**IN THE SUPREME COURT OF MARYLAND**

SEPTEMBER TERM, 2023, NO. 9
SCM-REG-0009-2023

**COREY CUNNINGHAM, ON BEHALF OF KODI GAINES, A MINOR,**
*Petitioner*,
v.
**BALTIMORE COUNTY, MARYLAND, *et al.*,**
*Respondents.*

**ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF MARYLAND**

# BRIEF OF AMICUS CURIAE NATIONAL POLICE ASSOCIATION SUPPORTING RESPONDENTS

Robert S. Lafferrandre, OBA #11897*
Jeffrey C. Hendrickson, OBA #32798*
Jacob N. Denne, OBA #35097*
**PIERCE COUCH HENDRICKSON BAYSINGER & GREEN, L.L.P**
1109 North Francis Avenue
Oklahoma City, Oklahoma 73106
Telephone: (405) 235-1611
Facsimile: (405) 235-2904
rlafferrandre@piercecouch.com
jhendrickson@piercecouch.com
jdenne@piercecouch.com

*Attorneys for Amicus Curiae National Police Association*

David A. Skomba, (CPF 8612010477)
Tamara B. Goorevitz, (CPF 9812150274)
**FRANKLIN & PROKOPIK, P.C.**
Two North Charles Street, Suite 600
Baltimore, Maryland 21201
Telephone: (410) 752-8700
Facsimile: (410) 752-6868
dskomba@fandpnet.com
tgoorevitz@fandpnet.com

*Attorneys for Amicus Curiae National Police Association*

**Motion for Special Admission Pending*

October 20, 2023

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases** **Page(s)**

**Statutes** **Pages**



**Other Authorities**

## STATEMENT OF CONSENT TO PARTICIPATE AS AMICUS CURIAE

## I. INTERESTS OF *AMICUS CURIAE*.

The National Police Association is an Indiana non-profit corporation founded to provide educational assistance to supporters of law enforcement and support to individual law enforcement officers and the agencies they serve. The NPA seeks to bring important issues in the law enforcement realm to the forefront of public discussion thus facilitating remedies and broadening public awareness.

## II. REASONS TO DESIRE *AMICUS CURIAE* PARTICIPATION.

This case merits the participation of *amicus curiae* because it involves questions of complicated and oft changing federal law that this Court rarely need address or apply. As Appellant notes, the State of Maryland does not recognize qualified immunity as a defense to claims under the Maryland Declaration of Rights, *see* Aplnt.'s Br., at 10-11. Thus, the only time qualified-immunity questions would make their way to this Court would be in cases brought, in part, under 42 U.S.C. § 1983. Those cases rarely remain in state court when filed, give the defense's general preference to remove them to federal courts, which, generally speaking, have more experience with the application of federal law.

Given this, the participation of *amicus curiae* with extensive experience briefing issues related to federal constitutional torts and their related defenses would benefit the Court's analytical process and streamline the issues for consideration. The National Police Association has filed certiorari-stage and merits-stage *amicus curiae* briefs in the Fourth

Circuit Court of Appeals and the United States Supreme Court on similar issues, and desires to use that experience to aid the Court in its decision-making on the present case.

## III. CONSENTS OF THE PARTIES TO *AMICUS CURIAE* PARTICIPATION.

The undersigned counsel requested Appellant's consent via email, and Appellant's counsel, Attorney Hershfield, consented to the same via telephone call on Wednesday, October 11, 2023. The undersigned confirmed Appellant's consent via an email to Appellant's counsel on Wednesday, October 11, 2023. The undersigned counsel likewise requested Appellees' consent via email, and Appellees' counsel, Attorney Benjamin, consented to the same via email on Friday, October 13, 2023. Copies of these emails are available for the Court's review should it be necessary.

## IV. ISSUES *AMICUS CURIAE* INTENDS TO RAISE.

*First*, the NPA intends to present the Court with a brief addressing, in detail, some of the United States Supreme Court's recent qualified-immunity decisions. These decisions—many of which are notably absent from Appellant's brief—emphasize that courts must avoid identifying "clearly established law" at a level of generality that would render the doctrine meaningless. If all one had to show was that their right to be free from excessive force, for example, was clearly established, then qualified immunity would have no point. Every found constitutional violation would answer both the first and second prongs simultaneously. Appellant wishes this world were ours; the NPA intends to show it is not.

