No. 25-362

IN THE

Supreme Court of the United States

JAMES GRIFFITHS, INDIVIDUALLY AND AS EMPLOYEE OF THE CUYAHOGA METROPOLITAN HOUSING AUTHORITY,

Petitioner,

v.

RITA KEITH, INDIVIDUALLY AND AS THE NATURAL PARENT OF ARTHUR KEITH AND AS ADMINISTRATOR OF THE ESTATE OF ARTHUR KEITH, DECEASED,

Respondent.

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

BRIEF OF THE NATIONAL FRATERNAL ORDER OF POLICE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER JAMES GRIFFITHS

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INTEREST OF AMICUS CURIAE[1]

The National Fraternal Order of Police ("National FOP") represents more than 378,000 law enforcement officers across the country. The National FOP's mission is to advance the interests of law enforcement professionals and to ensure that officers are provided the tools, training, and legal protections necessary to safely and effectively perform their duties in service to the public.

The National FOP has a compelling interest in this case because the Court's decision will directly affect the ability of officers nationwide to protect themselves and the communities they serve. The Sixth Circuit's ruling, if allowed to stand, imposes an unrealistic and dangerous legal standard on officers who face armed suspects—requiring them to wait until a gun is pointed or fired before responding with defensive force. Such a rule ignores fundamental human performance limits, contradicts established Fourth Amendment precedent, and would needlessly endanger officers and civilians alike.

The National FOP also has a strong institutional interest in preserving the doctrine of qualified immunity. Qualified immunity is not a license for misconduct; it is a

1. Pursuant to Rule 37.6, counsel for the National Fraternal Order of Police authored this brief in whole. No counsel for any party authored this brief in whole or in part. No person or entity, other than the amicus, its members, or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, counsel of record for all of the parties received notice of this counsel's intention to file an amicus brief at least ten days prior to the deadline to file the brief.

vital safeguard that allows officers to make reasonable, split-second decisions in dangerous and uncertain conditions without the fear of personal civil liability. The doctrine recognizes that officers must act on rapidly unfolding situations and incomplete information, and the law cannot expect them to anticipate every future judicial interpretation.

Equally important, the "clearly established law" requirement ensures that officers are judged based on the state of the law as it actually existed at the time of the incident—not on hindsight or abstract generalizations. By requiring plaintiffs to identify precedent with materially similar facts, this Court's jurisprudence gives officers fair notice of what conduct is prohibited and prevents liability from turning on novel or unforeseen applications of the law. The Sixth Circuit's ruling exemplifies exactly what this Court has repeatedly warned lower courts not to do—define the law at too high a level of generality, effectively imposing liability without the requisite clearly established precedent tailored to the facts the officers faced.

Officers can act decisively and within the bounds of the law when they understand what conduct is clearly prohibited, while courts maintain a principled framework for distinguishing reasonable, good-faith judgment from unconstitutional conduct. The National FOP submits this brief to emphasize that the Sixth Circuit's approach—departing from this Court's precedent and the practical realities of police work—threatens both officer and public safety by creating hesitation in moments that demand swift and lawful action.

SUMMARY OF ARGUMENT

The Sixth Circuit's decision imposes an unrealistic and dangerous rule that disregards the realities of law enforcement and human performance. By suggesting that an officer must wait until a suspect points a firearm directly at them before using defensive force, the court effectively adopted a "Superhuman Cop" standard—one that no officer, regardless of training or experience, can meet. Police officers are human beings subject to the same physiological and cognitive limits as everyone else. Empirical research and decades of training confirm that the time it takes to perceive a threat, decide on a response, and act is measured in seconds, while a suspect can fire multiple rounds in a fraction of that time. Forcing an officer to delay defensive action until a gun is aimed at them transforms the constitutional standard into a death sentence.

Real-world evidence underscores the danger. Across the country, ambushes and firearm assaults against law enforcement have risen sharply, with record numbers of officers attacked or killed in recent years. These threats often arise in the blink of an eye, during routine calls or seemingly ordinary encounters where a suspect's intentions remain unclear until the moment violence erupts. No legitimate training standard instructs officers to wait until a weapon is pointed directly at them before acting to protect themselves. The Constitution does not require officers to stake their lives on a suspect's next move.

