No. 25-637

IN THE
Supreme Court of the United States

MARK HANNEMAN, MINNEAPOLIS POLICE OFFICER, ET AL.,
Petitioners,

v.

KAREN WELLS, AS CO-TRUSTEE FOR THE NEXT OF KIN OF AMIR RAHKARE LOCKE, ET AL.,
Respondents.

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

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTEREST OF AMICUS CURIAE[1]

The International Municipal Lawyers Association ("IMLA") is the nation's largest organization devoted solely to local government law. Founded in 1935, IMLA is a nonpartisan, nonprofit, professional association of counsel encompassing more than 2,500 local government entities (including cities, counties, and subdivisions thereof), represented through their chief legal officers, state municipal leagues, and individual attorneys. IMLA advocates for the responsible development of municipal law and presents the collective viewpoint of local governments around the country in lawsuits that affect their interests.

IMLA's members have an overriding interest in reversing the improper denial of qualified immunity in this case. The holdings below contravene this Court's foundational precedents and wrongly subject a uniformed officer to the rigors and publicity of trial. The result is hugely detrimental to law enforcement and public safety, on many levels. It muddies what should be clear lines enabling officers to protect themselves in life-threatening scenarios. It exacerbates what are already significant post-traumatic challenges for police involved in such unfortunate events. It can cause a sense of betrayal among officers and departments who rightly believe they are following the law. And it can undermine public safety by creating

[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than amicus or their counsel has made a monetary contribution to the preparation or submission of this brief. Counsel for the parties received notice of intent to file this brief at least 10 days prior to filing.

perverse incentives for law enforcement to avoid circumstances where deadly force may be required.

SUMMARY OF ARGUMENT

Qualified immunity protects public servants from facing the burdens of litigation or facing trial, and this Court has repeatedly stressed the importance of resolving immunity questions at the earliest possible stage of litigation. *Saucier v. Katz*, 533 U.S. 194, 200 (2001). This Court also requires that clearly established law be determined with a level of specificity that approximates the actual circumstances of the case and has recently confirmed that when evaluating the use of deadly force, a court should "consider all the relevant circumstances [facing an officer], including facts and events leading up to the climactic moment" deadly force was used. *Barnes v. Felix*, 605 U.S. 73, 76 (2025).

Here, the Eighth Circuit denied qualified immunity without considering all the relevant circumstances and ignored the clearly established law that permitted an officer to use deadly force when faced with a suspect pointing an apparently loaded weapon in the direction of officers. Prior to the Eighth Circuit's decision, the Eighth Circuit and numerous other Circuit Courts have held officers may use deadly force when a suspect points a gun in their direction or another person's direction. Thus, whether existing caselaw made it clear Officer Hanneman's use of deadly force was unconstitutional is not beyond debate, and he was entitled to qualified immunity.

This is bigger than Officer Hanneman's underlying case, however. If the existing holding is left in place, it leaves uncertainty for officers facing an

immediate threat of deadly harm. Does an officer need to wait until a weapon is pointed at just the right height, and just the right trajectory, to protect themselves from being second-guessed in the peace of a judge's chambers? This Court's existing precedent says no. But Circuit Courts have reached inconsistent holdings, with a split leaving uncertainty and the need for this Court's correction.

Protecting public servants with qualified immunity is more than an affirmative defense or bar to lengthy litigation. It ensures public servants have notice and due process regarding potentially unconstitutional conduct. At a time when law enforcement morale and public support has waned, and it is more difficult to recruit and retain qualified individuals to swear an oath to put the interest of the public before their own interest, it is critical to ensure that only those who are plainly incompetent or knowingly cross bright lines are held liable, not those whose actions fall in gray areas. Accordingly, this Court should grant the petition for writ of certiorari.

