light most favorable to Mr. Estevis, the officers did *not* hear that officials from other agencies believed Mr. Estevis nearly hit them while evading spike strips, although Mr. Estevis would later plead guilty to aggravated assault for one of these near misses. Pet.App.17a, 24a, 27a.[1] Eventually Mr. Estevis lost pressure in all four of his tires to spike strips, causing the chase to slow to a crawl. Pet.App.17a. Another officer was then able to speak to Mr. Estevis at length through his rolled down window; the nature of the conversation caused officers to believe Mr. Estevis was distraught and having a mental health crisis. Pet.App.17a, 66a, 70a.

After about fifteen minutes of the low-speed pursuit, Pet.App.34a. Officers Cantu and Guajardo decided to blind Mr. Estevis with a spotlight and forcibly intercept his truck. Pet.App.25a, 67a, 71a. Officer Guajardo was disciplined for engaging in the pursuit, (Pet.App.17a) while Officer Cantu was disciplined for the interception maneuver. Pet.App.18a. As a result of the interception, Mr. Estevis's truck was stopped against the right-hand curb of the road, where police vehicles encircled the truck and boxed Mr. Estevis in. Pet.App.18a, 21a. After Officers Guajardo and Cantu exited their police vehicles, Mr. Estevis drove the truck

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[1] "Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant." *Hernandez v. Mesa*, 582 U.S. 548, 554, 137 S. Ct. 2003, 2007, 198 L. Ed. 2d 625 (2017).

less than one car length in reverse. Pet.App.18a; *see* Pet.App.21a. But he was not able to escape the box; the rear corner of Mr. Estevis's truck hit the rear passenger side of Officer Guajardo's now-empty police SUV. *Id.* The truck was unable to push past due to the truck's damaged tires, confirming the encircling police vehicles had successfully trapped the damaged truck against the side of the road. *Id.*

Two seconds after the truck had come to rest against Officer Guajardo's police SUV, Officer Guajardo fired a volley of three shots just as Mr. Estevis began to drive his truck forward. Pet.App.19a. The truck swiped the passenger side of Officer Cantu's empty police sedan, hopped the curb, and collided with a barrier on the grassy shoulder about two car-lengths away from where the truck began. Pet.App.19a; *see* Pet.App.21a. All nearby officers remained in cover behind vehicles and no one was in the truck's reverse or forward paths. Pet.App.20a, 22a, 32a–33a.

Mr. Estevis's truck's wheels spun helplessly in the grass while both Officers Guajardo and Cantu walked up to the truck, taking aim. Pet.App.19a, 33a. Mr. Estevis then released the accelerator, and his truck fell silent. Pet.App.19a. Next—eight seconds since the truck had reversed into his police vehicle—Officer Guajardo fired three times into the cabin of the stopped truck. Pet.App.19a, 22a–23a n.6, 34a. Two seconds after that, Officer Cantu fired three times. Pet.App.22a–23a n.6, 34a. Two shots hit Mr. Estevis, and one of them left him partially paralyzed below the waist. Pet.App.21a.

Throughout, there was never any evidence Mr. Estevis had a firearm. Pet.App.16a.

Mr. Estevis sued under 42 U.S.C. § 1983. Pet.App.14a. On the officers' summary judgment motion, the district court examined the shooting under all three *Graham v. Connor* factors to conclude that Officer Guajardo's initial volley (shots 1–3) was not unconstitutional, but found genuine disputes of material fact whether the balance of the *Graham* factors permitted Officer Guajardo's subsequent three shots (shots 4–6) and Officer Cantu's later three shots (shots 7–9). Pet.App.31a–37a.

As to the first factor, the district court found a dispute whether Officer Guajardo knew that different officers had felt threatened by Mr. Estevis during the high-speed portion of the chase, as Officer Guajardo's assertion conflicted with audio recordings of the radio transmissions from which Officer Guajardo claimed he heard this. Pet.App.31a–32a.

As to the second *Graham* factor, the district court found multiple disputes about the degree of threat posed by Mr. Estevis, including from the evidence that both officers had admitted Mr. Estevis was not a threat during the low-speed police chase (Pet.App.34a); Guajardo was disciplined for pursuing him, while Cantu was disciplined for intercepting Mr. Estevis (Pet.App.18a, 25a–26a); Officer Cantu admitted Mr. Estevis did not pose a threat as his pickup truck drove forward, (Pet.App.33a);[2] Officer Cantu admitted Mr. Estevis was not a threat once it stopped (Pet.App.33a);[3] the videos showing no officers were in the truck's path, (Pet.App.22a, 32a–33a); Mr. Estevis's

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[2] *See* Pet.App.67a.

