No. 25-1295

Supreme Court of the United States

DONOVAN MOORE, *et al.*,
Petitioners,

v.

ASHLY ROMERO, AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF STEPHEN ROMERO, DECEASED, *et al.*,
Respondents.

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

BRIEF AMICI CURIAE OF THE NATIONAL POLICE ASSOCIATION IN SUPPORT OF PETITIONERS

James L. Buchal
(Counsel of Record)
Murphy & Buchal LLP
P.O. Box 86620
Portland, OR 97286
(503) 227-1011
jbuchal@mbllp.com
Counsel for Amici Curiae

June 22, 2026

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Interests of the Amici[1]

The National Police Association ("NPA") is a nonprofit corporation organized under Indiana law. The NPA pursues a general mission of advancing law enforcement interests, including participating in cases as amicus curiae when the cases raise legal questions important to law enforcement. The NPA is a national association representing police officers across the country.

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. The NPA seeks rules of immunity and civil liability that provide sufficient deference to police decision making to protect not only the interests of law enforcement officials, but the rule of law itself. The growing complexity of constitutional rights for criminals created by the federal judiciary, attaching in the midst of life-threatening criminal events, threatens to paralyze police ability adequately to respond to armed citizens whose conduct brings calls for police assistance.

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[1] No counsel for any party authored this brief in whole or in part, nor did parties or their counsel make any monetary contribution intended to fund its preparation or submission. Counsel of record received notice of the intent to file this brief more than ten calendar days before it was due.

Summary of Argument

Once again this Court faces a Petition seeking review of a judgment over which large numbers of Circuit Court judges disagree about fundamental Constitutional rules relating to the use of force—yet a slight plurality of such judges finds the rules for destroying qualified immunity to be clearly established. It is obvious that Officers Moore and Kurtz had no fair and clear warning that the Constitution prevented them from using deadly force on a suspect who went for his gun while under arrest.

The larger problem is that such a rule of law would even come into the contemplation of federal judges, who have issued a decision in blatant conflict with this Court's decades of lawmaking concerning the lawful use of deadly force. The opinion below meets every criterion for review articulated in Rule 10. The majority below went well beyond mere error into a willful disregard of the careful framework for objective, officer-focused review of the "totality of the circumstances"—part and parcel of a larger problem of departure from the accepted and usual course of judicial proceedings in use-of-force cases.

The Petition offers this Court the opportunity to build structure into the "totality of circumstances" test by establishing a hierarchy of circumstances in which the suspect's potential subjective motivations are explicitly given less

weight than the critical factor bearing on the degree of threat to the police: is the suspect seeking or gaining control of a gun?

The Petition also offers the Court a means to improve the functioning of the judiciary in vindicating the purposes of qualified immunity, through full review of now-ubiquitous bodycam and dash videos even in the motion to dismiss context.

Argument

I. THE MAJORITY BELOW HAS NOT ONLY IMPLEMENTED THE "TOTALITY OF THE CIRCUMSTANCES" TEST IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, BUT SHOULD BE SEEN AS SO FAR DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO REQUIRE THIS COURT'S REVIEW.

A. The Constitutional Test for Lawful Application of Deadly Force Is "An Important Federal Question" Within the Meaning of Rule 10.

We cannot improve upon Circuit Judge Griffith's statement in dissenting from the grant of rehearing *en banc* that this case

> "raises an issue of exceptional importance, as it puts local and state police officers in our

> Circuit in an impossible situation: Going forward, they must voluntarily assume a high level of personal risk—of being shot by an armed and dangerous suspect who is grabbing for and then raising his firearm mere feet away." (App 82a.)

The NPA would go further, and state that the inevitable result of the approach taken by the majority here will be to deter police control of suspects in a fashion that will lead to more death, not less, and to the death of innocents rather than armed citizens whose misconduct has resulted in police calls.

