NO. 25-267

In the Supreme Court of the United States

MILTON GREEN,

Petitioner,

v.

CHRISTOPHER TANNER, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF PROFESSOR SETH W. STOUGHTON AS AMICUS CURIAE SUPPORTING PETITIONER

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STATEMENT OF INTEREST[1]

Amicus curiae Seth Stoughton is a former officer of the Tallahassee Police Department who now serves as a Professor at the University of South Carolina Joseph F. Rice School of Law, as well as Professor (Affiliate) in the University's Department of Criminology and Criminal Justice, and the Faculty Director of the Excellence in Policing

[1] All parties received notice 10 days in advance of the filing of this brief. No counsel for any party authored this brief in whole or in part, and no person or entity other than the amicus or his counsel made a monetary contribution intended to fund the brief's preparation or submission.

& Public Safety Program.[2] Professor Stoughton's articles have appeared in the Emory Law Journal, the Minnesota Law Review, the Tulane Law Review, the Virginia Law Review, and other top journals. He is a frequent lecturer on policing issues, regularly appears in national and international media, and has written about policing for The New York Times, The Atlantic, TIME, and other nationally prominent news publications.

As both an officer and a scholar, Professor Stoughton has developed special expertise in police tactics and the appropriate use of force. He has written multiple articles and book chapters on these subjects and given comprehensive treatment to them as principal co-author of the book *Evaluating Police Uses of Force* (NYU Press 2020). He also conducts training for law enforcement agencies on numerous issues, including the investigation and assessment of officers' use of force.

Professor Stoughton has an abiding concern for the proper interpretation of Fourth Amendment standards for the use of force, a belief that the law should preserve longstanding principles of professional policing on the use of force, and a deep interest in preventing individuals subject to excessive force from being left without recourse. He writes to provide the Court with the benefit of his policing expertise and to urge the Court to grant review of this case to ensure that the decision below is overturned, the jury's proper role in resolving excessive-force cases is restored, and the judge-made myths about policing that

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[2] Professor Stoughton is participating as amicus in his individual capacity and not on behalf of the University of South Carolina.

were relied upon by the court below and that have proliferated throughout the courts of appeals are discarded once and for all.

INTRODUCTION AND SUMMARY OF ARGUMENT

A "totality of the circumstances" inquiry that "is not capable of precise definition or mechanical application." *Graham* v. *Connor*, 490 U.S. 386, 396 (1989) (internal quotation omitted). An analysis turning entirely on the "careful attention to the facts and circumstances of each particular case." *Ibid.* A "factbound morass," *Scott* v. *Harris*, 550 U.S. 372, 383 (2007), lacking any "easy-to-apply legal test" or "on/off switch," *Barnes* v. *Felix*, 605 U.S. 73, 80 (2025) (internal quotation omitted). This is how the Court has described the process of determining whether an officer's use of force is reasonable under the Fourth Amendment: as an indelibly *factual* examination that should be decided by a jury. Yet a minority of federal circuit courts, including the court below, paradoxically conclude that when an officer's justification for using force is based on the officer's mistake of fact, the reasonableness of that mistake becomes an issue of law that a court must decide.

That approach is entirely without foundation. Nothing about the fact issues that permeate excessive-force cases suggests that those issues should lie outside the jury's traditional province as final arbiter of fact—or indicates jurors are somehow ill-suited to resolve them. And that does not change when the excessive-force allegations at issue concern a mistake of fact, where the fact issues become even more pervasive.

Indeed, there is every reason to believe that juries may be *better* suited to resolve the fact issues in excessive-force

cases than judges. After all, a multi-member jury is intrinsically better at diffusing the biases that frequently contaminate excessive-force cases—both in favor and against the officer. And a jury's evaluation of the facts will often be informed by input from expert witnesses like amicus who possess expertise in law-enforcing norms and training—a perspective that can be lost when the issue is deemed a matter of law that only judges are competent to decide.

Indeed, this case exemplifies the hazards that result when courts confuse the factual issues involved in excessive-force cases for issues of law and remove them from the jury's purview. The evidence in this case suggests that the judges who reviewed this case at every level considered the facts more with an eye toward exonerating the officer than fairly evaluating the events surrounding the officer's encounter with Petitioner—to the point of contradicting the officer's own version of those events. And in treating the reasonableness of Officer Turner's use of force as an issue of law, the court below turned to certain time-worn myths common among judges about police behavior that cannot be squared with the realities of modern policing, including that a suspect with a gun poses such intrinsic danger to the officer that deadly force is automatically justified, or that such a thumb on the scales in the officer's favor is required because of the "split-second" decision-making that officers must make in the field. No reasonable officer trained in the methods of modern policing would cling to such lazy heuristics. And no properly informed jury would allow officers to do so.