ARGUMENT

I. Qualified immunity should be decided at the earliest stage.

"Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *White v. Pauly*, 580 U.S. 73, 78-79 (2017). The qualified-immunity doctrine shields all "government officials performing discretionary functions." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Courts must strike the right balance to assure an

official receives due process by making it "apparent" and beyond debate that what they are doing violates the Constitution. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). As this Court stated, "Officers sued in a civil action for damages under 42 U.S.C. § 1983 have the same right to fair notice as do defendants charged with the criminal offense defined in 18 U.S.C. § 242. Section 242 makes it a crime for a state official to act 'willfully' and under color of law to deprive a person of rights protected by the Constitution." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002). This fair notice is accomplished by ensuring clearly established law is analyzed and applied at a level of specificity that addresses the actual circumstances of the case. *Mullenix v. Luna*, 577 U.S. 7, 12 (2015); *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). The dispositive question whether the law is clearly established is "whether the violative nature of **particular** conduct is clearly established." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

Qualified immunity is essential to ensure public servants continue to step up to the tremendous ask that they put their physical safety on the line to ensure protection for all. The potential for protracted litigation and personal financial liability which results in the absence of qualified immunity makes the commitment to serve in law enforcement more difficult. Qualified immunity balances important interests – "the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Qualified immunity protects officials from the burden of litigation unless their actions in the line of duty violated "clearly established" law. *Brosseau*, 543 U.S. at 198.

Unless a government official "knowingly violate[s] the law," or acts in a way that is "plainly incompetent," [they are] entitled to qualified immunity and a suit against [them] should be promptly dismissed. *Stanton v. Sims*, 571 U.S. 3, 6 (2013).

"Qualified immunity is an entitlement not to stand trial or face the other burdens of litigation." *Saucier v. Katz*, 533 U.S. 194, 200 (2001) (citing *Mitchell v. Forsyth*, 472 U.S. 511 (1985)). The privilege is an immunity from suit rather than a mere defense to liability, and like absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial. *Id.* Thus, this Court has repeatedly stressed the importance of resolving immunity questions at the earliest possible stage of litigation. *Id.*

> When a plaintiff files a complaint against a public official alleging a claim that requires proof of wrongful motive, the trial court must exercise its discretion in a way that protects the substance of the qualified immunity defense. It must exercise its discretion so that officials are not subjected to unnecessary and burdensome discovery or trial proceedings . . . [I]f the defendant does plead the immunity defense, the district court should resolve that threshold question before permitting discovery.

Crawford-El v. Britton, 523 U.S. 574, 598-99 (1998); *see Siegert v. Gilley,* 500 U.S. 226, 231 (1991) ("Until this threshold immunity question is resolved, discovery should not be allowed.").

This Court has explained "qualified immunity is important to 'society as a whole,' [] because as 'an immunity from suit,' qualified immunity 'is effectively

lost if a case is erroneously permitted to go to trial.'" *White*, 580 U.S. at 79 (citation omitted) (reversing Tenth Circuit decision failing to identify case with similar circumstances to put officer on notice to clearly establish precedent). This Court has consistently held for purposes of qualified immunity, the clearly established law analyzed must be "particularized to the facts of the case . . . [otherwise] [p]laintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Id.* at 552 (citing *Anderson*, 483 U.S. at 639-40). In *Kisela v. Hughes*, this Court confirmed "Specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." 584 U.S. 100, 104 (2018) (quoting *Mullenix*, 577 U.S. at 12).

The Eighth Circuit conceded it has jurisdiction to determine purely legal issues such as whether a violation of clearly-established law occurred, based on facts alleged by a plaintiff. *App. A, at 5a.* Officer Hanneman's qualified immunity argument should have been considered by the district court at the earliest stage. Unfortunately, it failed to fully consider the issue. This Court should grant certiorari to ensure that not only Officer Hanneman is entitled to have a court consider his qualified immunity defense, but to emphasize to lower courts that the defense must be available at the earliest possible stage.

II. This Court should grant the Petition because Circuit Courts are split whether responding to a gun pointed toward an officer or a furtive movement with a gun is a split-second decision qualified immunity is meant to protect.

The Eighth Circuit's decision did not consider all the circumstances leading to Officer Hanneman's use of deadly force, resulting in a holding that cites no clearly established law that should have put Officer Hanneman on notice. This Court has clearly stated that in establishing qualified immunity, the test must be applied at a level of specificity that approximates the actual circumstances of the case. *Mullenix*, 577 U.S. at 12.