B. The Majority Ruling Conflicts with Relevant Decisions of this Court.

Over and over again, for decades, this Court has emphasized that the federal judicial role is not second guessing an officer's decisions with the '20/20 vision of hindsight". *Kisela v. Hughes*, 584 U.S. 100, 103 (2018) (per curiam); *Graham v. Connor*, 490 U.S. 386, 396 (1989). Over and over again, this Court has emphasized that qualified immunity protects all but "the plainly incompetent or those who knowingly violate the law". *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Over and over again, this Court has emphasized that the Nation's police officers must have "breathing room to make reasonable but mistaken judgments". *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 611 (2015) (quotation omitted). As demonstrated below, nearly every

aspect of the opinion below conflicts with these core principles.

C. Granting the Petition Can Also Resolve Conflict Among the Court of Appeals Concerning Video Evidence.

While less important that the use-of-force issue, the Petition provides an opportunity to unify federal jurisprudence in an era of body- and dashcams. As demonstrated in Circuit Judge Readler's dissent from the denial of rehearing *en banc*, there is an inter-Circuit split, with the majority opinion in substance joining the Tenth Circuit in declining to utilize video footage in this context. (App. 111a (citing *Fuqua v. Santa Fe County Sheriff's Office*, 157 F.4th 1288, 1299 (10th Cir. 2025), *pet. for cert.* filed Mar. 19. 2026 (No. 25-1108).)

D. The Majority Opinion Has So Far Departed from the Accepted and Usual Course of Judicial Proceedings as to Call for an Exercise of this Court's Supervisory Power.

As Circuit Judge Griffith emphasized in his dissent from the denial of rehearing *en banc*, the Court of Appeals below has developed a pattern of both defiance to this Court's declarations of law and refusal to utilize the *en banc* procedure to exercise supervisory power over straying panels. (App. 78a-80a.) And as Circuit Judges Thapar and Hermandorfer emphasize in their dissent from the denial of rehearing *en banc*, there is a

particular pattern of defiance denying qualified immunity on the basis of "clearly established" law that is, contrary to this Court's requirements, only established at a "high level of generality". (App. 87a-88a.) These circumstances permeate the majority opinion below, provoking the extensive dissents and support granting the Petition.

The NPA also urges this Court to consider that the "accepted and usual course of judicial proceedings" within the meaning of Rule 10(a) should include cases where the Court of Appeals "had, for instance, manifested a strong bias for or against a particular class of litigants". *Dick v. N.Y. Life Ins. Co.*, 359 U.S. 437, 462 (1959) (Frankfurter, J., dissenting). The NPA contends that it is a bias against police and use of force in policing, not mere legal error, which explains a majority opinion where "the break from [Sixth Circuit] precedent and Supreme Court precedent couldn't be clearer". (App. 97a (C.J. Thapar & Hermandorfer, dissenting).)

Over and over again, the majority's "review of the facts" abandons any pretense of an objective review of the totality of the circumstances in favor of imagining the subjective intent of the decedent. For example, the opinion's "review of the facts" declares that the decedent "managed to grasp his gun and slide it away from his body, out of his reach" (App. 10a), when any objective, officer-centered approach would see a potential threat interrupted by the second volley

of shots that resulted in the gun sliding away. The majority's refusal to make full use of the bodycam footage to assess the totality of circumstances here, *even where both litigants used the videos extensively and agreed that the Court could consider the videos*, further betrays an anti-police bias. (*See* App. 6a ("we limit our review of the bodycam footage to that necessary to determine whether Ashly's factual allegations are clearly false").)

II. THIS COURT SHOULD IMPROVE THE "TOTALITY OF THE CIRCUMSTANCES" TEST FOR USE OF EXCESSIVE FORCE.

The Petition amply demonstrates the majority's departure from the simple idea that a suspect reaching for a gun during the arrest process (and here gaining control of it) allows police officers to use deadly force to remove the threat without liability for Constitutionally-excessive use of force. The Petition persuasively frames the majority's error as failing to analyze the totality of circumstances as required by *Barnes v. Felix*, 605 U.S. 73 (2025), to zero in the suspect's subjective intent when reaching for his gun the second time, akin to the "moment-of-threat" analysis foreclosed by *Barnes*.