[3] *See* Pet.App.66a, 68a; *see also* Pet.App.70a, 71a (both officers admitting that it would be unreasonable if they shot Mr. Estevis after his vehicle was stopped).

truck could not push past Officer Guajardo's empty police vehicle, so he was boxed in, (Pet.App.18a, 37a); and the video evidence showing they had at least eight seconds to realize the truck was boxed in and thus clearly ceased to be a threat before they fired any of the last six shots. Pet.App.22a, 34a. The district court concluded, "[m]ost importantly, Officer Guajardo advanced on the truck from the side for five seconds, with his gun drawn, and took careful aim" before firing his second volley, while Officer Cantu likewise advanced on the truck before firing. Pet.App.33a.

The district court found a reasonable jury could conclude these disputes outweighed the third *Graham* factor—the fact that Mr. Estevis had been evading arrest. Pet.App.35a–36a. Thus, after finding Fifth Circuit precedent clearly established the rights based on the facts viewed in the light most favorable to Mr. Estevis, the district court granted Officer Guajardo partial summary judgment for shots 1–3, and denied summary judgment to the officers for shots 4–9. Pet.App.37a–41a.

The officers gave notice of interlocutory appeal. Pet.App.8a. A Panel of the Fifth Circuit reversed and rendered judgment. Pet.App.13a. Rather than examining each *Graham* factor or the entire sequence of events, the Fifth Circuit focused exclusively on the ten second time period of the shooting itself, concluding it was "impossible for the officers to know for certain that the threat from Estevis's truck had ceased" during that time frame. Pet.App.10a. Although it did not specifically mention it, the Panel decision's solitary analysis of a ten second period is consistent with the Fifth Circuit's then-binding "moment-of-threat" doctrine. This reasoning was the sole grounds for the Panel's analysis of the officers' qualified immunity defense.

29 days after the Panel decision, this Court decided *Barnes v. Felix*, which rejected the Fifth Circuit's "moment-of-threat" doctrine—instead requiring that each use of force be evaluated "with the fact-dependent and context-sensitive approach" required by *Graham*. *Barnes*, 145 S.Ct. at 1359. Without addressing this Court's decision in *Barnes*, the Fifth Circuit denied rehearing. Pet.App.64a.

REASONS FOR GRANTING THE PETITION

This case was briefed and decided entirely under the "moment-of-threat" doctrine in the Fifth Circuit Court of Appeals, which remained binding circuit precedent until after judgment in this case. Because this Court has now rejected the "moment-of-threat" doctrine, the Court should grant the petition, vacate the judgment below, and remand (GVR) for reconsideration in light of the change in the law.

> Where intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is ... potentially appropriate.

Lawrence v. Chater, 516 U.S. 163, 167, 116 S.Ct. 604, 607, 133 L.Ed.2d 545 (1996) (per curiam); *Lords Landing Vill. Condo. Council of Unit Owners v. Cont'l Ins. Co.*, 520 U.S. 893, 896, 117 S. Ct. 1731, 1732, 138 L. Ed. 2d 91 (1997) (per curiam). This Court generally "remand[s] *federal-law* cases … to consider an intervening decision of the Court that is the final expositor of a particular body of law-with federal questions, the Supreme Court of the United States." *Thomas v. Am.*

Home Products, Inc., 519 U.S. 913, 915, 117 S. Ct. 282, 283, 136 L. Ed. 2d 201 (1996) (Scalia, J., concurring in GVR). Notably, unlike a traditional grant of certiorari, "[w]e assuredly would not decline to GVR a case affected by one of our own intervening decisions merely because the case is of no general importance beyond the interest of the parties." *Id.*

This case squarely satisfies each element of this Court's established practice for GVR.

I. The Fifth Circuit judgment did not consider this Court's intervening decision in *Barnes*.

The Fifth Circuit opinion and judgment was issued before *Barnes* was decided in this Court. Although the Fifth Circuit denied rehearing four days after *Barnes*, the parties did not brief that issue and there is no indication that the Fifth Circuit considered the implications of this Court's decision when it denied rehearing. Pet.App.63a–64a.

II. The Fifth Circuit decision below "rests upon a premise that" this Court rejected in *Barnes*—the "moment-of-threat" doctrine.

The judgment of the Fifth Circuit Panel rests on the now-overruled "moment-of-threat" doctrine.