Clearly established rights are those that are sufficiently clear that every reasonable official would have understood that what they were doing violates that right. *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021). This Court does not define clearly established law at a "high level of generality." *Id.* at 6 (quoting *Brosseau*, 543 U.S. at 199). Instead, the Court "look[s] for a controlling case or robust consensus of cases of persuasive authority." *Id.* The Court acknowledges in an obvious case, there need not be a prior case directly on point, but 'existing precedent must have placed the statutory or constitutional question **beyond debate**.'" *Rivas-Villegas*, 595 U.S. at 6.

"At the end of the day, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law,' permitting liability only for the transgression of 'bright lines,' not for violations that fall into 'gray areas.'" *Perry v. Adams,* 993 F.3d 584, 587 (8th Cir. 2021) (quoting *Malley v.*

Briggs, 475 U.S. 335, 341 (1986)). Courts must strike the right balance to assure an official receives due process by making it "apparent" and beyond debate that what they are doing violates the Constitution. *Anderson*, 483 U.S. at 640. Here, Officer Hanneman's due-process rights are not protected under the district court's order and Eighth Circuit's decision because it was not apparent or beyond debate that using deadly force in response to a gun pointed in the officer's direction, violated the Constitution.

This Court's guidance is urgently needed to provide clear parameters as to when an officer may use deadly force in response to a gun being pointed in their direction. Certiorari will be particularly helpful due to the split in Circuits and uncertainty on an important question. With the Eighth Circuit's decision remaining in place, it remains unclear whether an officer may use deadly force in response to an immediate threat of a gun pointed in the officer's direction without violating the Constitution. That cannot be correct, and yet in the Eighth Circuit as it currently stands, that is the law. Moreover, while a number of circuits have recognized that law enforcement officers are entitled to qualified immunity when an armed suspect points a gun in the officer's direction, the lower courts are not uniform on this point. If this Court grants certiorari, it will provide needed guidance to officers and courts as to when the use of deadly force is constitutionally permissible under these circumstances. And because police officers regularly encounter armed suspects, that guidance is urgently needed.

This Court "instructed that reasonableness 'must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision

of hindsight' and that '[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving.'" *Ryburn v. Huff*, 565 U.S. 469, 477 (2012) (quoting *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). Courts must not use the benefit of hindsight and calm deliberation when reviewing an officer's judgment about the amount of force necessary in a given situation. *Id.*

When evaluating an excessive force claim, the Court specifically considers "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. "A seizure-by-shooting is objectively reasonable when 'the officer [using the force] has probable cause to believe [an individual] poses a significant threat of death or serious physical injury to the officer or others.'" *Gardner v. Buerger*, 82 F.3d 248, 252 (8th Cir. 1996) (citing *Tennessee v. Garner*, 471 U.S. 1, 3 (1985). Additionally, *Barnes v. Felix* held that courts should not consider only the moment deadly force is used, but all the circumstances including facts and events leading up to the climactic moment. 605 U.S. at 76. The Eighth Circuit failed to do that.

The decision below is perplexing because as of the time of the incident, the Eighth Circuit had caselaw holding "no constitutional or statutory right exists that would prohibit a police officer from using deadly force when faced with an apparently loaded weapon." *Smith v. City of Brooklyn Park,* 757 F.3d 765, 772 (8th Cir. 2014) (quoting *Sinclair v. City of Des Moines,* 268 F.3d 594, 596 (8th Cir. 2001)

(affirming summary judgment based on qualified immunity when officers used deadly force after being confronted by man pointing gun at them); *Morgan-Tyra v. City of St. Louis*, 89 F.4th 1082, 1085-86 (8th Cir. 2024) (relying on *Smith v. Brooklyn Park* to affirm grant of qualified immunity based on deadly force in response to gun despite dispute about where gun was pointed).