From the perspective of the NPA, without additional refinements from this Court, the "totality of the circumstances" test threatens to destroy clarity and certainty in this area of law, allowing lower courts far too much flexibility to

escape the time-honored system of common law obedience to prior, fact-bound precedents of this Court. This case involves critical and recurring circumstances that can and should be categorically addressed to rein in lower court application of the test.

A. Strong Guidance Is Needed to Limit Lower Court Discretion in Dangerous Circumstances Such as These.

The totality of circumstances here begins with the proposition that conflict between parties described as being in a domestic relationship is some of the most intense and dangerous conflict officers face. A recent U.S. Department of Justice study showed the highest percentage of line of duty deaths (29%) were in domestic dispute cases.[2] *See also United States v. Martinez*, 406 F.3d 1160, 1164 (9th Cir. 2005) ("violence may be lurking and explode with little warning" and "more officers are killed or injured on domestic violence calls than on any other type of call"; citations omitted). The majority opinion makes no reference to this circumstance; it is frequently cited in the dissents.

Another critical circumstance all but ignored by the majority was the extremely short duration of the overall events. The video exhibit of

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[2] N. Breul & D. Luongo, *Making It Safer: A Study of Law Enforcement Fatalities Between 2010-2019* (USDOJ Dec. 2017), at 19.

synchronized footage (App. 121a) shows the first officer on the scene addressing the decedent at approximately 0:14; the decedent suddenly reaches for his gun at approximately 0:29; shots are fired and he reaches for the gun *again* at approximately 0:32. This was an extraordinarily short time for each officer to assess the threat, decide on the response, and then initiate the response—a process involving complex motor responses required to make ready and fire a weapon—all while paying attention as well to bystanders, fellow officers and other circumstances. [3]

Even under perfect laboratory conditions, the cognitive time gap between action and reaction is between 0.5 and 0.75 seconds; it takes at least that much time to recognize a threat, analyze its meaning, formulate a response selection, and

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[3] *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).

initiate motor response.[4] An experiment conducted with shooters told to stop shooting at a target when it turned red confirmed physiologically-based delays in officer decision making resulted in an average of two extra shots fired after the "stop" signal.[5] Nothing here provided a "stop" signal the officers should have seen, and they had no time to act other than as they did.

The Petition offers this Court an opportunity to clarify that the broadest application of qualified immunity and the narrowest right to be free from the use of deadly force is in inherently dangerous situations, specifically including all arrests in which the suspect is armed with a gun, and police decision making is forced in a matter of seconds. More specifically, when it is demonstrated that the suspect unquestionably reached for his gun, resulting use of deadly force by police within the range of that gun should be presumptively Constitutional.

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[4] 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).

[5] L. Bartel *et al.*, "Time to Stop: Firearm Simulation Dynamics," J. Forensic Biomechanics, 16(1) (2025).

This Court can and should declare that in these circumstances, liability will almost never attach to the Nation's police officers unless they are acting either obviously incompetently or in bad faith. It has been thirty-seven years since this Court explained that it was important for lower courts to consider 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." *Graham*, 490 U.S. at 396-97. Decisions like this one confirm that more than the guidance in *Barnes* is required: the Nation's police need clearly defined, safe harbor rules which prevent federal courts from second-guessing specific dangerous situations like this one.

B. This Court Should Use the Petition as a Vehicle to Clarify Objective Review of the Circumstances.

There is a natural human tendency to imagine the subjective reality of the decedent. It is certainly possible to look at the video footage and see a man who tragically and foolishly thought he was assisting the police by reaching for his weapon to hand or throw it to them. Thus, the majority saw a decedent who "managed to grasp his gun and slide it away from his body, out of his reach". (App. 10a.) But any objective, officer-centered review of the same footage confirms a sudden forceful and successful effort to grab the gun—with sufficient force that when the

second volley of shots interrupts the quick draw, the gun slides away toward the officers. Certainly, the District Court had no trouble seeing that "it would have been difficult for any reasonable officer in Defendants' position to discern the difference between grabbing the gun to use it versus grabbing the gun to hand it over" (App. 62a.)[6]

We will never know what the decedent intended. His subjective intentions could range from cooperation with the police, to an attack upon them, to even "suicide by cop".[7] What we do know is that all domestic violence situations are

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[6] The anti-police bias of the majority is further demonstrated when it goes so far as to suggest that shooting the officers at this point would have "required significant contortion of his body" (App. 11a) when all that would be required is to extend his right arm—the arm with which he repeatedly went for the gun.

