UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 21-55994, 21-55995

ESTATE OF DANIEL HERNANDEZ, *et al.*,

Plaintiffs–Appellants,

v.

CITY OF LOS ANGELES, *et al.*,

Defendants–Appellees

On Appeal from the United States District Court
for the Central District of California
No. 20-cv-04477-SB-KS/No. 20-cv-05154-DMG-KS
Honorable Judge Stanley Blumenfeld, Jr.

BRIEF AMICUS CURIAE OF THE NATIONAL POLICE ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

The National Police Association (NPA) is a nonprofit § 501(c)(3) corporation formed under the laws of Indiana. NPA does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

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The National Police Association and its Interest

The National Police Association ("NPA") is an Indiana nonprofit corporation with a core mission to maintain the authority and discretion of law enforcement officers to respond lawfully to violent offenders and defend themselves. The NPA is not seeking to present any private interest of its own, but to present its position as to the correct rules of law to be applied in cases involving police use of deadly force. In this case, the NPA seeks to support and defend the discretion of police officers to respond to the difficult and often life-threatening circumstances to which they are exposed in their line of duty, because rules of civil liability that do not provide sufficient deference to police decision making threaten not only the interests of law enforcement officials, but the rule of law itself.

Rule 29(a)(4)(E) Statement

No party's counsel authored this brief in whole or in part, or contributed any monies intended to fund preparing or submitting this brief.

Summary of Argument

Justice Holmes's famous aphorism that "[d]etached reflection cannot be demanded in the presence of an uplifted knife," *Brown v. United States*, 256 U.S. 335, 343, 41 S. Ct. 501, 502 (1921), reflects the wisdom of the federal courts in affording a high degree of deference in assessing responsibility for taking lives in defense of self or others. As set forth below, sound science and policy support to

both an officer's assessment of threats and the degree of force required to respond to them—as well as to the officer's understanding of the complex and evolving constitutional rules limiting the use of deadly force.

As Appellees correctly observe, the entire encounter between Officer Toni McBride and Daniel Hernandez was captured on multiple video streams, with the assertions of disputed fact primarily involving interpretation of the video evidence. The NPA agrees that summary judgment can and should not be evaded on the basis of differences of opinion as to the objective evidence presented by the video streams. The NPA writes to offer background information concerning the nature of officer decision making in high-stress decisions and how that scientific perspective supports the District Court's findings that Officer Toni McBride and her employers did not violate the constitutional rights of the decedent, Daniel Hernandez, and even if there was a constitutional violation, appellees are shielded by the doctrine of qualified immunity.

In Point I, we demonstrate that there was probable cause to regard the decedent as posing "a significant threat of death or serious physical injury to the officer or others." *Tennessee v. Garner*, 471 U.S. 1, 3, 85 L. Ed. 2d 1, 105 S. Ct. 1694 (1985). The decedent had reportedly caused a traffic crash involving five motor vehicles. It was reported that he was cutting himself and wanted to do himself harm. The evidence of that carnage was openly before Officer McBride

with crashed vehicles and debris strewn about the roadway. People had been severely injured and required treatment. Was the crash intentional? Was the driver homicidal? Was the driver suicidal? Any reasonable person would interpret the decedent as posing a significant threat.

When the decedent focused his attention upon Officer McBride, walking rapidly toward her with an edged weapon in his hand, and challenging her through postural cues and words, he did so in the teeth of her warnings and display of a firearm pointed directly at him. His rapid approach created time/pressure constraints that would negatively impact any reasonable human being's ability to analyze the situation in the fashion that a reviewing court might. Under the circumstances of this case, any reasonable officer would feel fear for their life and the lives of others.

In Point II, the NPA demonstrates that regardless of this Court's answer to whether Officer McBride's use of force was reasonable under all the circumstances, the trial court's finding of qualified immunity should be affirmed. No controlling precedent (or, indeed, any persuasive precedent), would give Officer McBride fair notice of a constitutional rule forbidding her conduct. Nor should any rule of constitutional law be articulated that would bar an officer confronted with an armed suspect who disobeys commands to drop the weapon from defending herself and others.

