



WHAT DO OFFICERS AND AGENCIES NEED TO KNOW?

The preservation of human life is the highest priority in policing. Police authority to use force, including deadly force, is subject to constitutional limitations. In a recent Fourth Amendment case, *Barnes v. Felix*, the Supreme Court reiterated that evaluating the constitutionality of an officer's uses of force requires reviewing the totality of the circumstances, including events leading up to the ultimate use of force.

BARNES V. FELIX | CASE FACTS AND PROCEDURAL POSTURE

On April 28, 2016, Harris County Precinct 5 Constable's Office Officer Roberto Felix, Jr., initiated a traffic stop on a vehicle driven by Ashtian Barnes for outstanding toll violations. Barnes pulled over and Ofc. Felix approached the stopped vehicle. After a short interaction, during which Barnes said he did not have his identification and Ofc. Felix smelled marijuana, Ofc. Felix instructed Barnes, whom he had not yet identified, to exit the vehicle. Barnes opened the driver's door, but then began driving away. As Barnes' vehicle began moving, Ofc. Felix jumped onto the doorsill of the vehicle, commanded Barnes to not move, then fired two blind shots into the car, fatally striking Barnes.²¹

Barnes' parents sued Ofc. Felix, alleging the use of deadly force violated the Fourth Amendment. The [district court](#), applying Fifth Circuit precedent, emphasized that "the Fifth Circuit does not consider 'what had transpired up until the shooting itself' in assessing the reasonableness of an officer's use of deadly force."²² After identifying that the "moment of threat occurred *after* Felix jumped onto the door sill . . . in the two seconds before Felix fired his first shot," the court concluded that the use of deadly force at that point was presumptively reasonable and granted Ofc. Felix's motion for summary judgment.

The plaintiffs appealed. [The Fifth Circuit](#) framed the inquiry this way: "As the district court explained, we may only ask whether Officer Felix was in danger *at the moment of the threat* that caused him to use deadly force against Barnes."²³ Judge Higginbotham, writing for a unanimous panel of three judges, described that "the moment of threat occurred in the two seconds before Barnes was shot," when Ofc. Felix was "still hanging on to the moving vehicle and believed it would run him over."²⁴ Judge Higginbotham also wrote a separate concurrence, expressing his The Supreme Court granted certiorari. The plaintiff, along with the United States Office of the Solicitor General, [argued](#) that the "moment of threat doctrine" improperly limited the scope of review,

argument. Instead of defending the “moment of threat doctrine” and focusing on “the moment that [Ofc. Felix’s use of force] occurred,” as they did in their briefs, they introduced, for the first time and before largely skeptical justices, the argument that the district court and Fifth Circuit had, in fact, reviewed the “totality of the circumstances.”

Holding

In a unanimous opinion, the Court rejected the “moment of threat” doctrine and reaffirming the principle in *Garner*: courts evaluating the constitutionality of police uses of force must review the totality of the circumstances. The Court wrote: [N]o rule that precludes consideration of prior events in assessing a police shooting is reconcilable with the fact-dependent and context-sensitive approach we have prescribed. A court deciding a use-of-force case cannot review the totality of the circumstances if it has put on chronological blinders.

The Court did *not* however, address the question of “whether or how an officer’s own ‘creation of a dangerous situation’ factors into the reasonableness analysis,” describing that question as “not properly before us.” The Court noted, “In looking at only the two seconds before the shot, [the lower courts] excluded from view any action of the officer that allegedly created the danger necessitating deadly force.”²⁷ The courts below “did not address the relevance, if any, of Felix stepping onto the doorsill of Barnes’ car,” so that issue was outside the scope of the grant of certiorari.²⁸

The *Barnes* decision requires courts to review the totality of the circumstances that led up to an officer’s ultimate decision to use force. That approach, which was already in place in the overwhelming majority of federal circuits, appropriately considers how reasonably available information affects officer decision-making. For example, an officer’s knowledge that a suspect has a habit of unlawfully carrying a weapon and a history of violence against the police, which requires looking beyond the two seconds before a shooting, is certainly relevant to whether an officer’s use of force decision is objectively reasonable.

POLICE USES OF FORCE AND THE FOURTH AMENDMENT

The Fourth Amendment protects the right to be free from unreasonable searches and seizures, including most police uses of force. In *Graham v. Connor*, the seminal use-of-force case, the Supreme Court wrote, “Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.” The constitutional question, the Court held, is whether the force was “objectively reasonable.”