*Second*, the NPA intends to present the Court with a brief addressing the policy considerations underlying qualified immunity. The fact is, most attorneys and judges assess

a set of facts—was the suspect intoxicated? was the gun raised? was the door unlocked?—from the relative comfort of their offices, chambers, and the like. Our nation's law enforcement officers do not get that luxury. They instead take these situations head-on, dealing in real time with citizens who, for a host of reasons, seek to cause harm to themselves, to the public, and/or to the officers who enforce the nation's laws. And rarely do lawbreakers welcome a police officer's intervention. Much more often, officers must resolve situations involving belligerent individuals who may be under the influence of intoxicants, in the throes of a mental-health crisis, armed with a weapon, or some combination of all three. The difficulty—and danger—these interactions pose can scarcely be put into words. As a result, constitutional doctrines that defer to officers in such situations, like qualified immunity, are preferable to the near-strict constitutional-liability scheme that many qualified immunity detractors idealize.

## STATEMENT OF THE CASE

According to the Appellant, two questions face this Court. The NPA discusses only the qualified-immunity question presented, and accordingly defers to the Appellees' statement of the case, to the extent it differs from the Appellant's statement. Notably, the Appellant neglects to mention the evidence that Corporal Ruby fired his rifle after observing Ms. Gaines enter the kitchen and raise her shotgun to a firing position, aimed at officers on one side of the door, in a manner and position she had not previously assumed. *See Cunningham v. Baltimore Cty.*, 246 Md. App. 630, 651-52 (2020) (*Cunningham I*). The Appellant also omits that Corporal Ruby specifically aimed at Ms. Gaines in a manner designed to avoid injuring Kodi Gaines. *See Cunningham v. Baltimore Cty.*, No. 378, Sept.

Term 2022, 2023 WL 2806063 at *1 (Md. Ct. App. Apr. 6, 2023) (*Cunningham II*). The omitted items indisputably bear on the ultimate outcome.

## ARGUMENT

The NPA offers this brief for two purposes, presuming the Court assesses the merits of Appellant's Fourteenth Amendment substantive due process claim.[1] First, to illustrate a concept the Supreme Court has repeatedly reminded courts and litigants. In assessing whether a particular act, in a complex case, had been clearly established as violating the U.S. Constitution, the "law" defining that violation cannot be identified at such a high level of generality that it sweeps in any act, lest the "clearly established" prong have no meaning at all. In so many words, the Appellant asks this Court to define the law as Kodi Gaines' bystander right to be free from conscience-shocking acts resulting in harm. That sentiment, the NPA will show, is far too general to have any real meaning here, and the Court should not adopt it.

Second, the NPA seeks to illustrate the important policy considerations qualified immunity supports. Research into police officers' response times and ability to handle stressful situations, regardless of their training, demonstrates that officers faced with complex, dangerous situations experience a marked decrease in their ability to process verbal conversations and to identify the location of items and people in a given space. Given this, it makes sense from a public policy perspective to have a deferential doctrine

[1] As the Court is well aware, one of the Maryland Appellate Court's central holdings was that Plaintiff does not have an actionable Fourteenth Amendment claim at all. *See Cunningham II*, 2023 WL 2806063, at *18. The NPA leaves argument on that contention to the Appellees.

like qualified immunity counter the possibility of liability in every high-stakes interaction between officers and citizens that calls for a use of force.

## I. THE SUPREME COURT REPEATEDLY EMPHASIZES THE IMPORTANCE OF DEFINING THE LAW AT LOW LEVELS OF GENERALITY WHEN DEALING WITH A NON-OBVIOUS CASE.

To start, qualified immunity is an affirmative defense to constitutional liability under 42 U.S.C. § 1983 which state actors, sued in their personal capacity, can invoke. *Mullenix v. Luna*, 577 U.S. 7, 11 (2015). When asserted, usually at summary judgment but also before discovery and after trial, the doctrine requires the claimant to show that the defendant (1) violated a constitutional right that (2) was "clearly established" at the time of the subject incident. *Younger v. Crowder*, 79 F.4th 373, 385 (4th Cir. 2023). Should the Court reach it, the question posed here is whether Corporal Ruby violated one of Kodi Gaines' clearly established rights in shooting Korryn Gaines in August 2016.