[7] "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). That study focused on the phenomena in Los Angeles County between the years 1987 to 1997, and found that suicide-by-cop accounted for 11% of all officer-involved shootings and 13% of all officers' justifiable homicides. The prevalence of this phenomenon further highlights the importance of a well-functioning qualified immunity system in situations where police confront armed suspects who reach for their weapons.

incredibly volatile and violence may "explode with little warning" *United States v. Martinez*, 406 F.3d 1160, 1164 (9th Cir. 2005). From this perspective, the majority's complaint that the decedent "gave no clear indication that he intended to resist" (App 11a) cannot overcome the objective fact of reaching for a gun. This Court should clarify that when a suspect suddenly reaches for his weapon during an arrest process, the degree of apparent prior compliance is in substance irrelevant in the analysis.

Nor can the judiciary place controlling significance upon the words coming from a suspect in any totality of the circumstances test. The majority interprets the words "I got you . . . I got you" as telling the officers that he was complying. (App. 11a.) The majority's "Oxford English Dictionary" focus on whether the decedent's *words* were a threat (*id.*) confirms an armchair, after-the-fact approach utterly at odds with all police training. In the chaotic situation unfolding before them, the officers may not have even heard the words; their only concern was compliance with their orders to end the threat. They certainly "did not have the benefit of stopping time and contemplating nuances of English vernacular". (App. 35a (Griffith, C.J., dissenting).)

Experienced police officers know that suspects can say anything. What matters is what suspects do. Accordingly, this Court does not require officers to accept what suspects are

saying, *District of Columbia v. Wesby*, 583 U.S. 48, 61 (2018), a holding that should be expressly extended to officer/suspect interactions involving the use of lethal force.

Of course, objective signs that a threat has ended, including a person dropping their weapon, or lying completely still and submissive on the ground with their hands showing, factor into the totality of circumstances test, but the test must focus on the perspective of an objective, reasonable officer. There is perhaps no higher risk to an officer than a suspect in the middle of an arrest reaching for and obtaining control of a firearm. Such circumstances alone, should be legally sufficient to justify the use of force outside extraordinary circumstances demonstrating incompetence or bad faith.

C. The Majority's Assertion of Incapacitation Needs Categorical Correction.

Another reason to grant the Petition is that the federal judiciary needs more specific guidance about a recurrent factual circumstance critical to application of the "totality of the circumstances" test: the effect of an initial police volley of gunshots wounding the suspect. The majority's premise that that "[b]y the time he lay on the ground after a first round of fire that had clearly injured him, a reasonable officer would not have

perceived Stephen[8] as a threat" (App. 11a) is obviously falsified by the video evidence; the District Judge had no trouble recognizing that "[t]he video confirms that he was still very much capable of shooting Moore or Kurtz" (App. 63a).

The majority's error is regrettably a recurring one,[9] encouraged by this Court's obiter dictum in *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2022), that a second round of shots would not be justified "after an initial round had clearly incapacitated" the suspect".

A proper understanding of the physiological realities of gunshot wounds and incapacitation demonstrates that actual incapacitation is so difficult to achieve that the federal judiciary should not include asserted incapacitation in any "totality of the circumstances" test without objective evidence of the specific injuries really needed to incapacitate a suspect. Armchair acceptance by federal judges of unsupported and unsupportable allegations of incapacitation

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[8] The majority's repeated use of the decedent's first name in its opinion (and his wife's) may also be seen as a departure from the accepted and usual course of judicial proceedings, intended to personalize persons regarded as victims (as opposed to the majority's consistent use of "Officers Moore and Kurtz"), further indicative of anti-police bias.