The Sixth Circuit's error extends beyond its misunderstanding of police realities—it also misapplies

this Court's qualified-immunity jurisprudence. Qualified immunity protects officers from liability when their conduct does not violate clearly established law that a reasonable officer would have known. This Court has repeatedly held that the "clearly established" inquiry must be particularized to the facts the officer faced, not defined in broad generalities. Yet the panel relied on abstract principles of excessive-force law rather than specific precedent governing the unique and dangerous circumstances of this case.

No Supreme Court or Sixth Circuit precedent clearly established that an officer confronting a fleeing suspect who refuses to drop a firearm, but had not yet pointed it, may not use deadly force. To the contrary, Sixth Circuit precedent, including *Thomas v. City of Columbus,* confirms that officers may reasonably perceive a grave threat even before a weapon is raised. The Sixth Circuit's rule therefore conflicts with both controlling precedent and practical realities.

Qualified immunity serves an essential function in policing: it allows officers to make split-second decisions in uncertain, life-threatening situations without fear that every reasonable but mistaken judgment will be second-guessed through years of litigation. The "clearly established law" requirement ensures that officers have fair notice and predictable legal standards to act decisively in defense of themselves and the public. By abandoning that standard, the decision below jeopardizes officers' safety and the safety of every community that relies on them.

ARGUMENT

I. Requiring officers to wait until an armed suspect points a gun at them ignores fundamental human performance limitations and places officers at a fatal disadvantage.

A. The real-world dangers officers face when confronting armed suspects.

According to the FBI's Uniform Crime Reporting Program, law enforcement officers continue to face significant and increasing threats of violence while performing their duties. FBI, *FBI Releases Officers Killed and Assaulted in the Line of Duty, 2023 Special Report and Law Enforcement Employee Counts* (May 14, 2024), https://www.fbi.gov/news/press-releases/fbi-releases-officers-killed-and-assaulted-in-the-line-of-duty-2023-special-report-and-law-enforcement-employee-counts. From 2021 to 2023, 194 officers were killed in the line of duty as a result of criminal acts – the highest three-year total in two decades. *Id.* Although the number of officers killed declined slightly each year since 2021, the rate of assaults on officers has risen for three consecutive years, reaching a ten-year high in 2023 with 79,091 officers assaulted nationwide. *Id.*

Of particular concern, 466 officers were assaulted and injured by firearms in 2023, marking the highest number in the past decade. *Id.* These statistics demonstrate that officers regularly encounter situations involving armed suspects and serious threats to their safety, even before a weapon is directly aimed or fired. The data also underscores that police work increasingly exposes officers

to unpredictable and escalating violence, particularly when responding to routine calls such as drug violations. Taken together, the FBI's findings illustrate that the danger to officers frequently develops in an instant and forcing officers to wait until a firearm is aimed or discharged could unreasonably endanger their lives.

Across the nation, ambush attacks on police have surged, turning even routine duties into potential life-or-death situations. In recent months alone, officers have been targeted in a series of deadly assaults. Just weeks ago, five officers in York County, Pennsylvania, were shot—three fatally—while serving a warrant at a farm. Katelyn Smith, *Five Officers Shot, Three Killed, in York County* (Sep. 23, 2025), WGAL News 8, https://www.wgal.com/article/spring-grove-pa-york-north-codorus-police-officers-shot/66542569. In July, three officers in Lorain, Ohio, were ambushed while eating lunch in their cruiser; one was killed, and two others were wounded. *Authorities Release Details On Ambush That Claimed Life Of Lorain Officer*, Newsradio WTAM 1100 (Sept. 19, 2025), https://wtam.iheart.com/content/2025-09-19-authorities-release-details-on-ambush-that-claimed-life-of-lorain-officer/. The assailant was heavily armed and prepared for sustained combat, carrying a cache of weapons, ammunition, and explosives in his vehicle. And in June, a Santa Monica, California, police officer was ambushed and injured in a targeted attack. Meredith Deliso & Alex Stone, *Shooting Suspect ID'd in Santa Monica Police Officer 'Ambush': Officials*, ABC News (June 26, 2025), https://abcnews.go.com/US/santa-monica-shooting-cop-injured-manhunt-suspect/story?id=123209311.