The Panel declined to weigh the other two *Graham* factors and ignored everything that happened outside the ten seconds of the shooting. Instead, the Panel asserted that it was able to distinguish one of its prior cases solely because during the ten second time period of the shooting, the Court asserted that the officers "had good reason to believe they were still under threat from an erratic suspect [Mr. Estevis] who seconds earlier had decided to use his truck as a 5,000-pound weapon" when he had backed into Officer Guajardo's empty police SUV while "boxed in," then

had "driven into a fence, and showed no signs of giving up."[4] Pet.App.10a. The Panel emphasized that this was different than the threat posed by the suspect in *Lytle v. Bexar Cnty., Tex.*, 560 F.3d 404, 409 (5th Cir. 2009), where the suspect had reversed towards an officer on foot, but then fled down an open road before the officer fired. Pet.App.10a.

Apart from its dubious characterization of the facts, the Panel's reasoning conflicts with *Barnes* because it does not consider facts outside the time period of the shooting. For example, the officer in *Lytle* knew their suspect had deliberately rammed into *occupied* vehicles and was capable of resuming a high-speed chase, *Lytle*, 560 F.3d at 407, whereas the opposite is true here: the officers had no information to suggest Mr. Estevis had tried to hurt anyone, they knew he could not hurt anyone since he was "boxed in," they knew his truck could only flee at under five miles per hour even if it escaped the box, and indeed they knew he was stopped and thus not a threat. Pet.App.17a, 24a, 33a, 37a; *see also* Pet.App.66a, 68a, 70a, 71a.

Highlighting how the Fifth Circuit's "moment-of-threat" tunnel vision leads to departure from this Court's jurisprudence, the Panel in this case then compared this case to *Plumhoff* because that decision also considered officers who fired a volley of shots occurring over a ten-second period. Pet.App.11a. Yet, unlike this case, this Court emphasized in *Plumhoff* that the subject still posed a danger because he was speeding away

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[4] This assertion merits reconsideration for the independent reason that Mr. Estevis was incapacitated and his truck was completely stopped when the officers fired shots 4–9. Pet.App.26a, 26a, 33a, 40a. "[C]ourts may not resolve genuine disputes of fact in favor of the party seeking summary judgment." *Tolan v. Cotton*, 572 U.S. 650, 656, 134 S. Ct. 1861, 1866, 188 L. Ed. 2d 895 (2014).

to resume his flight. *Plumhoff v. Rickard*, 572 U.S. 765, 777, 134 S. Ct. 2012, 2022, 188 L. Ed. 2d 1056 (2014). In contrast, the officers here knew Mr. Estevis was "boxed in," not even capable of resuming a high-speed flight due to his damaged tires, and stopped so that he posed no threat. Pet.App.17a, 24a, 33a, 37a.

Just as this Court held in *Barnes*, "the decision[] below applied a rule about timing," but "a court cannot thus 'narrow' the totality-of-the circumstances inquiry, to focus on only a single moment." *Barnes*, 145 S.Ct. at 1360. As that is exactly what the Fifth Circuit Panel did in this case, it rests upon the precise premise which this Court's intervening decision overruled.

III. This Court's decision in *Barnes* is likely to change the outcome below.

Barnes will likely change the outcome of this case by requiring the courts below to weigh the totality of the circumstances—i.e., all three *Graham* factors as applied to all of the facts each officer knew when he shot at Mr. Estevis—for four reasons.

First, the Panel and the District Court's differing analyses, and differing results, flow from the fact that the Panel used a narrower "moment-of-threat" timing than the District Court. The Panel isolated the ten second "moment-of-threat," and only considered the second *Graham* factor, whereas the District Court expressly analyzed all three *Graham* factors beginning with the officers' decision to pursue and intercept Mr. Estevis. Pet.App.10a, 31a–37a. Although the District Court was also bound by the "moment-of-threat" doctrine, its analysis finding that the officers' shots 4–9 were unreasonable comes far closer to the totality of the circumstances test required by *Barnes*, while the Panel reached the opposite conclusion by focusing

solely on a ten second period that it deemed the moment of the threat. The differing results of the two lower courts thus demonstrate that requiring reconsideration in light of *Barnes* is likely to change the outcome.