In its most pithy form, a right is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (per curiam). In other words, the conduct violating a right defines the existence of the right itself. If it is so obvious the conduct would risk violating a constitutional amendment, or if—in a less obvious case—specific contextual conduct had previously been held to violate a constitutional amendment, then

the right to be free from that conduct is clearly established.[2] Thereafter, when an officer violates that right, qualified immunity does not adhere.

The crux of this back-and-forth is the level of generality at which a right is defined. As discussed above, the first prong of qualified immunity is whether a defendant violated a constitutional amendment. Because of this, the second prong ("clearly established") must necessarily be something more specific in all but the most obvious cases. Were it that the clearly established prong could be resolved by simply referencing the first-prong finding of a constitutional violation, there would be no need for the clearly established prong at all. If, for example, a court found that a defendant used excessive force in violation of the Fourth Amendment, then qualified immunity would have no purpose if one could answer the "clearly established" prong by saying the right to be free from excessive force was clearly established. Of course, it was. But that form of qualified immunity would never relieve of a police officer from liability in a close-call case—which is the whole point of qualified *immunity*. The "clearly established" prong imbues the doctrine with meaning.

It is for that reason the Supreme Court has "repeatedly told courts…not to define clearly established law at a high level of generality." *Ashcroft v. al–Kidd*, supra, 563 U.S. 731, 742 (2011). The dispositive question is, instead, "whether the violative nature of *particular* conduct is clearly established." *Mullenix*, 577 U.S. at 12 (emphasis original). This inquiry "must be undertaken in light of the specific context of the case, not as a broad

[2] One *per curiam* Supreme Court opinion phrases this as a situation where the obviousness or precedent has "placed the statutory or constitutional question beyond debate." *See Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curiam) (citation omitted).

general proposition." *Id.* (citing *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam)). And this is not a bygone feature of the doctrine; just two terms ago, the Supreme Court forcefully reminded every lower court of this holding in two separate cases. *See Rivas-Villegas*, 595 U.S. at 6 and *City of Tahlequah v. Bond*, 595 U.S. 9, 13 (2021) (per curiam). It has not since signaled an indication of backing away from that holding—especially when the facts do not make it obvious that a constitutional violation happened in the first place.[3]

This, to put it mildly, is one of those non-obvious cases. Appellant must, therefore, offer some precedent to the Court beyond a generalized concept of Fourteenth Amendment due process standards that shows that Corporal Ruby violated one of Kodi Gaines' clearly established rights in shooting *Ms. Gaines* in August 2016. *See Rivas-Villegas*, 595 U.S. at 6. The Appellant does nothing of the sort. Without engaging in too much *ad hoc* summarization, the Appellant's position is that Kodi, as a "bystander," had a right to be free from government conduct that was so "reckless and irresponsible as to constitute inhumane conduct literally shocking to the conscience." *See* Aplt.'s Br., at 14-15 (citing *Rucker v. Harford County*, 946 F.2d 278 (4th Cir. 1991)). The problem with this argument is that—like the objective-reasonableness Fourth Amendment standard discussed above (at 6)—Appellant is simply borrowing the general constitutional standard ("shocks the

[3] *See Brown v. Davenport*, 596 U.S. 118, 137 (2022) (in denying habeas relief, Supreme Court holdings that speak "only at a high level of generality" cannot be "clearly established" federal law for purposes of determining that a state-court decision warrants habeas relief if it violates federal law).

conscience") for Fourteenth Amendment claims and calling it clearly established as to Kodi. That reasoning flies in the face of the Supreme Court's repeated admonishment to not define clearly established rights at too high a level of generality, lest they swallow up the forbearing constitutional question.

Leaving aside the fact that *Rucker* did not clearly establish any set of facts as constitutionally violative, this case is not even remotely similar to *Rucker*'s *hypothetical* example (shooting into a crowd) of when an officer could act so reckless toward unintended targets as to shock the conscience with his or her behavior. The *Rucker* hypothetical could very well be the obvious case where a generalized right to be free from conscience-shocking behavior would carry the day and defeat qualified immunity. But that is, assuredly, not what the Court faces here.