In *Smith v. Brooklyn Park*, the Eighth Circuit affirmed qualified immunity granted by the district court because it was objectively reasonable to use deadly force when a suspect is pointing a gun at the officer.[2] 757 F.3d 765, 770 (8th Cir. 2014). In *Smith*, police responded to a domestic violence call with a victim barricaded in a bathroom and a suspect with a shotgun who threatened to kill the victim. *Id.* at 767. The victim remained on the phone with the 911 operator and relayed the suspect was trying to kick through the door. *Id.* Officers tried to persuade the suspect to exit the house, but he said he was not going back to jail. *Id.* After officers forced entry into a dark, cluttered kitchen, an officer saw a face and turned on the flashlight on his gun. *Id.* at 768. The now-illuminated living room revealed the suspect on a couch with a shotgun raised and pointed at the officers. *Id.* The officer yelled, "He's got a gun!" and fired his weapon, believing the suspect would kill him or other officers. *Id.* The second officer entering heard the other officer yell about a gun, also turned on his flashlight on his gun, and fired his gun in response to seeing the

[2] Defendants filed a pre-discovery Summary Judgment Motion to obtain an early determination on qualified immunity, based on statements and 911 transcripts, similar to the aid provided from body worn camera footage. *Smith v. City of Brooklyn Park, et al.*, No. 11-cv-03421 MJD/JJG (Doc. 9).

suspect with a raised shotgun. *Id.* There was no video, and the plaintiff claimed the suspect was unarmed and had his hands up when he was shot. *Id.* at 771.

The Eighth Circuit recognized that "no constitutional or statutory right exists that would prohibit a police officer from using deadly force when faced with an apparently loaded weapon." *Smith*, 757 F.3d at 772 (quoting *Sinclair*, 268 F.3d at 596). Regardless of the plaintiff's dispute, the court pointed to the district court's reliance on undisputed radio traffic that repeatedly reported the suspect was armed and threatening to kill the victim. *Smith*, 757 F.3d at 774. Relying on *Scott v. Harris*, the court did not adopt the plaintiff's unsupported speculation. *Id.* (citing 550 U.S. 372, 380 (2007)).

Indeed, under Eighth Circuit precedent before this case, an officer could use deadly force to protect themselves before waiting to set eyes upon the weapon. *Cole ex rel. Est. of Richards v. Hutchins*, 959 F.3d 1127, 1132 (8th Cir. 2020) (explaining "menacing action" with a gun can justify the use of deadly force); *Thompson v. Hubbard*, 257 F.3d 896, 899 (8th Cir. 2001) (recognizing officer can "employ[] deadly force to protect [themselves] against a … suspect who … moves as though to draw a gun" without "wait[ing] until [they] set[] eyes upon the weapon."). The Eighth Circuit has previously held officers need not wait to act until they are staring down the barrel of a loaded gun. *Aden as trustee for Estate of Aden v. City of Bloomington, et al.*, 128 F.4th 952, 959 (8th Cir. 2025) (citing *Rogers v. King*, 885 F.3d 1118, 1121-22 (8th Cir. 2018) (holding officers reasonably perceived threat of serious physical harm when suspect raised gun to shin-level). "Simply reaching for a loaded gun is enough to create a substantial risk of serious bodily

injury to another person." *United States v. Hill*, 583 F.3d 1075, 1078 (8th Cir. 2009) (holding defendant's attempts to retrieve loaded firearm during struggle with officers created substantial risk of serious physical injury).[3]

Other circuits are split on when an officer can use deadly force in circumstances involving a suspect pointing a gun or weapon at the officer. And even within a particular circuit, cases come out differently on this question, which increases the need for this Court's intervention.

For example, some circuits have found an officer's use of deadly force was objectively reasonable when the suspect posed an immediate threat to the safety of the officer. *See, e.g., Whitlow v. City of Louisville*, 39 F. Appx. 297, 306-07 (6th Cir. 2002) (unpublished) (officer's use of deadly force was reasonable when the officer was confronted with an individual pointing a gun at the officer's lower extremities, who, instead of dropping his weapon when ordered to do so by the officer, raised the weapon to point directly at the officer). In *Whitlow*, the Sixth Circuit agreed there was no constitutional violation for an officer's use of deadly force against a domestic assault suspect who pointed a gun directly at the officer. *Id.* Police obtained a search warrant and a SWAT team was utilized to gain entry. *Id.* at 300. Officers forced entry with a door ram and threw in a distraction device which made loud bangs and flashes. *Id.* An officer saw the suspect and yelled, "He's got a gun" or "gun." *Id.* Officer Estes entered and yelled, "Police, search warrant." *Id.* He saw the suspect, holding a pistol,