This case therefore illustrates perfectly why this Court's intervention is required, not only to restore the

jury's proper place in resolving Fourth Amendment excessive-force cases, but also to overcome the persistent myths about police behavior that do not match actual police practice and therefore should not figure in the excessive-force inquiry.

ARGUMENT

I. It is important for the Court to take this case to restore the jury's proper role in deciding whether an officer's mistake of fact excuses the use of excessive force.

The central question in this case is whether a judge or a jury should bear responsibility for determining whether an officer should be excused for using excessive force in violation of the Fourth Amendment because of a mistake of fact. The court of appeals determined that this determination may be made only by courts, based on circuit precedent establishing that "[o]nce the court has assumed a particular set of [predicate] facts[,]" the issue of "whether [the officer's] actions rose to a level warranting [the] use of force is a question of law for the court, not a question of fact." App. 14a (quoting *Liggins* v. *Cohen*, 971 F.3d 798 (8th Cir. 2020)). But that decision cannot be squared either with this Court's decisions or the realities of excessive-force cases.

1. In our system of justice, juries, not judges, bear the ultimate responsibility for "the determination of historical facts," *Lockhart* v. *McCree*, 476 U.S. 162, 200 (1986): the "who did what, when or where, how or why" that must be resolved in every contested case—including in excessive-force cases. *U.S. Bank Nat'l Ass'n* v. *Village at Lakeridge, LLC,* 138 S. Ct. 960, 966 (2018). And even when the facts surrounding an officer's actions are not contested, the

jury bears ultimate responsibility for measuring those facts against the yardstick of Fourth Amendment reasonableness: The application of the "reasonable man standard" is within the jury's "unique competence." *TSC Indus., Inc.* v. *Northway, Inc.*, 426 U.S. 438, 450 n.12 (1976) (citing 10 C.A. Wright & A.R. Miller, *Federal Practice and Procedure* § 2729 (1973)).

2. The inquiry involved in determining whether an officer used excessive force is suffused with these sorts of factual issues. After all, resolving excessive-force cases requires determining the events that actually happened with a "'careful attention to the facts and circumstances' relating to the incident, as then known to the officer." *Barnes*, 605 U.S. at 80 (quoting *Graham*, 490 U.S. at 396). Those facts must then be sifted and compared to determine the relative weights of "both the individual and governmental interests at stake." *Barnes*, 605 U.S. at 80. And that inquiry requires examining the "severity of the crime" that prompted the subject's encounter with police, *Graham*, 490 U.S. at 396, along with the "actions the officer took during the stop, such as giving warnings or otherwise trying to control the encounter," *Barnes*, 605 U.S. at 80. "[T]he stopped person's conduct is [also] always relevant because it indicates the nature and level of the threat he poses, either to the officer or to others." *Ibid.* And the examination of the subject's behavior often comes with embedded facts of its own, including the determination of "how a reasonable officer would have perceived otherwise ambiguous conduct," and may encompass events that occurred long before the encounter between officer and subject began, including "the history of the interaction, as well as other past circumstances known to the officer." *Id.* at 80, 81-82. This is all a "factbound mess"—and it is a

mess that the jury is primarily responsible for cleaning up. *Id.* at 80.

The fact issues only multiply when officers justify their use of force based on a mistake of fact, because determining whether the officer's conduct is reasonable in such circumstances requires resolving all the same factual issues involved in any other excessive-force case—with additional layer of fact issues related to the mistake added in for good measure.

By contrast, nothing about an excessive-force case lies solely within the provinces of judges. There is no "easy-to-apply legal test" or "on-off switch" to apply in examining the reasonableness of an officer's actions in such cases—and therefore no pure matters of law falling exclusively within judges' competence as *legal* experts. *Barnes*, 350 U.S. at 80 (quoting *Scott*, 550 U.S. at 382–383). Instead, it is a "totality-of-the-circumstances" inquiry that "is not capable of precise definition or mechanical application," requiring "careful attention to the facts and circumstances of each particular case," *Graham*, 490 U.S. at 396. In this inquiry, the court's role is confined to that of gatekeeper, charged with determining only whether sufficient evidence of the officer's culpability exists to allow a jury to determine whether his actions were reasonable. In short, excessive-force cases are factual inquiries all the way down—and mistake-of-fact cases doubly so. That brings them within the province of the jury to decide.