The Court’s opinion allows courts to consider “whether or how an officer’s [actions] factor[] into the reasonableness analysis,”²⁹ but this, too, works to the benefit of officers who act reasonably under what courts already recognize as difficult circumstances. The Barnes opinion emphatically **does not** hold, or even suggest, that any mistake by officers will magically render any subsequent use of force unreasonable. Instead, it allows courts the flexibility to look at events preceding the use of force—including suspect actions, environmental factors, and officer actions—to conduct the “careful balancing” that Graham requires.

In light of existing precedent in a majority of circuits, there is at least the potential for an officer’s *unreasonable* actions to affect the reasonableness analysis if those actions contribute to or create a dangerous situation that *reasonable* police action would have avoided. In this case, if the courts concluded that it was *unreasonable* for Ofc. Felix to physically jump onto a moving car, and that his unreasonable actions created the danger of being struck or run over by the vehicle (keeping in mind the actions of Barnes), they may conclude that the use of deadly force resulting, in part, from Ofc. Felix’s action was itself unreasonable.

Implications for Agencies and Officers

As always, officers should use sound, situationally appropriate tactics and communications because those are the best ways to protect officer safety. Of course, no legal standard requires perfection; it is inevitable that officers operating in high-pressure situations will make mistakes. Precedent from the eight federal circuits that have, for years, already looked beyond the moment of threat establishes that courts have been, and remain, fully capable of both considering an officer’s actions leading up to a use of force and, separately, determining whether an officer’s actions *unreasonably* contributed to the threat that they ultimately used force to address.

Agencies should keep in mind that the standard for the administrative reviews of officer conduct, including uses of force, are distinct from constitutional review. Judicial review, such as in civil litigation, is concerned with the constitutionality of an officers’ actions. Administrative reviews, in contrast, are conducted to determine whether an officer’s actions were consistent with agency policy, procedure, and training.³⁰ The Constitution sets a baseline for legality, agency policies often impose higher or more specific standards designed to promote professionalism, accountability, and community trust. An officer’s actions may be deemed constitutionally reasonable under *Graham* and *Barnes* but still fall short of departmental expectations. Although administrative review should take into account the “totality of the circumstances,” including considerations that are simply not subject to Fourth Amendment regulation—such as officer professionalism, activation of body-worn cameras, etc.—investigators, supervisors, and review boards should understand that *their* role is to assess whether an officer acted consistently with the training, tactics, and principles outlined in department policy. The constitutionality of officer actions is left to the courts. Maintaining this distinction helps ensure policy

compliance, supports public confidence, and reinforces a culture of continuous improvement within law enforcement.

Conclusion

Barnes v. Felix decisively settles a circuit split by reaffirming that courts must evaluate police uses of force under the totality of the circumstances, as viewed from the perspective of a reasonable officer on scene. By rejecting the narrow “moment of threat” doctrine, the Supreme Court has ensured that courts can fully consider the broader context of an encounter, including events leading up to the use of force. This approach supports a more accurate, fair, and realistic assessment of officer conduct—one that recognizes both the challenges of policing and the importance of accountability under the Fourth Amendment. Moving forward, officers can be confident that the law continues to protect reasonable decision-making in difficult, evolving situations, while also ensuring that uses of force are evaluated with the depth and nuance they deserve.

Discussion Questions

These questions are designed to foster reflection, reinforce legal standards, encourage alignment with departmental policy, and promote critical thinking about decision-making in dynamic environments

1. How does the Supreme Court’s decision in *Barnes v. Felix* align with or differ from your department’s use-of-force policies?
2. In what ways does *Barnes v. Felix* reinforce the importance of sound decision-making early in an encounter?
3. Does the Supreme Court’s decision in *Barnes v. Felix* affect how officers should write use-of-force/response-to-resistance reports?
4. What is the difference between constitutional review and administrative review of officer conduct, and why is it important to maintain that distinction?
5. What lessons can be learned from the officer’s decision to step onto the doorsill of a moving vehicle in *Barnes v. Felix*?



ABOUT EPPS

The Excellence in Policing & Public Safety (EPPS) Program was created in Fall 2023, initially funded by a \$10 million appropriation by the South Carolina Legislature. EPPS is dedicated to integrating police practitioners, researchers, and community members to address contemporary challenges in policing and public safety.