[3] Based on the clearly established law in the Eighth Circuit at the time of the incident, this Court could also summarily reverse the below decision.

with his arm extended. *Id.* Estes yelled, "Police, drop it." *Id.* The suspect raised the weapon and pointed it directly at Officer Estes and the officer fired his gun. *Id.* The suspect died of multiple gunshot wounds. *Id.* It was later determined the suspect's gun was unloaded. *Id.* The court determined the only reasonable inference was the officer was acting in self-defense, which was permissible when faced with an immediate threat to the officer or others. *Id.* at 306.

In *Rice v. City of North Las Vegas*, the Ninth Circuit affirmed the district court's grant of summary judgment based on qualified immunity where an officer used deadly force in response to a suspect raising his gun in the general direction of other officers, despite the officer having a narrow field of view with his rifle's scope. No. 23-2935, 2024 WL 4616201, *1 (9th Cir. 2024). Despite not being certain whether the suspect had a direct line of sight to the officers in the moments before the shooting, the Circuit Court concluded when the suspect pointed a gun in the direction of the officers, it was objectively reasonable for the officer to conclude the suspect posed an immediate threat of harm to them. *Id.*

In reaching this decision, the Ninth Circuit considered that "the Fourth Amendment [does not] always require[] officers to delay their fire until a suspect turns his weapon on them. If the person is armed … a furtive movement, harrowing gesture, or serious verbal threat might create an immediate threat." *Id.* (quoting *George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013)). *See also Gonzalez v. City of Antioch*, 697 Fed. Appx. 900, 901 (9th Cir. 2017) (affirming constitutional use of deadly force after officer shot suspect who momentarily raised his gun in the direction of officers

since officers could reasonably perceive the movement as a threat).

Courts taking this approach generally agree that "[a] reasonable officer need not await the 'glint of steel' before taking self-protective action; by then, it is 'often … too late to take safety precautions.'" *Estate of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255. 1260 (10th Cir. 2008) (quoting *People v. Morales*, 198 A.D.2d 129 (N.Y. App. Div. 1993)). In *Estate of Valverde by and through Padilla v. Dodge*, the Tenth Circuit held an officer was entitled to qualified immunity after he fired his first shot less than a second after a suspect pulled out his gun. 967 F.3d 1049, 1063 (10th Cir. 2020). In reaching this conclusion, the Tenth Circuit referenced cases in which it "repeatedly held that officers in similar circumstances acted constitutionally, even when the actions of the person shot were ambiguous." *Id.; see also Wilson v. Meeks,* 52 F.3d 1547, 1553 (10th Cir. 2020) (concluding officer did not violate the Constitution in a situation where an officer fired twice when the decedent brought forward a hand holding a gun while acknowledging it was possible the decedent intended to surrender).[4]

Even where it was disputed an officer explicitly saw a gun pointed in their direction, where there has been the presence of a gun and furtive movement,

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[4] Another Tenth Circuit example includes *Phillips v. James*, where the court held when officers knew the suspect in his own house was armed, dangerous, and had threatened them, "[t]here was no reason for [the shooting officer] to have to wait to be shot at or even to see [the suspect] raise a gun and point it at him before it would be reasonable for him, under the[] circumstances [of a SWAT standoff], to shoot [the suspect when the suspect was standing at a window]." 422 F.3d 1075, 1084 (10th Cir. 2025).

courts have granted qualified immunity. *Loch v. Litchfield*, 689 F.3d 961, 965 (8th Cir. 2012); *Benton v. Layton*, 139 F.4th 281, 290-91 (4th Cir. 2025).

The Seventh Circuit reversed the denial of qualified immunity for an officer who used deadly force to defend himself and other officers when a suspect pointed a gun at them and threatened he would "fire a warning shot," reasoning the officer did not need to wait and hope the suspect was a skilled shot before taking action to shut down the threat. 884 F.3d 736, 740 (7th Cir. 2018).