Corporal Ruby observed Ms. Gaines make movements unlike those she had made earlier in the standoff. *See Cunningham I*, 246 Md. App. at 651. He—as corroborated by the other officers on the scene when discussing Corporal Ruby's orders—saw Ms. Gaines raise her weapon in "firing position" toward the door where fellow officers were positioned. Id. at 652. And in so attempting to end the standoff with minimal injury, particularly to Kodi Gaines, Corporal Ruby raised his aim before firing at Ms. Gaines. Id. Given the details in the Appellant's statement of the case, it tortures reason to believe that Rucker's "firing into a crowd" example clearly established that what Corporal Ruby did here violated the Fourteenth Amendment. It plainly did not.

To put a bow on it, this case is a prime candidate for qualified immunity. The Appellate Court of Maryland correctly held that the Appellant did not identify any

precedent showing that Kodi's specific rights were clearly established in August 2016 such that Corporal Ruby could have known his shot—aimed specifically to limit as possible any injury to Kodi—would have violated those rights. The application thereof to Corporal Ruby's conduct not only tracks existing Supreme Court precedent, but as discussed in Section II, firmly embodies the policy reasons the doctrine exists in the first place.

To be sure, qualified immunity has its detractors. These criticisms mostly focus on the common-law and statutory foundations of the doctrine, *see* William Baude, *Is Qualified Immunity Unlawful?*, 106 CALIF. L. REV., 45, 82 (2018), or on the doctrine's claimed needlessness when many governments simply indemnify officers found to have violated the Constitution. *See* Joanna Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885 (2014). But those criticisms are not necessarily universal. *See* Aaron Nielsen, et al., *A Qualified Defense of Qualified Immunity*, 93 NOTRE DAME L. REV. 1853 (2018). And, in any event, the NPA does not herein advocate for the worst manifestations of the doctrine—it is surely the case that the proper view of the Supreme Court's qualified immunity jurisprudence would not permit the doctrine's application simply because the exact same or very nearly the same scenario had never previously occurred.[4] *See*, *e.g.*, *Lombardo v.*

[4] Qualified immunity is, nonetheless, often described as requiring this precise "same acts, same facts" showing. *See*, *e.g.*, Frequently Asked Questions About Ending Qualified Immunity, Institute for Justice, https://ij.org/issues/project-on-immunity-and-accountability/frequently-asked-questions-about-ending-qualified-immunity/ (last accessed October 18, 2023) ("What does it take to show that a right is clearly established? To show a right is clearly established, a victim must identify an earlier decision by the Supreme Court or a federal appeals court in the same jurisdiction holding that precisely the same conduct under the same circumstances is illegal or unconstitutional"). While the occasional case may—

*City of St. Louis*, 143 S. Ct. 2419 (Mem) (2023) (Jackson, J., dissenting from denial of certiorari). For that reason, should this Court reach the Fourteenth Amendment question, it should affirm the Appellate Court of Maryland and remand with instructions to enter judgment in Corporal Ruby's favor.

## II. QUALIFIED IMMUNITY FURTHERS LEGITIMATE GOVERNMENT AND CITIZENRY INTERESTS.

The NPA next turns to the broader policy questions. Make no mistake—qualified immunity is a doctrine that defers to law enforcement defendants. That deference is warranted. As will be borne out below, research on the human body's response to high-stress situations shows officers routinely suffer temporary mental and physical impairments brought on by the scenarios they face daily. A deferential defense to constitutional liability is, therefore, necessary, even if it occasionally relieves government officials from liability for constitutional violations in the name of avoiding a chill on legitimate government action when officers are punished for violating rights previously unknown. *See* Nielson, et al., *supra*, at 1853. Indeed, that consideration motivated in part the Supreme Court's first modern concept of the doctrine. *See Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982) ("But where an official's duties legitimately require action in which clearly established rights are not implicated, the public interest may be better served by action taken 'with independence and without fear of consequences'") (quoting *Pierson v. Ray*, 386 U.S. 547 (1967)).

---

wrongly—impose such a requirement, far more often courts do not apply such an extreme version of the doctrine.