These are not isolated tragedies—they represent a deeply troubling national pattern. Ambush-style

assaults against law enforcement have risen sharply in recent years. Since 2018, shootings of police officers have increased by 60 percent, and in just the first seven months of 2025, at least 56 officers were shot in 45 ambush-style attacks. Laura Geller, Anna Schecter, Graham Kates & Cara Tabachnick, *Police Officers Across U.S. Face Crisis as Ambush Shootings Rise: "It Just Happened Out of Nowhere"*, CBS News (Aug. 22, 2025), https://www.cbsnews.com/news/police-officers-across-crisis-ambush-shootings/.

National law enforcement organizations have sounded the alarm. Earlier this year, this organization urged Congress to pass the "Protect and Serve Act" to strengthen federal protections for officers facing violent assaults in the line of duty. H.R. 743, *Protect and Serve Act of 2023*, 118th Cong. (2023); *Protect and Serve Act Introduced in House*, Fraternal Order of Police (Feb. 26, 2025), https://fop.net/2025/02/protect-and-serve-act-introduced-in-house-2/.

In this environment, the rule imposed by the Sixth Circuit – requiring officers to withhold defensive action until a gun is actually pointed at them – would endanger lives by forcing officers to wait until the moment when it is too late to react. The Constitution does not demand that officers gamble their lives on a fleeing suspect's next move.

B. The Sixth Circuit's rule creates an impossible "Superhuman Cop" standard that no officer can meet.

The Sixth Circuit's decision effectively requires that a police officer must wait until an armed and dangerous

suspect turns and points his gun directly at him before using deadly force. This rule rests on a dangerous fiction: that highly trained police officers possess superhuman abilities to perceive threats instantaneously, make split-second decisions with perfect accuracy, and respond faster than an armed suspect can pull a trigger. The reality of human performance, however, demonstrates that this standard is not merely unrealistic—it is physiologically impossible.

The myth that police training somehow "trains the humanity out" of officers has been thoroughly debunked by peer-reviewed research in human performance and decision-making. Von Kliem, *Training the Humanity Out of Cops (and Other Myths)*, Force Science Inst. (July 21, 2023), https://forcescience.com/2023/07/training-the-humanity-out-of-cops-and-other-myths/. As Force Science Institute research demonstrates, even under ideal laboratory conditions with officers intently focused on a single threat, average police response times measure 0.83 seconds from threat recognition to firing their weapon. *Id.* During that time, a suspect who initiates violence can pull the trigger three to four times. *Id.* "That's assuming the incoming rounds didn't extend the officer's response time…or prevent it altogether." *Id.*

Real-world encounters further widen that gap. Unlike laboratory settings where officers stand perfectly still and focus exclusively on a potential threat, officers in the field must simultaneously scan for available cover, improve their position, watch for crossfire, consider what is behind them, attempt de-escalation, communicate with responding units, and coordinate with other officers on the scene. *Id.* Environmental factors such as distance, lighting conditions, and physical obstructions compound

these challenges by increasing the time required for an officer to perceive and respond to a threat. *Id.* Indeed, real-world police shootings and reality-based training exercises have documented response times measuring between two to three seconds, while suspects can shoot in 0.25 seconds or less. *Id.*

The Sixth Circuit's decision in this case does not account for the stages of human mental processing that must occur before a physical response. Human factors expert, Dr. Marc Green, has authored over 100 publications on vision, perception, reaction time, and human cognition. Dr. Green applies his research to police performance, including deadly force decision-making. He identifies four substages of mental processing that precede any physical response: 1. The time it takes to detect the sensory input ("sensation"); 2. The time needed to recognize the meaning of the sensation ("perception/recognition"); 3. The time needed to interpret the scene, extract its meaning, and consider its future effects ("situational awareness"); 4. The time necessary to decide which, if any, response to make and to mentally program the movement ("response selection and programming"). Kliem, *supra* (citing Dr. Green's research). Only after completing these mental processes can an officer begin the physical movements necessary to respond—drawing their weapon (while defeating holster retention features), disengaging any safety mechanisms, aiming, and pressing the trigger. *Id.* Each of these physical actions requires additional time, and the trigger must be reset between shots, further extending response time. *Id.*

The type of decision-making required in police encounters directly impacts response time. In situations

involving "complex choice reaction time"—where multiple possible stimuli each require different responses—reaction times increase as officers must interpret varied conduct and select the appropriate response. *Id.* This is "frequently the case in force encounters." *Id.* An armed suspect who has refused commands to drop his weapon and is moving unpredictably presents exactly this type of complex, ambiguous threat that extends decision-making time.