[9] *See, e.g., Estate of Hernandez v. City of Los Angeles*, 139 F.4th 790, 801 (9th Cir. 2025) ("A jury could reasonably find that Hernandez no longer posed an immediate threat"), *pet. for cert.* filed Oct. 30, 2025 (No. 25-538).

ignores (if not contributes to) real danger to the Nation's police.

The FBI's Firearms Training Unit, in a 1989 Report entitled "Handgun Wounding Factors and Effectiveness,"[10] summarized the difficulties of incapacitating attacking criminals by shooting them, pointing out that:

- "The human target can only be reliably incapacitated only be disrupting or destroying the brain or upper spinal cord." (Report at 9; *see also id.* at 16 ("Physiologically, no caliber or bullet is certain to incapacitate any individual unless the brain is hit.").)

- "Barring central nervous system hits, there is no physiological reason for an individual to be incapacitated by even a fatal wound, until blood loss is sufficient to drop blood pressure and/or the brain is deprived of oxygen." (*Id.* at 8.)

- *". . . there is sufficient oxygen within the brain to support full, voluntary action for 10-15 seconds after the heart has been destroyed.* (*Id.;* emphasis added.)

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[10] U. Patrick, Handgun Wounding Factors and Effectiveness (FBI Firearms Training Unit July 14, 1989).

Here, the decedent reached for his gun roughly four seconds after the initial round of shots and was manifestly not incapacitated.

Because, as the Report explains, "[f]ew, if any, shooting incidents will present the officer with an opportunity to take a careful, precisely aimed shot at the subject's head," police training is therefore properly "oriented toward 'center of mass' shooting". (*Id.* at 3.) 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 that can stop the person.

Officers know that the mere fact that a bullet has struck a suspect—even center mass—does not remove the threat to themselves or bystanders. It was dangerous, naïve and inconsistent with the reasonable-officer perspective for the majority to interpret the video as consistent with the decedent having been "neutralized and complying with the officers' demands". (App. 18a.) The Petition offers this Court the opportunity to direct lower courts away from subjective and counterfactual speculation about whether an initial volley of shots removed the threat to officers, absent objective proof of damage to the brain or upper spinal cord.

D. The Totality of Circumstances Test Needs Further Refinement.

The fact-dependent and context-sensitive approach for evaluating police use of force adopted by this Court in *Barnes* requires federal courts to "slosh [their] way through the fact-bound morass of "reasonableness,'" 605 U.S. at 80 (quoting *Scott v. Harris*, 550 U.S. 372, 383 (2007)). The opinion below demonstrates that without clarification and refinement, the "totality of the circumstances" test will allow judges hostile to police use of force to refer to events well outside the "moment of threat" to color judicial assessments of the fundamental legal test for the objective reasonableness of the use of deadly force: whether "the officer has probable cause to believe the suspect poses a threat of serious physical harm, either to the officer or others . . .". *Kisela v. Hughes*, 584 U.S. 100, 103 (2018).

Clarifying how the totality of circumstances test should work in the context of armed suspects who gain control of their weapon during an arrest will go a long way toward removing the damage caused by the opinion below and other similar opinions. Given the persistent problems with the federal judiciary's application of an objective, officer-centered, totality of the circumstances test, this Court may wish to reconsider *Graham* and reintegrate the ancient common law "good faith" standard to create an even clearer safe harbor for police. Specifically, a safe harbor rule declining to second-guess police decision making when a

suspect reaches for, and even obtains control of, a deadly weapon during the arrest process unless bad faith somehow exists can continue to provide a § 1983 remedy in those rare cases involving conduct where there may be a disputed issue of fact as to whether the officer is "acting out of anger or emotion rather than any legitimate law enforcement purpose". *Zion v. Cnty. of Orange*, 874, F.3d 1072, 1077 (9th Cir. 2017).

III. THIS COURT SHOULD ALLOW VIDEO EVIDENCE TO ESTABLISH QUALIFIED IMMUNITY IN THE RULE 12 CONTEXT.

This 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 (1991) (per curiam). Petitioners clearly demonstrate that the majority's limitations on the use of video evidence assisted the majority in pursuing a qualified immunity analysis that, on the record of this case, was fatuously general and which utterly failed to vindicate the purposes of the qualified immunity doctrine.