Argument

I. OFFICER McBRIDE DID NOT VIOLATE MR. HERNANDEZ' CONSTITUTIONAL RIGHTS.

A. The Legal Framework.

It is well established that the "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight". *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872 (1989). In *Graham*, the Supreme Court emphasized 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—about the amount of force that is necessary in a particular situation." *Id*. at 396-97; *see also Scott v. Henrich*, 39 F.3d 912, 914 (9th Cir. 1994).[1]

An officer's use of deadly force is reasonable if "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." *Tennessee v. Garner*, 471 U.S. 1, 3, 85 L.

[1] A similar rule has been articulated in the European Court of Human Rights: "It is not for the Court with detached reflection to substitute its own opinion of the situation for that of a police officer who was required to react in the heat of the moment." *Brady v. The United Kingdom*, No. 55151/00 (April 3, 2001) (available at https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-5796%22]} (accessed June 21, 2022)).

Ed. 2d 1, 105 S. Ct. 1694 (1985). While every case is different, this Court has articulated the general rule that "where a suspect threatens an officer with a weapon such as a gun or a knife, the officer is justified in using deadly force." *Smith v. City of Hemet*, 394 F.3d 689, 704 (9th Cir. 2005) (collecting cases). This Court properly grants a significant degree of deference to an officer's threat assessment, recognizing that "[i]f the person is armed—or reasonably suspected of being armed—a furtive movement, harrowing gesture, or serious verbal threat might create an immediate threat." *George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013).

Probable cause to find significant threat of death or serious physical injury authorizing the use of deadly force is commonly found when police officers are faced with those armed with knives or even potentially dangerous objects such as large rocks. *See, e.g., City & County of San Francisco v. Sheehan*, 575 U.S. 600, 135 S. Ct. 1765, 1775, 191 L. Ed. 2d 856 (2015) (officers confront disabled woman wielding a knife in her home); *Lal v. California*, 746 F.3d 1112, 1117 (9th Cir. 2014) (Lal advanced toward officers with "football-sized" rock over his head). Multiple district courts in this Circuit have found officers justified in using deadly force against those who are advancing toward them with a knife. *E.g., Watkins v. City of San Jose*, No. 15-CV-05786-LHK, 2017 U.S. Dist. LEXIS 68648, at *31 (N.D. Cal. May 4, 2017), *aff'd sub nom. Buchanan v. City of San Jose*, 782 Fed.

Appx. 589, 782 Fed. Appx. 589, 2019 U.S. App. LEXIS 22364 (9th Cir. July 26, 2019); *J.A.L. v. Santos*, 2016 U.S. Dist. LEXIS 31913, 2016 WL 913743, at *5 (N.D. Cal. Mar. 10, 2016).

B. Analysis of the Threat Presented to Officer McBride.

Here, the circumstances were manifestly "tense, uncertain, and rapidly evolving" to an extent counseling a high degree of deference to law enforcement choices concerning use of deadly force. *Graham*, 490 U.S. at 396-97. Officer McBride arrived at the scene of a motor vehicle accident with multiple severely damaged vehicles (4-ER840-45), and was immediately told upon exiting the patrol car that there was a "crazy guy with a knife" threatening to hurt himself and others (4-ER0849). There were multiple individuals in the area "screaming and yelling". (*Id.*)

At this juncture, Officer McBride had a duty to provide aid to injured motorists, to secure a crime scene, to attend to pedestrians in the area and keep them safe, and to locate an armed and dangerous individual. The situation was fraught with danger, and potential danger. Emergency medical personnel who were dispatched to the scene would soon arrive to the unsafe and uncontrolled area. Citizens who stood in the streets and on the sidewalk presented potential unforeseen dangers.

With limited information, the responding officers, including Officer McBride, had to draw inferences about potential threats in the environment and plan for them. For example, they would have to identify who was injured, assess the degree of those injuries for triage purposes, and determine who or what might cause further injuries. Assessing dangerous individuals or circumstances that had the propensity to cause more injuries, the officers would have to prioritize the threats and immediately take control of them. Treatment to injured persons could not effectively take place in the area, so long as a known or suspected threat remained uncontrolled.