2. Indeed, in many ways juries are better situated than courts to resolve the contested fact issues that go into the excessive-force inquiry. Courts may have more fixed views on policing and criminal suspects than the general public—given courts' frequent encounters with members of both groups. That is likely to make judges more biased

than the general public in weighing the balance of individual and governmental interests at the core of an excessive-force case, which may make them more prone to deeming an issue beyond reasonable dispute that is actually highly debatable. For this reason alone, the bias-mitigating effects of a multi-member jury pulled from a cross-section of the community should actually be preferred to the judgment of a single judge.

Furthermore, the excessive-force inquiry requires deep "attention to context," *Barnes*, 350 U.S. at 74, and juries are often better situated to understand that larger context, especially when they enjoy the benefit of testimony from policing experts like amicus to aid the inquiry. Experts like amicus study the ways in which officers actually operate on the ground, and the training, standards, and norms that govern their behavior. Those experts may have a very different understanding about whether an officer's use of force is reasonable than the average observer. But such expert opinion testimony is admissible only to aid "the trier of *fact*" in "determining a *fact* in issue." Fed. R. Evid. 701, 704, Adv. Comm. Note (emphasis added). Such testimony is not available to aid judges in conducting pure *legal* analysis. And even the judge who might be willing to consider the opinions of experts in determining the reasonableness of an officer's use of force may be less inclined to do so when the issue is deemed to be a "legal" determination within the judge's expertise rather than a factual issue that can be informed by the opinions of police officers and those who train and supervise them. For all these reasons, the jury box may provide a superior vantage point from which to assess the reasonableness of an officer's use of force than the more detached view from chambers.

3. The court of appeals offered no reason to believe otherwise. Instead, its decision to displace the jury as fact-finder in use-of-force cases based solely on this Court's decision in *Scott* v. *Harris*, 550 U.S. 372 (2007). But *Scott* announced no categorical rule declaring the reasonableness of an officer's conduct to be a purely legal issue in *any sort* of excessive-force case—much less in *every* excessive-force case concerning mistakes of fact. On the contrary, it was *Scott* that lamented the excessive-force inquiry to be a purely "*factbound* morass," not a *legal* one. 550 U.S. at 383 (emphasis added). *Scott* likewise did not announce any general rule that the jury should be displaced from its traditional role as fact-finder in measuring an officer's actions against the yardstick of reasonableness—even when the facts underlying that inquiry are uncontested or "assumed." App. 14a (quoting *Liggins*, 971 F.3d at 798).

Instead, *Scott* simply held that reasonableness could be decided as a matter of law based on the particular circumstances of that case—circumstances resulting entirely from the fact that the suspect's entire encounter with police had been "captur[ed]" on "videotape." 550 U.S. at 378. Because of that factual "wrinkle," it did not matter that the "opposing parties" were "tell[ing] two different stories"—with the officer claiming force was necessary because the suspect was driving dangerously and erratically, and the suspect claiming he was driving safely and carefully. *Id.* at 378-81. The Court determined that the suspect's story was "clearly contradict[ed]" by the video, revealing unequivocally that the suspect was not driving carefully before the officer employed force to remove his car from the road, but was instead engaged in a "Hollywood-style" chase of the "most frightening sort, placing police officers and innocent bystanders alike at great risk

of serious injury." *Id.* at 378, 380. That clear conflict between the suspect's view of events and the actual events meant "no reasonable jury could believe" the suspect's position, thereby undercutting the only evidence the suspect offered to suggest the officer was acting unreasonably. *Id.* at 380-381. Accordingly, despite what the court of appeals believed, *Scott* merely applied the traditional summary judgment burden-shifting framework to a particular set of evidentiary facts. Nothing more.

4. The consequences of this misinterpretation of *Scott* likely proved outcome-determinative in this case because, by treating the reasonableness inquiry as an issue of law and resolving the issue in Respondents' favor, both the court of appeals and the district court foreclosed the jury from making a determination that likely would have come out the other way.