The Fifth Circuit agreed an officer need not allow an individual to aim his weapon before "applying deadly force to ensure their safety," and affirmed qualified immunity for the officer where evidence at a minimum showed the suspect was holding a gun when the officer entered the motel room and body worn camera footage supported officer's testimony gun was aimed at him. *Langiano v. City of Fort Worth, Texas*, 131 F.4th 285, 293 (5th Cir. 2025) (citing *Salazar-Limon v. City of Houston*, 826 F.3d 272, 279 n. 6 (5th Cir. 2016)).

The Sixth Circuit has acknowledged that possession of a gun alone does not necessarily create a threat, but circumstances may also support the use of deadly force even if a suspect does not aim his gun at an officer. *Tucker v. Marquette County, Mich.*, No. 20-1878, 2021 WL 2828027, *2 (6th Cir. 2021) (citing *Jacobs v. Alam*, 915 F.3d 1028, 1040 (6th Cir. 2019)). In reviewing cases upholding deadly force against armed individuals who had not raised the firearm at officers, the Sixth Circuit pointed to the circumstances of the approaching individual, including running at an officer. *Id.* (citing *Thomas v. City of Columbus*, 854 F.3d 361, 366 (6th Cir. 2017)). The Sixth Circuit pointed

out it has previously reasoned the "'deadly threat' the suspect posed 'could have easily and quickly transformed into deadly action in a split-second' and that the officers did not have to wait for him to raise his gun before using deadly force." *Id.* at *3 (citing *Thornton v. City of Columbus*, 727 F. App'x. 829, 831, 837 (6th Cir. 2018)).

In contrast, several courts, including the Eighth Circuit below have denied qualified immunity to officers where armed suspects have created threatening situations for the officers.

The Fourth Circuit reversed the district court's grant of qualified immunity in *Aleman v. City of Charlotte*, holding that a mentally-unstable suspect holding a gun and raising it in his hand when an officer told him to show his hands posed a threat but not an "immediate threat" supporting deadly force because he was not "pointing, aiming, or firing the weapon" at an officer or other person. 80 F.4th 264, 291 (4th Cir. 2023). The Court also focused only on the moment force was used, contrary to the Supreme Court's subsequent ruling in *Barnes v. Felix*, 605 U.S. at 76. *Id.* at 294. The Fourth Circuit also held the officer violated clearly established law by using deadly force, reasoning that holding a weapon while failing to obey commands can only justify use of deadly force when the person makes some kind of furtive or threatening movement with the weapon, signaling an intent to use the weapon in a way that imminently threatened the safety of the officer or another person. 80 F.4th at 295-96. In other words, once the gun was up, the officer still had to wait until the suspect moved his aim closer to the direction of a person before firing. Such reasoning ignores the reality that such delay could gravely endanger an officer's or others' lives.

Similarly, the Ninth Circuit second-guessed whether an individual swinging around toward an officer commanding him to "Drop the gun," while holding what appeared to be an AK-47 could be perceived as making a furtive, threatening movement to support the use of deadly force and denied qualified immunity. *Estate of Lopez by and through Lopez v. Gelhaus*, 871 F.3d 998, 1017-18 (9th Cir. 2017). That court determined using deadly force without first issuing a warning, violated clearly established law. *Id.* at 1019. The dissenting opinion pointed out it was not clearly established or obvious, as whether the officer "acted unreasonably turns on such minute details was how high the gun barrel had risen, whether it might have been feasible to give a warning, and just how aggressive [the individual's] turning motion was." *Id.* at 1031-32 (J. Wallace dissenting).

Here, the officers faced a homicide suspect known to have body-armor-piercing bullets, who failed to comply with multiple commands to show his hands, and who instead, hid under a blanket and grabbed a gun off an ottoman, and then pointed the gun at, or moved a gun in the direction of, the officer. Based on the existing Circuit caselaw and the time of the incident, as well as the Court's decision in *Barnes*, Officer Hanneman did not have notice that his use of deadly force did not meet constitutional standards and clearly violated the Fourth Amendment. For those reasons, this Court could summarily reverse. However, based on the lack of consensus in the lower courts about when an officer can use deadly force in circumstances involving armed suspects, this Court should grant certiorari to provide needed guidance.