The body-cam video shows Officer McBride getting out of her car into these chaotic circumstances at 1:47 (4-ER854 (time stamp to Exhibit A to McBride Decl.)), and illustrates the exigent nature of the circumstances and the multiple assessments and judgments she was required to make. We emphasize the video record because it is well established that the high levels of stress associated with life-threatening interactions can lead to incomplete witness accounts by all involved.[2] Here, the audio track recording includes the following:

Motorist: "He has a knife; he has a knife"

[2] *See generally* L. Hope, Evaluating the Effects of Stress and Fatigue on Police Officer Response and Recall: A Challenge for Research, Training, Practice and Policy, *J. Applied Research in Memory, and Cognition*, 5, 239-245 (2016).

McBride: "Why does he want to hurt himself?"

Motorist: "We don't know, he's the one who caused the accident."

McBride: [on the radio] "Give me a back-up"

McBride: [Speaking to motorist] Hey if it's possible I need you to step out of your vehicle and go on the sidewalk. Right now.

McBride: [on the radio] "Can I get a backup for a 415 with a knife?"

Motorist: "Me?"

McBride: "Yes, I need you to step out now."

Motorist: "There, there."

McBride: [speaking to another citizen] "Go…Go. Go, Go, right now!"

McBride: [speaking on radio] "Hold on."

McBride: [speaking to her partner] "Partner right now we need to get cover!"

McBride: [speaking to all onlookers in the area] All-everybody, go away!" "Que se meuva."

Dispatcher: "Newton unit's responding, be advised, the suspect is armed with a knife, cutting himself. He's inside his vehicle. He TC'd (traffic collision) against five vehicles off of 32nd Street."

Here we see Officer McBride speaking to the motorist to gather more information while maintaining steady observation over the black truck in front of her. She realizes that the incident would best be resolved with more help, and requests it. At the same time she is appraising the not-yet-immediate threat posed

by the decedent, she politely asks the motorist to exit the vehicle. Officer McBride's demeanor is not panicked; she is level-headed and in control, reaching for the handle of the door to let the motorist out.

When another man approaches Officer McBride, she tells him to leave. She is focused on the most immediate threats. This was a tense, dangerous moment which would reasonably invoke elevated emotional response from anyone, including well-trained officers.

Officer McBride's statement about "cover" shows that she was mindful about finding something that could protect her and the other officers from a sudden attack by the decedent. By cover, she was referring to some object placed between the officers and potential attacker that could stop projectiles or edged weapons from penetrating.

Officer McBride also quickly responds to the onlookers within the zone of danger posed by decedent, telling everyone to go away. Mindful of the diverse language conditions in Los Angeles, she roughly repeated the order in Spanish, "Que se mueve".

The Court should consider this to be an impressive display of what is often called multi-tasking (task switching in psychology). Officer McBride masterfully switches from concerns about an unlocated armed assailant, to concerns about the public, to concerns about her fellow officers. However, task-switching has been

shown to cut efficiency and raise risk during periods of human performance.[3] It can also result in slower reaction time due to mental overload,[4] but in complex environments the need to task switch remains critically important.[5]

Officer McBride's performance on video demonstrated her keen ability to manage multiple stimuli with poise and precision while under highly elevated stress. At this point Officer McBride had done everything within her power to make the scene as safe as possible for herself and members of the public. All of these techniques were expressions of an intent to preserve lives, including that of decedent.

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[3] Rogers, R., & Monsell, S., The Costs of a Predictable Switch Between Simple Cognitive Tasks, *Journal of Experimental Psychology*, 250-264 (1995).

[4] Rubinstein, J., Meyer, & Evans, J. E., Executive Control of Cognitive Processes in Task Switching. *Journal of Experimental Psychology: Human Perception and Performance,* 763-97 (2001).

[5] Even under ideal circumstances, research in human factors demonstrates that there is a cognitive time gap between action and reaction of between 500 and 750 milliseconds. The findings show that it takes that much time to recognize a threat, analyze its meaning, formulate a response selection, and initiate motor response. Dror, Itiel E., Perception of risk and the Decision to Use Force, *Policing*, 1(3), 265-272 (2007); Godnig, E., Body Alarm Reaction and Sports Vision, *Journal of Behavioral Optometry*, 12(1), 3-6 (2001); Hillman, M., Physical lag times and their impact on the use of deadly force, *The Tactical Edge*, 25-29 (1995); Lewinski, W. L., & Hudson, B., The impact of visual complexity, decision making and anticipation: The Temple study, experiments 3 and 5, *Police Marksman*, 28(6), 24-27 (2003); Siddle B., *Sharpening the Warriors Edge* (PPCT Research Pubs. 1995).