That likelihood is evinced by the divergence between the versions of events adopted by the two courts—and that offered by Officer Tanner. Both courts accepted that Officer Tanner was mistaken about many of the basic facts relating to his encounter with Petitioner Maurice Green. Both recognized that Tanner fired at Green only because he mistook Green for one of a group of men who had led Tanner and his fellow officers on a high-speed car chase, when Green was actually an off-duty officer who bore no relationship to the fleeing suspects. App. 4a-6a, 14a. Both courts nonetheless deemed it reasonable as a matter of law for Officer Tanner to perceive an imminent threat of harm from Green. But here the accounts of the two courts diverge wildly from each other—and from the version of events offered by Officer Tanner himself—on the reasons *why* Tanner's conduct should be deemed reasonable.

Officer Turner himself claimed that even though Green was walking away from Turner in the moments leading up to his fateful decision to shoot Green, Turner believed Green "made eye contact" with him, raised his gun, pointing the barrel toward Tanner and his partner Matt Burle, and ignored multiple commands to drop his weapon. JA97, JA107-109, JA117. That account was contradicted directly by Green himself as well as Turner's fellow officers. *See* Pet. 6-7 (citing JA589, JA601, JA2261-62; JA2456).

The district court nonetheless accepted Turner's version of events, concluding that Turner must have believed Green was pointing a gun at him because he had mistaken Green's "badge for a gun," even though Tanner testified he could not see the hand in which Green was carrying the gun. Pet. 8 (citing App. 39a); App. 21a-22a; JA115. By contrast, the court of appeals *rejected* Tanner's testimony that Green had turned and pointed a gun at him, concluding instead that Green was actually walking away from Turner with his gun pointed downward at the moment Turner shot him, but could have still presented a danger to other officers on the scene in Green's direction of travel—even though Turner himself testified he did not know there were officers in that direction. App. 14a. Pet. 9; JA115. App. 6a, 15a-16a.

Both the court of appeals and the district court therefore deemed the underlying facts to be beyond dispute, despite adopting incompatible versions of the facts and decided Tanner's response to the threat he perceived from Green was reasonable as a matter of law despite disagreeing on the basic nature of that threat. Perhaps most damning of all, both courts could reach the decision that Turner's actions were reasonable only by *disregarding* the version of events offered by Tanner himself. These

multiple levels of conflict suggest that both courts resolved the case out of a concern for protecting police officers from liability rather than a dispassionate view of the facts—because they could not concoct a view encompassing all of the facts that would actually exonerate Officer Turner. A jury that actually looked at all the evidence therefore would have been practically required to decide that his conduct was unreasonable.

Accordingly, this case is a perfect example of the hazards that result when courts resolve the highly contestable factual questions involved in determining whether an officer decided to use excessive force based on a mistake of fact that juries should decide by treating them as issues of law that only judges can decide. For that reason, it is critical for the Court to take this case to ensure that the jury's fact-finding role in use-of-force cases is properly restored.

II. It is also important for the Court to take this case to overturn certain pervasive myths in excessive-force cases that run counter to police-officer training and experience.

This case also reveals a deeper problem in Fourth Amendment jurisprudence than mere confusion among courts over whether judges or juries should resolve contested facts about whether an officer's mistake of fact is reasonable. This case also demonstrates a pernicious trend developing among the lower courts: the tendency to deem officers' use of force reasonable as a matter of law whenever faced by a subject who is armed with a gun. And this pernicious trend must be halted in its tracks.

A. A suspect's mere possession of an apparently loaded weapon does not automatically justify use of deadly force.

The court of appeals in this case recognized that the analysis in an excessive-force case requires evaluating the "totality of the circumstances," "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether the suspect is actively fleeing or resisting arrest." App. 11a (citing *Liggins*, 971 F.3d at 800). But the court nonetheless held that this inquiry can be satisfied, and an officer's decision to use even lethal force be deemed reasonable, based on a *single* circumstance: the existence of a subject "with an apparently loaded weapon." App. 12a.

Under the Eighth Circuit's dubious logic, it must be considered reasonable for officers to employ deadly force against any armed subject (or any subject who *appears* to be armed) even "'before [the] subject actually points a weapon at the officer or others.'" App.12a (quoting *Liggins*, 971 F.3d at 801). The court deems this rule necessary because the subject "'could raise the gun and fire at the officers in a split second.'" App. 14a (quoting *Rogers* v. *King*, 885 F.3d 1118, 1122 (8th Cir. 2018). But this rule runs directly counter to every lesson that police officers learn about the proper use of force.