III. The Eighth Circuit's decision raises questions of exceptional importance, leaving uncertainty which negatively impacts recruitment and retention of law enforcement.

Qualified immunity is important to ensure individuals continue to step up for public service as police officers, without leaving it to only the "most resolute or the most irresponsible." *Crawford-El*, 523 U.S. at 590 n. 12. This Court's precedent of upholding qualified immunity promotes rather than deters "able citizens from acceptance of public office." *Harlow*, 457 U.S. at 814. Decisions like the underlying decision from the Eighth Circuit highlight the deterrent effect of personal liability for split-second, life-threatening scenarios.

Numbers are down in law enforcement hiring. International Association of Chiefs of Police, *The State of Recruitment & Retention: A Continuing Crisis for Policing: 2024 Survey Results*, at p. 1-4, https://www.theiacp.org/sites/default/files/2024-11/IACP_Recruitment_Report_Survey.pdf. In 2023, the average police officer-to-resident ratio nationally was 2.4 officers per 1,000 residents, yet Minneapolis had a ratio of 1.4 per 1,000 residents, the second lowest in the country. Liz Sawyer & Jeff Hargarten, *Minneapolis police staffing levels reach historic lows amid struggle for recruitment, retention*, Minn. Star Tribune, (Sept. 16, 2023), https://www.startribune.com/minneapolis-police-staffing-levels-reach-historic-lows-amid-struggle-for-recruitment-reention/600305214. For every Minneapolis officer hired, two have retired. Deena Winter, *Minneapolis police overtime expected to hit $26 million this year*, Minn.

Star Tribune, (Oct. 25, 2024), https://www.startribune.com/minneapolis-police-overtime-expected-to-hit-26-million-this-year/601169561.

The problem extends across the country. For example, as of August 2024, more than 25% of budgeted officer positions in the St. Louis Police Department remained vacant. Laura Barczewski, *St. Louis and St. Louis County police discuss staffing shortages*, NBC 5 St. Louis, (Aug. 2, 2024), https://www.ksdk.com/article/news/local/st-louis-and-county-police-discuss-staffing-shortages/63-289bcbfa-56eb-4365-a596-7bfb56ebb9d8. Similarly, in Washington, D.C. the Metropolitan Police Department has had hundreds of officers depart since 2020. Ted Oberg, *Chief: DC Police Staffing at Its Lowest in Decades*, NBC 4 D.C. (Feb. 23, 2023), https://www.nbcwashington.com/news/local/chief-dc-police-staffing-at-its-lowest-in-decades/3286158.

Staffing shortages have a detrimental effect on public safety. Better numbers of officers lead to quicker response times and correlate to more successful prosecutions, improving public safety. Dr. Jordi Blanes I. Vidal & Tom Kirchmaier, *The Effect of Police Response Time on Crime Clearance Rates*, 85 Rev. Econ. Studs. 855, 855 (2018). Staffing shortages have directly coincided with an increase in violent crime. *See* Ivana Saric, *Police Departments Struggle with Staffing Shortages*, Axios (Aug. 8, 2022), https://www.axios.com/2022/08/08/police-department-staff-shortage. In Tulsa, Oklahoma, where the violent crime rate is twice the national average, there are 160 vacant officer jobs. Daphne Duret & Weihua Li, *It's Not Just a Police Problem, Americans Are Opting Out of Government Jobs*, Marshall Proj. (Jan. 21, 2023),

https://www.themarshallproject.org/2023/01/21/police-hiring-government-jobs-decline. In Minneapolis, Minnesota, the police department "is frequently unable to meet minimum staffing goals for each shift, which often results in the decision to leave front desks vacant at local precincts." Sawyer, *supra*.