Less than a minute after exiting the patrol car (at about the 2:47 time stamp on the body cam video), Officer McBride has spotted the decedent in or behind the truck and yells, "hey man, let me see your hands, let me see your hands, man". Police officers are trained to understand that it is the suspect's hands that will kill you. They are trained to fixate on the hands above all other things, to identify if an object may be present and to identify with a reasonable degree of certainty what that object is. Hands kept hidden from officers can create a tremendous amount of anxiety due to the speed in which a weapon can suddenly be displayed and used against an officer.

The decedent appeared from behind the truck at approximately the 2:53 on the body cam video, advancing directly toward Officer McBride. With each step he increased the time/pressure constraints that govern decision making. McBride tried to keep the reactionary distance between herself and Hernandez to give her more time to plan, negotiate, issue commands, and watch for compliance. Officer McBride held her firearm in her right hand as a show of force, an unambiguous threat designed to warn any reasonable person that continued forward movement would be countered, if necessary, with the use of lethal force. She also placed her support hand up in the universal "stop" motion and commanded, "stay right there," but the decedent continued to approach rapidly.

As a matter of California law, decedent was engaging in very serious misconduct quite apart from the prior accident he caused. California law makes it a felony to draw or exhibit a deadly weapon with the intent to resist or prevent arrest or detention by a peace officer. Cal. Penal Code § 417.8.

At approximately 2:54, Officer McBride told the decedent to drop the knife, but he continued to approach rapidly. At approximately 2:57, she told him again to drop the knife (commands repeated at 2:58 and 2:59), but he continued to approach rapidly. She lifted her pistol from a low-ready position and pointed it directly at the decedent, center mass. This was a final warning. Officers are trained to fire center mass. Center mass firing assures (1) aiming at the largest available target area to increase hit accuracy, (2) that bullets strike the thickest part of the target and do not pass through to harm innocent citizens and, (3) that the bullets strike vital areas of the body most likely to stop the person.

The decedent strode towards her without pause, continuing to close the distance. He spread his arms confrontationally, making himself seem larger and more threatening. One may reasonably interpret his body language as suggesting that he was daring McBride to shoot him. Indeed, one may reasonably infer that

the decedent was engaged in conduct known as "suicide by cop".[6] The rising incidence of this phenomenon, and its potential application here, militates in favor of greater deference to officers' decisions concerning deadly use of force, as the very purpose of the decedent's behavior appeared to be to create the circumstances requiring Officer McBride to use deadly force.

A bystander's video offers what is perhaps the sharpest view of the decedent walking rapidly toward Officer McBride. There, he emerges from behind the truck

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[6] "Suicide-by-cop" is a term used to describe law enforcement assisted suicide in which a person exhibits behaviors to intentionally engage in dangerous, life-threatening, and perceived criminal behavior towards law enforcement officers or others while law enforcing officers are present. Hutson, H., Anglin, D., Yarbough, Hardaway, K., Russell, M., Strote, J., *et al.*, Suicide by Cop, *Annuals of Emergency Medicine*, 32, 665-669 (1998). The Police Executive Research Forum (PERF) lists the following criteria to establish the occurrence of suicide-by-cop:

> "- Threatens the life of the officer or another person, or
> "- Attempts to make the officer believe he poses such a threat,
> "- In order to give the officer no choice but to use lethal force to stop the threat."

In a study of the phenomena in Los Angeles County between the years 1987 to 1997, suicide-by-cop accounted for 11% of all officer-involved shootings (OIS) and 13% of all officers' justifiable homicides. The median time from arrival of officers at the scene to the time of the shooting was 15 minutes with 70% of shootings occurring within 30 minutes of arrival of officers. "Suicide by Cop" is surprisingly common, and the numbers of incidents are rising. Another study of 419 "Suicide-by-Cop" incidents from 1994-2014 revealed that 4% had a replica or fake firearm, 5% kept their hands in their pockets or otherwise appeared to have a weapon as they approached the officer and refused commands, while 16% were armed with a knife. Patton C., & Fremouw, W., Examining 'Suicide by Cop': A Critical Review of the Literature, *Aggression and Violent Behavior*, 27, 107-20 (March-April 2016).

at approximately 0.09 (4-ER838; time stamp on Smith Decl. Ex. C.) and by the time Officer McBride fires the first shot, he appears to have already closed more than half the distance towards her. In the bodycam video, one can observe that Officer McBride is retreating almost the entire length of the car on her right side as the decedent advances.