Second, similar to *Barnes*, if the courts below consider whether the officers' own conduct created the situation with Mr. Estevis prior to the shooting, that is likely to change the outcome. In *Barnes*, the officer escalated the encounter by leaping onto the subject vehicle's doorsill just as it began to move—so this Court remanded for consideration of whether that escalation was unreasonable. *Barnes*, 145 S.Ct. at 1356, 1360. Similarly, in this case, Officers Cantu and Guajardo escalated by intercepting Mr. Estevis's slow-moving truck—leading to discipline by the police department. Pet.App.16a–18a, 25a, 36a–37a. The Panel was aware of this, but relegated the fact to a footnote. Pet.App.5a n.2. Just like the decision which *Barnes* reversed, the Panel in this case relied on the moment-of-threat rationale to refuse to grapple with the implications of the officers creating the circumstances where deadly force would be used, even though they admitted there was no threat at that time. Pet.App.36a. Indeed, the fact that the officers deliberately blinded Mr. Estevis and then "boxed in" his vehicle should have been considered in the totality of the circumstances because a reasonable officer would not be surprised when Mr. Estevis backed into Officer Guajardo's vehicle without escaping. Pet.App.18a, 37a, 67a, 71a. That was, in fact, the officers' intent; to box Mr. Estevis in. Without the faulty premise that a reasonable officer would be surprised to find themselves boxing Mr. Estevis in, the lower courts' reasoning and the outcome of this case will likely change.

Third, as discussed above, another fact heavily emphasized in the District Court, but not analyzed by the Panel as it is outside the "moment-of-threat," is that Mr. Estevis's vehicle was only mechanically capable of resuming a slow-speed pursuit even if it did escape the "box" of police vehicles. Pet.App.10a, 34a. This Court specifically held in *Plumhoff v. Rickard*, 572 U.S. 765, 777, 134 S. Ct. 2012, 2022, 188 L. Ed. 2d 1056 (2014) that "[t]his would be a different case if [the officers] had initiated a second round of shots after the initial round had clearly incapacitated [the driver] and had ended any threat of continued flight." This appeal presents precisely the "different case" *Plumhoff* anticipated. The threat from Mr. Estevis's driving ended more than fifteen minutes earlier when Mr. Estevis could not, and did not, exceed five miles per hour—so the officers admitted the danger was long passed by the time of the interception. Pet.App.34a, 36a. On remand in light of *Barnes*, the officers' knowledge of that fact must be considered as part of the totality of the circumstances, so it will likely change the outcome.

Finally, a related fact dispute which the Panel did not consider arises from the first *Graham* factor. Although the officers knew Mr. Estevis had been driving dangerously, the video and radio evidence shows they had every reason to believe Mr. Estevis was open to a dialogue with police and not trying to hurt anyone. As mentioned above, he had a lengthy conversation with one officer *during* the "chase" by rolling down his window. Pet.App.17a. This context for the shooting undermines the Panel's reasoning that the officers should have assumed Mr. Estevis posed a threat earlier and needed to "know for certain that the threat from Estevis's truck had ceased" in order to violate clearly established law. Pet.App.10a. The Fifth Circuit in other decisions, where it was not constraining its analysis so

severely to the moment of threat, has found officers behaved unreasonably by shooting at much less dangerous subjects that Mr. Estevis. *See, e.g.*, *Baker v. Coburn*, 68 F.4th 240, 242, 249, 251 (5th Cir. 2023) (reversing summary judgment for shots fired during a three second period in which vehicle drove forward within a few feet of officer); *Edwards v. Oliver*, 31 F.4th 925, 928, n.1, 932 (5th Cir. 2022) (denying qualified immunity for shots fired within one second of vehicle driving forward within a few feet of officer); *Flores v. City of Palacios*, 381 F.3d 391, 399, 402 (5th Cir. 2004) (shot fired as car pulled away was excessive, with no mention of how much time had passed, where the car had only travelled a short distance as the driver heard the shot); *White v. Balderama II*, 161 F.3d 913 (5th Cir. Nov. 30, 1998) (shots fired after vehicle began passing officer were excessive, with no mention of how much time had passed, but time period was short enough that at least one shot in the volley came from in front of the car). This discrepancy indicates that the now-overruled "rule about timing" leads to unpredictable and inconsistent results depending on where the Fifth Circuit draws the timing cutoff in each case. *Barnes*, 145 S.Ct. at 1359.

Accordingly, the third factor also weighs in favor of GVR as there is a substantial probability that reconsideration in light of *Barnes* will change the result below.

CONCLUSION

The Court should be grant the petition, vacate the judgment below, and remand for reconsideration in light of *Barnes v. Felix*.

Respectfully submitted.

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