This Court has properly recognized that video evidence may override contradictory testimony in the context of a Rule 56 motion, *Scott v. Harris*, 550 U.S. 372, 280 (2007), and should accept the petition to expand that ruling to Rule 12 motions on qualified immunity. This is consistent with Rule 12(d) itself, which declares that

> "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion."

Where, as here, defending officers present video evidence to the court as part of a Rule 12 motion—unimpaired by any concerns as to its authenticity—and a plaintiff has a reasonable opportunity in opposition to the motion to present any countervailing material, full consideration of the video in the Rule 12 context should be expressly approved by this Court.

It is not enough to suggest, as did the majority below, that the video can only be considered to the extent that it "blatantly contradict[s] or utterly undermine[s] the complaint". (App. 5a (quoting *Hodges v. City of Grand Rapids*, 139 F.4th 495, 510 (6th Cir. 2025).) Use of force is based on "objective reasonableness based upon the information the officers had when the conduct occurred." *Saucier v. Katz*, 533 U. S. 194, 207 (2001), and there is no better source of that information than the bodycam footage.

Of course, video evidence may be ambiguous, and such ambiguity may permit a plaintiff to put

forward allegations concerning information available to the officers that explain away what would otherwise seem to justify the use of deadly force. But that is no reason to invent arbitrary restrictions on consideration of the video evidence.

In most cases, the ambiguities will have little to do with the information an objectively reasonable officer would find relevant to assess a threat to himself or others. That is especially the case here, where a suspect reaches to gain control of his firearm during an arrest, a circumstance against which any ambiguous aspects of the video fade into irrelevance.

To avoid a finding of qualified immunity, plaintiffs must identify a specific ambiguity raising an issue of fact to show that the officer was plainly incompetent or in bad faith. Instead of utilizing the video in this fashion, the majority merely asserted that the video evidence was "inconclusive at the relevant instances, [so that] we are ultimately required to credit the facts as they are alleged in the pleadings". (App. 6a.)

None of these "relevant instances" in fact required denial of the motion to dismiss. The partial compliance of the decedent (App. 11a) did not eliminate the threat posed by his reaching for and gaining control of a gun, whether or not it could be interpreted as an attempt to assist the officers (App. 16a); nor did the direction he stepped (App. 14a n.1); and as noted above, the

video could not and did not demonstrate incapacitation (*cf.* App. 16a).

The majority's procedural rule that it lacked the authority "to conduct a detailed analysis now" even though "that the videos will likely be dispositive evidence at summary judgment or trial" (App. 6a) in substance allowed it to evade appropriate implementation of the totality of the circumstances test.

Imposing procedural blinders against detailed review of video footage is inconsistent with this Court's repeated command to evaluate qualified immunity against use-of-force rules of sufficient particularity. In eschewing a "detailed analysis" of the video, the majority evaded evaluation of the specific context of this case against specific, prior use-of-force precedent.

The Nation's police are deprived of much of the value of qualified immunity if they cannot defend themselves with video evidence showing the specifics of their conduct in a way that makes it clear that no Constitutional right to be free from the use of deadly force has been (or should be) clearly established in such circumstances.

Conclusion

This Court has imposed upon the Nation's police officers a qualified immunity doctrine which by its nature, requires specific statements of law—amounting to what classes of factual

circumstances create objective reasonableness for the use of deadly force—in order to give "fair and clear warning to officers". *White v. Pauly*, 580 U.S. 73, 79 (2017) ("it is again necessary to reiterate the longstanding principle"). The Petition provides an ideal vehicle for a forceful restatement and clarification of the law to establish fair and clear safe harbors for the Nation's police officers faced with suspects who grab deadly weapons during arrests.

Respectfully submitted,

James L. Buchal
Counsel of Record
Murphy & Buchal LLP
P.O. Box 86620
Portland, OR 97286
(503) 227-1011
jbuchal@mbllp.com

Counsel for Amici Curiae
The National Police Association

June 22, 2026