The two shots are fired at approximately 3:02 (body cam video time stamp), or less than nine seconds after the decedent appeared from behind the truck. This is an extraordinarily short period of time for decision making, putting this case in a category unlike many other cases where police officers have the luxury of much longer interactions with potential threats. The Court should bear in mind that within these nine seconds, Officer McBride was required to assess the threat, decide on the response, and then initiate the response—the latter involving complex motor responses required to make ready and fire a weapon.[7]

While appellants stress the distance between decedent and Officer McBride, variously at anywhere from 36 to 44 feet away, the distance involved does not make Officer McBride's conduct unreasonable. In *Watkins,* the officers opened fire when the decedent was 46 to 55 feet away. *Watkins,* 2017 U.S. Dist. LEXIS

[7] *See generally* C. Burrows, Critical Decision Making by Police Firearms Officers: A Review of Officer Perception, Response and Reaction, *Policing: A Journal of Policy and Practice*, 1(3), 273-283 (2007).

68648 at *25. Officer McBride was not required to "await the 'glint of steel' before taking self-protective action; by then, it is 'often . . . too late to take safety precautions.'" *Estate of Larsen v. Murr,* 511 F.3d 1255, 1260 (10th Cir. 2008).

In assessing reasonability, it is also important to understand that Officer McBride and other witness perceived the decedent to be much closer. (*E.g.*, 2-ER172 (Bystander testifies officer was twenty feet away from decedent at time of first shot).) Visual perceptual distortions are common during periods of high arousal, when activation of the sympathetic nervous system (SNS) causes changes in optics including narrowed periphery, loss of near vision, loss of depth perception, loss of night vision, and loss of monocular vision.[8] The perception of time is also distorted.[9]

After the first two shots, the decedent got up almost immediately, and while not fully erect, was off his knees and poised to continue his advance when Officer McBride fired what was in substance a sustained volley of four shots from 3:05 to 3:08 (time stamps on body cam video), killing the decedent. It is clear that Officer

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[8]Godnig, E. C., Body Alarm Reaction and Sports Vision, *Journal of Optometry*, 12(1), 3-6 (2001); Siddle, B. K., & Breedlove, H., How stress affects vision and shooting stance, *Police Marksman*, 16-20 (May-June 1995).

[9] Pitel, M., *et al.*, Giving Voice to Officers Who Experienced Life-Threatening Situations in the Line of Duty: Lessons Learned About Police Survival, *SAGE Open [Access Journal]*, 1-13 (July-September 2018).

McBride utilized the pause after the first volley of two shots to analyze what she was seeing and to the best of her ability determine if more lethal force is needed to end the threat. Officers are trained to look for signs and indications of the threat ending, for example a person dropping their weapon, or lying completely still and submissive on the ground with their hands showing. They listen for compliant statements—or the absence of them. Officer McBride could detect none of this, instead seeing decedent in "a crouched position that appeared to be a sprinter's stance while screaming in rage". (4-ER0851.)

It was only after the second, longer volley of four shots that decedent no longer posed an overt, active, and continuing threat. In total, McBride fired six times and struck the decedent six times in approximately six seconds, an extraordinary feat of marksmanship under extremely stressful circumstances. When an officer decides to fire a weapon, it is important to get all rounds on target, as errant rounds might cause harm to innocent bystanders like those present that day.

For all these reasons, the video evidence can and should easily permit this Court to find that Officer McBride had "probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others," *Tennessee*, 471 U.S. at 3, making her use of deadly force reasonable under the circumstances. She did not violate the constitutional rights of decedent.