Contrary to the assumption underlying the Sixth Circuit's decision, no amount of police training can eliminate the fundamental constraints of human performance. Experience and repetition can sharpen pattern recognition, but they cannot overcome the physiological time required for perception, decisions, and actions.

C. The realities of law enforcement training, practice, and armed confrontations.

No credible law enforcement training program in the United States teaches officers that they must wait until a gun is pointed at them before using defensive force. Such training would be tantamount to instructing officers in how to lose deadly force encounters. Policing practices recognize that hesitation in the face of a lethal threat can be fatal – not only to officers, but to bystanders and other responding personnel.

The OODA Loop—standing for Observe, Orient, Decide, and Act—is widely recognized in law enforcement as the framework for understanding response time in force encounters. Kliem, *supra*. This framework acknowledges

that officers must cycle through multiple cognitive stages before they can physically respond to a threat. *Id.* Crucially, suspects who initiate violence are already acting while officers are still observing and orienting. Requiring officers to wait until a weapon is pointed at them adds an additional observation-orientation cycle while the suspect completes their action, exponentially increasing the danger to officers.

As explained, Dr. Green's research demonstrates that reaction time can double depending on whether a stimulus is expected or unexpected. *Id.* Thus, an officer who follows the Sixth Circuit's rule and waits for an armed suspect to point his weapon is, by definition, waiting for an unexpected action (since the officer cannot know when the suspect will turn and point). This uncertainty further extends response time beyond the already significant action-response gap.

Even experts who frequently testify *against* police officers in excessive force cases "have been forced to admit that officers are unlikely to make slow, analytical decisions in situations involving physical force" and that "during potentially lethal encounters and other high-pressure situations, it is reasonable to expect that officers may instead rely on intuition and experience." *Id.* These same experts have also "been forced to admit" that "police, like all humans, are constrained and influenced by the psychological, physiological, and environmental limits affecting perception, decision-making, and performance." *Id.* As the Force Science Institute concludes: "for those imagining that police receive training that eliminates the action/response gap, none have come forward to explain exactly what that training might be or where the officers

have been receiving it." *Id.* That is because no such training exists, nor could it.

D. The facts of this case illustrate precisely why the Sixth Circuit's rule is unworkable and dangerous.

This case illustrates the potential fatal consequences of the Sixth Circuit's rule. Officer Griffiths encountered Keith in a vehicle with tinted windows, suspected of involvement in a shooting, and located in a densely populated residential neighborhood. From the outset, the circumstances signaled that this could be a high-risk encounter. The danger became certain when Keith was seen holding a firearm.

Despite repeated commands to drop the weapon, Keith refused to comply. He exited the vehicle with the gun still in his hand and began moving away from Officer Griffiths. At that moment, Officer Griffiths faced precisely the kind of "complex choice reaction time" scenario that human performance studies show produces the slowest response times. Keith's possible actions were numerous and unpredictable: he could have dropped the weapon, continued fleeing, turned and fired at Officer Griffiths, turned and fired at bystanders, or sought cover to engage from a position of advantage.

Under the Sixth Circuit's rule, Officer Griffiths was expected to wait through this period of dangerous ambiguity until Keith actually turned and pointed the weapon—forcing the officer into a situation where human physiological limits made it impossible to react before Keith could fire multiple shots. That standard is not only unrealistic – it is deadly.

This Court has never required officers to stand defenseless until a suspect takes aim. Nor does the Fourth Amendment demand officers expose themselves to such lethal risk. Accordingly, the Sixth Circuit's decision conflicts both with established precedent and with the well-documented realities of human performance under stress.