1. Police officers are trained to employ a threat-assessment model requiring them to distinguish a mere "*risk*" of harm from a true imminent "*threat*" of harm. Under this model, only true threats justify the use of force. And a

threat exists only when the suspect has the "ability," "opportunity," and "intention" to cause harm.[3] Ability" refers to the subject's capacity to cause the identified harm through some explicitly identified means. "Opportunity" refers to the subject's proximity to the potential target in light of the specific harm at issue. "Intention" refers to the subject's apparent desire to cause the identified harm. All three conditions must be present for a threat to exist: The mere fact "that someone is capable of causing harm, has the opportunity to cause harm, *or* has the intent to cause harm does not justify a use of force." Seth W. Stoughton, Jeffrey J. Noble, and Geoffrey P. Alpert, *Evaluating Police Uses of Force* 35 (2020) (*Evaluating Force*) (emphasis added). And when only a mere risk of harm exists, it is "inappropriate to use force at that point." *Ibid.*

For example, an individual with a tire iron who is physically close to an officer and who is preparing to swing it at the officer has the ability, opportunity, and apparent intention to injure or kill the officer, while an individual who is using a tire iron to change a tire while speaking with an officer standing nearby might have the physical ability and opportunity to do so, but lack the apparent intention.

Officers are also trained to understand that distinguishing a threat of harm from a mere risk of harm is no box-checking enterprise. *Evaluating Force*, *supra* at 51. While "a subject who is kicking and punching an officer" might meet the technical definition of a threat, a "severe

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[3] Int'l Ass'n of Chiefs of Police, *National Consensus Policy & Discussion Paper on Use of Force* 11 (2017); *see also* U.S. Dept. of Justice, Office of Justice Services, Bureau of Indian Affairs, *Law Enforcement Handbook* (3d ed. 2015).

use of force" is less likely to be justified against "an unarmed and physically diminutive ten-year-old" who is punching and kicking than a "physically larger subject who was doing the same thing." *Ibid.* Accordingly, "it is not the suspect's behavior itself" that dictates whether use of force is appropriate, but the nature and extent of the threat of harm that this behavior represents. *Ibid.*

Of course, a threat of harm cannot exist merely because the officer recognizes that a risk of harm might *develop* into a true threat: "For a use of force to be *** permissible, an officer must have an objectively reasonable belief that something *is happening*, not just that something *might possibly* happen." *Evaluating Force*, *supra* at 37.

This threat-assessment model is no mere abstract theory that officers learn at the academy but forget upon graduating. Empirical evidence suggests that officers almost universally employ this model in deciding whether to use force against subjects in the field.[4]

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[4] *See* Kyle McLean *et al.*, *Re-examining the Use of Force Continuum: Why Resistance is Not the Only Driver of Use of Force Decisions*, 26 Police Quarterly 85 (2023) (reporting on an experimental study based on body-worn camera footage from suspect encounters by 360 officers, which found that officers' cognitive processes followed the threat-assessment model outlined above); Andrew T. Krajewski *et al.*, *Threat Dynamics and Police Use of Force*, 61 J. Research Crim. & Delinquency 1 (2023) (reporting that a large-scale study of 11,597 use-of-force reports drawn from 87 different agencies between 2014 and 2018 found that each of the three conditions in the threat-assessment model—ability, opportunity, and intention—were related in a statistically significant way to officers' decisions about whether to employ force and the amount force employed).

2. Because this threat-assessment model describes how officers actually decide whether to employ force in the field, it must inform any evaluation of how "the reasonable officer on the scene" would behave. *Graham*, 490 U.S. at 396. But any rule providing that a subject's mere possession of a weapon automatically justifies the use of deadly force against the suspect is completely incompatible with the analysis required under this threat-assessment model. At best, the fact that a subject is carrying a loaded weapon suggests only that the subject possesses the *ability* to cause harm to the officer or others. It cannot demonstrate that the subject possesses either the proximity or intent necessary to convert a mere risk of harm posed by the subject into a true threat of harm justifying the use of force.

Moreover, not all firearms are created equal. And the manner in which the subject carries a firearm also bears on severity and extent of the threat that the subject poses to the officer. A weapon carried in a holster or, as in this case, at the subject's side, suggests only that there is some (often attenuated) potential for danger—whereas a gun pointed at another person is compelling evidence of an imminent threat. So a subject's mere possession of a loaded firearm suggests nothing more than that the subject might be able to cause harm—not that the threat of harm is *actually occuring*. Accordingly, courts should not be permitted to employ the lazy heuristic that the mere presence of a firearm justifies deadly force. And the Court should take this case to ensure that this policing myth is properly discarded.