Staffing shortages impact the lack of public confidence, impacting a cycle dissuading potential recruits from applying. *See* Jaewon Jung, *Negative Public Perception Has Ripple Effect on Local Law Enforcement Agencies*, ABC 9 Eugene (Feb. 19, 2022) https://www.kezi.com/news/negative-public-perception-has-ripple-effect-on-local-law-enforcement-agencies/article_dfbcc65a-9127-11ec-9ecc-bb4afaf6bee4.html. The lack of public confidence or outright public distrust of law enforcement "undermines the legitimacy of law enforcement, and without legitimacy police lose their ability and authority to function effectively." Nat'l Inst. Just., *Race, Trust and Police Legitimacy*, (Jan. 9, 2013), https://nij.ojp.gov/topics/articles/race-trust-and-police-legitimacy#. Since police response time impacts public satisfaction, staffing shortages will continue to damage the public's negative perception of law enforcement. J.H. Auten, *Response Time – What's the Rush?*, 11 L. Order 24, 24-25 (1981); *see also* Gregory DeAngelo et al., *Police Response Time and Injury Outcomes*, 133 Econ. J. 2147, 2147-48 (2023).

Staffing shortages and deteriorating response times are exacerbated by improper denial of qualified immunity. The burden of defending litigation, despite not violating any clearly established law, adds to an invisible toll officers already face. It is clear that the constant prospect of encountering violence and potential sudden death can exact a heavy toll on those who

take up the charge to protect the public. Kevin L. Gilmartin, *Emotional Survival for Law Enforcement*, E-S Press, 2021. The facts bear this out: police are significantly more likely than the general population to die by suicide, including a substantial percentage due to PTSD. Jessica Dockstader and Daniel Lawrence, *What Suicide Data for Public Safety Officers Tells Us*, CNA, (April 18, 2024), https://www.cna.org/our-media/indepth/2024/04/suicide-data-for-public-safety-officers. And although an officer-involved shooting is undeniably tragic for the decedent's family and friends, the aftermath of taking a life, however justified in the context of legitimate law enforcement, can also be devastating to the individual officer. Michael E. Miller, *Months after a fatal police shooting, a young officer turns his gun on himself*, Washington Post (December 19, 2018), https://www.washingtonpost.com/graphics/2018/local/suicide-and-stress-among-police-officers-involved-in-shootings. Given that backdrop, the refusal to grant qualified immunity to an officer who had no reasonable alternative but to subdue an imminent lethal threat is particularly damaging, adding the stress, publicity, and potential personal liability at trial to an already deeply troubling turn of events.

These consequences are not merely internalized; public hindsight-based judgment and decline in respect or regard for officers can lead to feelings of inadequacy or derogation. Jessica Saunders, Virginia Kotzias, and Rajeev Ramchand, *Contemporary Police Stress: The Impact of the Evolving Socio-Political Context*, 20 CCJLS 35, 38 (2019); *see also* William (Liam) Duggan and L. Natia Ellis, MCJ, *The Public, The Police, and The Puzzle of Information*, at p. 12 (2024) (MSc thesis, Lund University) (explaining

negative influence of hindsight bias and blinding reviewer to the situation facing those on a scene before they knew the outcome).

This Court has long recognized qualified immunity is critical for ensuring capable candidates continue serving in important government positions. *See Harlow*, 457 U.S. at 814. Without continuing to protect against the stress of litigation and hindsight judgments, particularly in life-threatening, split-second decisions, individuals will avoid signing up to serve and may leave law enforcement in droves. And this continued impact on law enforcement shortages will have a detrimental effect on crime and public safety throughout the country.

CONCLUSION

The Eighth Circuit's failure to apply qualified immunity where officers reasonably believed that suspects awaiting them behind a locked door had armor-piercing bullets, and where body cam footage confirms that a weapon appeared to be milliseconds from being fired, does more than create confusion. It conflicts with this Court's admonition, reiterated last Term in *Barnes v. Felix*, that *Graham's* totality of the circumstances test governs excessive force analysis. That test led this Court to reverse in *Barnes*. It simultaneously granted, vacated, and remanded in *Marks v. Bauer*, another Eighth Circuit excessive force case.

Amicus curiae IMLA respectfully requests the Court grant the petition for certiorari. Alternatively, the Court should reverse and remand to the Eighth Circuit for further consideration in light of this Court's holding in *Barnes v. Felix*.

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