II. The "clearly established law standard" and qualified immunity.

A. The Sixth Circuit's qualified immunity analysis conflicts with controlling Supreme Court precedent.

The Sixth Circuit's error can be distilled to a single line: "Ultimately, whether deadly force was justified depends on whether Keith turned and pointed a gun at Griffiths." *Keith v. Griffiths*, 2025 U.S. App. LEXIS 14025, *13 (6th Cir. June 6, 2025). That is not, and has never been, the governing standard supplied by this Court, the Sixth Circuit, or any other circuit. Nor is it clearly established law that any reasonable officer would know.

This Court has repeatedly cautioned lower courts against defining "clearly established" rights at a "high level of generality." *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018). In *Wesby*, partygoers sued police officers for false arrest and unlawful entry after officers responded to reports of illegal activity in a vacant house. Even assuming the officers lacked actual probable cause, this Court held they were entitled to qualified immunity because "given the circumstances with which [they] were confronted, they reasonably but mistakenly conclude[d]

that probable cause [wa]s present." *Id.* at 591 (internal quotation marks omitted). The Court reaffirmed that:

> To be clearly established, a legal principle must have a sufficiently clear foundation in then-existing precedent. The rule must be settled law, meaning it is dictated by controlling authority or a robust consensus of persuasive cases. It is not enough that the rule is suggested by precedent. The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.

Id. at 589–90.

This Court reiterated this principle in *City of Escondido v. Emmons*, 139 S. Ct. 500 (2019) (per curiam), reversing the Ninth Circuit for defining the right at issue too broadly. The Ninth Circuit had stated only that "the right to be free of excessive force was clearly established." The Court rejected that formulation as "far too general," explaining that the correct inquiry was whether clearly established law prohibited the officers' actions "in these circumstances." *Id.* at 503–04 (emphasis added).

Similarly, in *City of Tahlequah v. Bond*, 595 U.S. 9 (2021), this Court reversed the denial of qualified immunity to officers who shot a suspect advancing toward them with a raised hammer. The Court emphasized that none of the cases relied upon by the lower court "come[] close to establishing that the officers' conduct was unlawful." *Id.* (slip op. at 6). Together, these cases reaffirm that clearly established law must be "particularized" to the facts the officer faced.

The Sixth Circuit ignored that command. Here, the panel's analysis collapsed the Supreme Court's "clearly established" requirement into a general statement of the Fourth Amendment. The panel acknowledged that the Amendment protects against excessive force, citing a single case from 1991, describing the general right "not to be shot unless [one] poses a threat to the officers or others." *Keith*, 2025 U.S. App. LEXIS 14025 at *15. But that formulation is precisely the kind of overgeneralization this Court has rejected. *See White v. Pauly*, 580 U.S. 73 (2017) (per curiam); *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021).

Under this Court's precedents, a plaintiff must identify prior authority placing the *specific conduct* at issue beyond debate—precedent involving "materially similar facts" such that every reasonable officer would know the conduct was unlawful. *White*, 580 U.S. at 79. Here, the Sixth Circuit failed to cite to any existing precedent involving "materially similar facts" to the facts of *this* case. Rather, it simply concluded that "a reasonable juror could find that Griffiths violated Keith's constitutional rights," then cited only general circuit precedent holding that deadly force is unconstitutional when no immediate threat exists *Keith*, 2025 U.S. App. LEXIS 14025 at *15. It identified no Supreme Court or Sixth Circuit decision where an officer, facing a fleeing suspect who refused to drop a firearm but had not yet aimed it, was held to have violated the Fourth Amendment. That omission is dispositive. The clearly established inquiry is not whether a general right existed, but whether that right was *clearly defined* in prior cases under *substantially similar circumstances. See White*, 580 U.S. at 79; *Rivas-Villegas*, 595 U.S. at 5.