The fact is, there is almost no profession like policing. As one officer put it, "[t]here are few professions where an employee can perceive a dangerous situation in the workplace and still be required to enter that environment and act." *See* Sgt. Rob Pride, "Police Recruitment was Already Tough. Attacks on Qualified Immunity Make Matters Worse." USA Today Opinion (Nov. 26, 2021), https://www.usatoday.com/story/opinion/voices/2021/11/26/attacking-qualified-immunity-hurts-policing/8654304002/. Though there is no generalized duty for police to intervene in a situation unless one or more involved individuals is in custody[5] (and a few other, more narrow exceptions), police departments tend to identify a failure to do so as dereliction of duty. *See* Pride, *supra*, at 11. This means, in turn, that officers are either thrust into, or thrust themselves into, dangerous situations involving life-or-death decisions with regularity. As it were, research into the circumstances officers routinely encounter, and the effect of those circumstances on an officer's ability to function, tracks with the Supreme Court's "without fear of consequences" intuition.

To begin, one study suggests that the average police officer will experience roughly 188 critical incidents throughout her career. *See* Brian A. Chopko, et al. *Critical Incident History Questionnaire Replication: Frequency and Severity of Trauma Exposure Among Officers from Small and Midsize Police Agencies*, JOURNAL OF TRAUMATIC STRESS, March 21, 2015, https://pubmed.ncbi.nlm.nih.gov/25808672/ (last accessed October 18, 2023). Many such critical incidents arise spontaneously during otherwise regular response calls,

[5] *See*, *e.g.*, *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

which denies officers the ability to plan or mentally rehearse for a situation that rapidly spirals out of control. *See* Colin Burrows, *Critical Decision Making by Police Firearms Officers: A Review of Officer Perception*, *Response*, *and Reaction*, A JOURNAL OF POLICY AND PRACTICE, Sept. 24, 2007, https://academic.oup.com/policing/articleabstract/1/3/273/1544689?redirectedFrom=fulltext (last accessed October 18, 2023).

When under significant mental stressors, a person's complex cognitive functions, like conducting verbal communication or processing the arrangement of persons in a set space, tend to falter. *See* Eamonn Arble, et al., *Differential Effects of Psychological Arousal Following Acute Stress on Police Officer Performance in a Simulated Critical Incident*, FRONTIERS IN PSYCHOLOGY, April 9, 2019, https://doaj.org/article/507cd0f7c3384e21945b8358ed423bd1#:~:text=Prior%20research%20suggests%20that%20physiological%20arousal%20following%20a,included%20multiple%20calls%2C%20dynamic%20environments%2C%20and%20surprise%20threats. (last accessed October 19, 2023). Thus, in other words, officers will encounter repeated, critical, and often surprise scenarios where *their own* mental capacity for decision-making is reduced. Over time, the impact of these events and their outcomes has a deleterious effect on officers' mental health. *See* John Violanti, et al., *Police Stressors and Health: A State-of-the-Art Review*, POLICING, November 2017, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6400077/pdf/nihms-1008968.pdf (last accessed October 18, 2023). That, in turn, is associated with declines in job performance. *See* Tina B. Craddock, et al., *Police Stress and Deleterious Outcomes: Efforts Towards Improving Police Mental Health*, JOURNAL OF POLICE AND CRIMINAL PSYCHOLOGY,

November 9, 2021, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8575544/pdf/11896_2021_Article_9488.pdf (last accessed October 19, 2023).

Making matters worse, however, is the reality that many citizens with whom law enforcement interact are themselves suffering from a mental health disorder, under the influence of a mind-altering substance, or both. This increases the chances that these citizens will act aggressively towards officers. A 2018 study found that even low doses of alcohol revealed a significant relationship between prefrontal cortex activity and aggression. *See* Thomas F. Denson et al., *The Neural Correlates of Alcohol-Related Aggression*, 18 COGNITIVE, AFFECTIVE & BEHAVIORAL NEUROSCIENCE, 203, 214 (January 8, 2018), https://link.springer.com/content/pdf/10.3758/s13415-017-0558-0.pdf. This conclusion, the authors noted, "corroborate[d] the predictions of many of the major theories of intoxicated aggression." *Id.* Such as, for example, that when combined with hostile situations or dispositional aggressiveness, alcohol can promote aggressive behavior. *Id.* at 203.