II. OFFICER MCBRIDE IS ENTITLED TO QUALIFIED IMMUNITY.

Even if this Court disagrees as to the underlying question as to whether Officer McBride's use of deadly force was reasonable—and it should not—the District Court was clearly correct in finding Officer McBride entitled to qualified immunity. That doctrine "shields an officer from suit when she makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances she confronted". *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S. Ct. 596, 598 (2004) (reversing this Court's rejection of qualified immunity for officer who shot fleeing suspect in the back); *see also Saucier v. Katz*, 533 U.S., at 206, 150 L. Ed. 2d 272, 121 S. Ct. 2151 (qualified immunity operates "to protect officers from the sometimes 'hazy border between excessive and acceptable force'"), *overruled on other grounds*, *Pearson v. Callahan*, 555 U.S. 223 (2009).

The Supreme Court has repeatedly "stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991) (*per curiam*). Indeed, "the 'driving force' behind creation of the qualified immunity doctrine was a desire to ensure that 'insubstantial claims' against government officials [will] be resolved prior to discovery". *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 815 (2009). From this perspective, appellants' concerns about limitations on discovery

miss the mark—the District Court properly utilized the undisputed video evidence to conclude, in substance, that the arguments in support of appellants' attempts to deny Office McBride qualified immunity were insubstantial.

Under the existing state of precedent in this Court and the Supreme Court, Officer McBride cannot be said to have had fair notice that her conduct was unlawful. That notice must be provided by specific precedent, not the general prohibition on unreasonable use of force set forth in *Graham* and similar cases. *See generally City & County of San Francisco v. Sheehan*, 575 U.S. 600, 613, 135 S. Ct. 1765, 1775 (2015).

There must be some "controlling authority" on point, or at least a "robust 'consensus of cases of persuasive authority" providing such notice. *Plumhoff v. Rickard*, 572 U.S. 765, 780, 134 S. Ct. 2012, 2023 (2014) (reversing Sixth Circuit denial of qualified immunity) (citations omitted). More importantly, the "existing precedent must have placed the statutory or constitutional question beyond debate." *Mullenix v. Luna*, 577 U.S. 7, 12, 136 S. Ct. 305, 308, 193 L. Ed. 2d 255 (2015) (*per curiam*) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011)).

That is plainly not the case here based on the cases discussed above. A recent district court decision addressing qualified immunity for fatal shots fired at a

knife-bearing decedent at a distance of approximately 32 feet is in perfect congruence with the circumstances here:

> ". . . the reasonableness of the officers' decision to use deadly force at that particular distance is not the relevant inquiry. Rather, the relevant inquiry is whether the contours of the law with respect to the use of deadly force are sufficiently clear such that a reasonable officer under the circumstances would understand that his conduct violates that law. See *Reichle v. Howards*, 132 S. Ct. 2088, 2093-94, 182 L. Ed. 2d 985 (2012) (articulating that to be clearly established, "existing precedent must have placed the statutory or constitutional question beyond debate") (quoting *al-Kidd*, 131 S.Ct. at 2083). Here, clearly established law does not dictate that the officers were required to wait until Olivas was capable of actually inflicting death or serious harm to justify the use of deadly force. Nor does clearly established law dictate a specific distance within which a suspect must come before an officer may reasonably deploy lethal force."

Chavez v. Las Vegas Metro. Police Dep't, No. 2:11-CV-01445-LRH-GWF, 2014 U.S. Dist. LEXIS 13012, at *24-25 (D. Nev. Feb. 3, 2014).

The precedents of the Supreme Court, this Court, and the district courts of this Circuit did not provide Officer McBride and her employers with notice that her response would transgress the constitutional rights of the decedent. It would be contrary to the interests of law enforcement and social order generally to create a rule of constitutional law denying the use of deadly force against armed suspects advancing on police officers who refuse commands to drop the weapon.

Conclusion

For the foregoing reasons, and the reason stated in the brief of appellees, the District Court's judgment should be upheld.

Dated: June 24, 2022

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I certify that, pursuant to Federal Rules of Appellate Procedure 29, the attached Amicus Curiae Brief is proportionately spaced, has a typeface of 14 points or more, and contains 4,630 words.

Dated: June 24, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be filed the Brief Amicus Curiae of the National Police Association in Support of Defendant-Appellees with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 24, 2022.

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