Indeed, the Sixth Circuit's own precedent actually demonstrates that Officer Griffiths' conduct was objectively reasonable. In *Thomas v. City of Columbus*, 854 F.3d 361 (6th Cir. 2017), the court granted qualified immunity to officers who shot an armed suspect even though he never raised his weapon. That case involved a 911 call after two men broke into a Columbus, Ohio apartment. Responding to the "priority one" burglary-in-progress call, Officer William Kaufman arrived first, aware that multiple suspects were inside and that sounds of a violent struggle could be heard. As Kaufman approached the breezeway to the apartment, two men ran toward him—one holding a gun. Believing the man to be an armed suspect, Kaufman fired twice from close range, fatally striking him. The individual was later identified as the homeowner and 911-caller, who had disarmed one of the intruders with an unloaded weapon before fleeing his apartment. The court reasoned: "Given these facts, a reasonable officer would perceive a significant threat to his life in that moment. Thus, Officer Kaufman's decision to fire his gun—even if [the suspect] never raised his—was objectively reasonable." *Id.* at 366. The court stated, "At this range, a suspect could raise and fire a gun with little or no time for an officer to react." *Id.*

That reasoning applies squarely here. Officer Griffiths faced a noncompliant, armed suspect in a residential area. Keith's refusal to disarm and his sudden and unpredictable movements created an imminent risk to the lives of Officer Griffiths and the other responding officers. Thus, *Thomas* confirms that Griffiths' split-second decision did not violate any "clearly established" law.

The Sixth Circuit's contrary conclusion rests on a misapplication of this Court's qualified immunity

framework. Because no controlling or closely analogous precedent put Officer Griffiths on notice that his conduct violated the Fourth Amendment, qualified immunity applies as a matter of law. The denial of qualified immunity should therefore be summarily reversed.

B. Qualified immunity and law enforcement.

Qualified immunity is often misunderstood. It does not protect officers who knowingly violate the law, nor does it shield them from criminal prosecution, internal investigations, or employer discipline. It does not apply to ministerial or purely administrative acts, and it does not bar suits against a city, municipality, or other governmental entity. Rather, qualified immunity protects individual officers from personal civil liability only when their conduct does not violate clearly established rights of which a reasonable officer would have known. It is neither absolute nor unlimited, and it applies not only to police officers but also to other public officials, including teachers, firefighters, and administrators.

This Court has explained that qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). Officers need clarity about the rules they are expected to follow—a "fair and clear warning" of what the Constitution requires. *Id.* at 747 (Kennedy, J., concurring) (citing *United States v. Lanier*, 520 U.S. 259, 271 (1997)). In performing their duties, officers often face rapidly evolving, high-stakes situations in which they must make split-second decisions, including whether to use force to neutralize a perceived threat to themselves or the public.

Every encounter is unique, and officers cannot be expected to predict every possible permutation of a dangerous scenario.

The "clearly established law" requirement is critical to ensuring that qualified immunity functions as intended. It requires precedent that is sufficiently factually similar to give officers notice that their conduct is unlawful. This standard protects officers from being judged under abstract or generalized legal principles, allowing them to rely on training, experience, and reasonable judgment in real time. Without this protection, officers would face constant fear of civil liability for making reasonable decisions under uncertainty, chilling the very actions necessary to protect public safety. We do not want to create a perverse incentive for officers to hesitate or refrain from pursuing a fleeing suspect out of fear that a split-second decision might later expose them to personal liability. By demanding that prior law clearly govern the specific conduct at issue, the doctrine strikes a balance between holding officials accountable and ensuring they can perform their duties without undue hesitation or distraction, particularly in situations that may put lives—including their own—at risk.

CONCLUSION

The Constitution does not require police officers to wait until the moment a gun is pointed directly at them before acting to protect their lives or the lives of others. Such a rule ignores both the harsh realities of law enforcement and the immutable limits of human perception and reaction time. Officers must make split-second decisions in rapidly evolving, life-threatening circumstances—decisions that

cannot be measured against the standard of hindsight or perfection.

The Sixth Circuit's approach disregards this Court's precedents and imposes an unrealistic standard that endangers officers and the public alike. It also erodes the vital protections of qualified immunity, which ensures that officers are judged according to clearly established law particularized to the facts they confront—not abstract legal ideals divorced from reality.

This Court should grant Officer Griffiths' Petition, reverse the decision below, and reaffirm that the Fourth Amendment and qualified immunity doctrine give officers the latitude necessary to make reasonable judgments under uncertainty – consistent with both constitutional principles and the realities confronting officers in the field.

Respectfully submitted,

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