The suggestion that individuals who interact with law enforcement have, generally, an increased propensity for aggression is not limited to those with substance abuse issues, however. In a 2006 article discussing neuroscientific components of the legal insanity defense, one legal commentator described a meta-analysis of studies that concluded, "[e]ven minimal frontal lobe dysfunction may cause impulsive aggression, as studies have found relationships between sub-clinical frontal lobe deficits and aggression in normal populations." *See* Richard E. Redding, *The Brain-Disordered Defendant: Neuroscience and Legal Insanity in the Twenty-First Century*, 56 AM. U. L. REV. 51, 61–62 (2006). In

other words, whether substance-related or not, there is support for the conclusion that citizens interacting with officers are more likely to possess altered mental states and/or react aggressively to simple conduct. The upshot of this literature, therefore, is that *many* of the most complex officer-citizen interactions suffer from temporarily diminished mental capacity on both sides for different reasons.

Here is the primary problem. In any given event, as one group of researches described it, officers have to make "immediate decisions of great consequence across a variety of unpredictable situations." *Arble*, et al., *supra*. For example:

> "[A]n officer approaching a reportedly armed suspect must attempt to communicate with the suspect while simultaneously visually scanning for the presence of weapons, considering other threats within the environment (e.g., other potential suspects, nearby civilians who could be in danger), evaluating the suspect's potential escape routes, potentially coordinating movements with a partner, maintaining radio communication, and considering the nature of the suspect in question (e.g., the suspect's mental state, or if the individual is in fact the actual suspect). These extreme cognitive demands must also be done while the officer is likely to be highly emotionally aroused. In this context of demanding cognitive engagement and emotional arousal, the police officer will be required to make a split-second decision not only to potentially discharge their firearm but also to do so accurately."

Those exceptional demands, which nearly any police officer will encounter, require a degree of deference that qualified immunity provides. In few other professions does the specter of uncapped damages dovetail with the opportunity for someone to assert their rights were violated. The nature of the job requires officers, in some instances, to use force—the prospect that one against whom forced was used would claim "too much!" is a near guarantee, at this point.

The final point made by the authors in the above-referenced study also drives home that officer in critical incident situations suffer from not only mental impairments but also physical ones. Notably, high-stress situations often impair performance in areas like tactical decision-making, rendering officers less able to make considered decisions about when to shoot at, as opposed to pursuing, a citizen-suspect. *See* Lorraine Hope, *Evaluating the Effects of Stress and Fatigue on Police Officer Response and Recall: A Challenge for Research*, *Training*, *Practice and Policy*, JOURNAL OF APPLIED RESEARCH IN MEMORY AND COGNITION, Sept. 2016, https://www.sciencedirect.com/science/article/abs/pii/S2211368116300572 (last accessed October 19, 2023).

And when officers *do* elect to fire their weapons in high-stress circumstances, their physical ability to do so likewise appears impaired. One group of researchers described how, in training situations, shooting hit rates reached 90%, but in real life shootings, the shooting hit rates did not exceed 50%. *See* Laura Giessing, *et al.*, *Effects of Coping-Related Traits and Psychophysiological Stress Responses on Police Recruits' Shooting Behavior in Reality-Based Scenarios*, FRONTIERS IN PSYCHOLOGY, July 3, 2019, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6617500/ (last accessed October 19, 2023). As these researchers observed, "in case[s] of performance failures, police shootings can have tremendous consequences for the officers themselves, colleagues, suspects, or innocent bystanders." *Id.*

Given the above, it is clear that a deferential liability defense is necessary. The nature of the profession regularly places officers in scenarios that compromise their mental and physical ability to respond and respond well. *See* Marian Pitel, et al. *Giving Voice to*

*Officers Who Experienced Life-Threatening Situations in the Line of Duty: Lessons Learned About Police Survival*, SAGE JOURNALS (Sept. 14, 2018, https://journals.sagepub.com/doi/pdf/10.1177/2158244018800904 (last accessed October 19, 2023). A robust qualified immunity jurisprudence ensures that officers are given leeway to do their near-impossible jobs without the specter of strict liability hanging over their heads.

Thus, *when applied properly to the proper case*,[6] qualified immunity can bolster both an officer's confidence in doing her job without as much concern that a judge or jury will later say her snap decision-making in a dangerous, unique, high-stress situation violated the U.S. Constitution. In turn, the citizenry benefits from the protection of law enforcement that is more inclined to vigorously guard its citizens rights, to the point of increasing the likelihood officers will involve themselves in ongoing situations despite having no constitution obligation to do so.