B. Officers rarely face—and are taught to avoid—a need for "split-second" decision-making.

While the rule employed in the lower courts equating every armed suspect with an imminent threat is itself a serious problem, the reasoning behind the rule is also deeply problematic and in need of revision. One of the reasons courts reflexively defer to officers in excessive-force cases—and grant them the unfettered ability to "shoot first, ask questions later" when faced with an armed subject—is the assumption that officers constantly face "split-second" decisions requiring them to decide whether to use force in the heat of the moment, where any hesitation could mean death. *See* Seth W. Stoughton, *Policing Facts*, 88 Tulane L. Rev. 847, 864 (May 2014) (quoting *Graham*, 490 U.S. at 396-97). But criminologists have long understood that this account of policing is out of touch with its realities on the ground.

For one thing, as the Court recently confirmed in *Barnes*, use-of-force incidents rarely pop out of nowhere and usually do not turn on last-minute decisions in isolation. An officer's use of force instead results from an entire sequence of "events leading up to the climactic moment" that may trace back to the beginning of the officer-subject encounter—or even further. *Barnes*, 605 U.S. at 76. Officers therefore usually have advance warning that a risk of harm is arising from a suspect. Officers therefore can plan in advance during an encounter about the trigger points where violence might become necessary and can also cool the temperature of an encounter to ensure those trigger points never arise.

Officers are also trained to take steps to shape encounters with subjects so as to prevent any risk of a violent confrontation from arising in the first place. Officers who

handle pedestrian stops learn to "select the location and environment" for a stop "before commanding a civilian to stop"—thus allowing the officer to shape the encounter through "preparation and tactical approach." *Policing Facts*, *supra* at 866.

Furthermore, true split-second decisions are rare in policing. Most stops are uneventful—and require no use of force by the officer. "Most civilians * * * do not resist at all." *Policing Facts*, *supra* at 866. When subjects do resist they usually put up only "[p]assive resistance"—nonviolent responses consisting of nothing more than "tensing up, pulling away, or fleeing." *Id.* at 867. In turn, most officers' responses to such passive resistance from subjects are nonphysical as well, limited to "shouting, cursing, and threats of force." *Ibid.* These are not "split-second" encounters: "When someone goes limp, pulls away, or turns to run, officers have time to think through their response." *Id.* at 868.

All these factors make instances requiring the use of more significant force extremely rare. In 2008, for example, officers found it necessary to use or threaten a use of force in less than 2% of encounters—out of 40 million interactions with civilians. *See* Christine Eith & Matthew R. Durose, Bureau of Justice Statistics, *Contacts Between Police and the Public* 11 (Oct. 2011) (*Contacts*).

"When officers do use physical force, they use relatively little." *Policing Facts*, *supra* at 867. For example, one study found that police use of force "consist[s] almost exclusively of grabbing and restraining." *Contacts*, *supra* at 11-13. "Injuries are relatively uncommon" and "typically minor." *Ibid.* And the force used by officers is rarely employed "defensively," to fend off an attack from a dangerous suspect. *Policing Facts*, *supra* at 868. Officers

more often use force "aggressively," to subdue and establish control over a resisting suspect. *Ibid.* For all these reasons, officers rarely face any need for "split-second" decision-making. And they have tools to handle the truly split-second decisions they do face that do not require resorting to deadly force.

None of this suggests officers never face true life-or-death decisions requiring immediate action—or that they should not enjoy substantial deference when they do. But it does suggest that officer-subject encounters exist on a continuum from the direly emergent to the casually mundane. And most encounters are clustered around the latter end of that spectrum. For that reason, an officer should be forced to prove that they faced a split-second decision before obtaining deference in their decision-making. And the fact that officers face true split-second decisions in *some* cases cannot relieve them of the obligation to prove they face an imminent threat of harm in *every* case before a use of force is justified—even from a suspect armed with a gun.

To allow otherwise would undermine every lesson that officers are taught in modern police training and will tilt officers' risk-assessment calculus heavily in favor of employing deadly force even when they are not faced with true risks of significant harm. That in turn will increase the likelihood that subjects will be harmed—sometimes fatally—by uses of force that could easily have been avoided. Life-altering consequences for the subject should not turn on mere heuristic assumptions. Accordingly, it is now time to put the "split-second" fallacy to rest.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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