[6] The Supreme Court has made clear that, contra most commentary, qualified immunity is not a blanket cover for officers to act with impunity. *See*, *e.g.*, *Taylor v. Riojas*, 141 S. Ct. 52 (2020) (*per curiam*); *McCoy v. Alamu*, 141 S. Ct. 1364 (2021). Whether these cases, reversing grants of qualified immunity, mark a change in thinking on the doctrine is not clear, though some suggest it. *See* Jennifer E. Laurin, *Reading* Taylor's *Tea Leaves: The Future of Qualified Immunity*, 17 DUKE J. CONST. L. & PUB. POL'Y 241 (2022). What those cases more likely show is that there are situations and conduct that simply do not merit the doctrine's application, and that courts are more than capable of so finding. *See Malley v. Briggs*, 475 U.S. 335, 341 (1986) (qualified immunity protects all but "the plainly incompetent or those who knowingly violate the law"). Though the present case is not one of them, the presence of decisions like *Taylor* and *McCoy*, and countless others at the federal district and circuit-court levels, serve to show the doctrine is not the courthouse-door lock that many aim to believe it is.

## CONCLUSION

This Court should affirm the decision of the Appellate Court of Maryland and remand to the Circuit Court of Baltimore County with instructions to enter judgment consistent with that decision.

Respectfully submitted,

*/s/ Jeffrey C. Hendrickson*
Robert S. Lafferrandre, OBA #11897*
Jeffrey C. Hendrickson, OBA #32798*
Jacob N. Denne, OBA #35097*
**PIERCE COUCH HENDRICKSON BAYSINGER & GREEN, L.L.P**
1109 North Francis Avenue
Oklahoma City, Oklahoma 73106
Telephone: (405) 235-1611
Facsimile: (405) 235-2904
rlafferrandre@piercecouch.com
jhendrickson@piercecouch.com

**Motion for Special Admission Pending*

*/s/ David A. Skomba*
David A. Skomba, (CPF8612010477)
Tamara B. Goorevitz, (CPF9812150274)
**FRANKLIN & PROKOPIK, P.C.**
Two North Charles Street, Suite 600
Baltimore, Maryland 21201
Telephone: (410) 752-8700
Facsimile: (410) 752-6868
dskomba@fandpnet.com
tgoorevitz@fandpnet.com

*Attorneys for Amicus Curiae*
*National Police Association*

## CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-122

1. This brief contains 4,353 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the requirements stated in Rule 8-112.

*/s/ Jeffrey C. Hendrickson*
Jeffrey C. Hendrickson

*/s/ David A. Skomba*
David A. Skomba

## CERTIFICATION OF COMPLIANCE WITH RULE 20-201

1. The undersigned counsel certifies that the foregoing brief does not contain any restricted information.

*/s/ Jeffrey C. Hendrickson*
Jeffrey C. Hendrickson

*/s/ David A. Skomba*
David A. Skomba

## CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2023, I served a complete copy of this brief on all parties via MDEC and two copies via U.S. first-class, postage-prepaid mail to the following counsel of record:

Leslie D. Hershfield
**SCHULMAN, HERSHFIELD & GILDEN, P.A.**
One East Pratt Street, Suite 904
Baltimore, Maryland 21202
Telephone: (410) 332-0850
lhershfield@shg-legal.com

*– and –*

Timothy F. Maloney
Alyse L. Prawde
**JOSEPH, GREENWALD & LAAKE, P.A.**
6404 Ivy Lane, Suite 400
Greenbelt, Maryland 20770
Telephone: (301) 220-2200
tmaloney@jgllaw.com
aprawde@jgllaw.com

*Attorneys for Petitioner*

James R. Benjamin, Jr.
Glenn T. Marrow
**BALTIMORE COUNTY OFFICE OF LAW**
400 Washington Avenue
Towson, Maryland 21204
Telephone: (410) 887-4420
jrbenjamin@baltimorecountymd.gov
gmarrow@baltimorecountymd.gov

*Attorneys for Respondents*

*/s/ Jeffrey C. Hendrickson*
Jeffrey C. Hendrickson

*/s/ David A. Skomba*
David A. Skomba