

23-1239 BARNES V. FELIX

DECISION BELOW: 91 F.4th 393

LOWER COURT CASE NUMBER: 22-20519

QUESTION PRESENTED:

The Fourth Amendment prohibits a police officer from using "unreasonable" force. U.S. Const. amend. IV. In *Graham v. Connor*, this Court held that reasonableness depends on "the totality of the circumstances." 490 U.S. 386, 396 (1989) (quotation marks omitted). But four circuits—the Second, Fourth, Fifth, and Eighth—cabin *Graham*. Those circuits evaluate whether a Fourth Amendment violation occurred under the "moment of the threat doctrine," which evaluates the reasonableness of an officer's actions only in the narrow window when the officer's safety was threatened, and not based on events that precede the moment of the threat. In contrast, eight circuits—the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits—reject the moment of the threat doctrine and follow the totality of the circumstances approach, including evaluating the officer's actions leading up to the use of force.

In the decision below, Judge Higginbotham concurred in his own majority opinion, explaining that the minority approach "lessens the Fourth Amendment's protection of the American public" and calling on this Court "to resolve the circuit divide over the application of a doctrine deployed daily across this country." Pet. App. 10a-16a (Higginbotham, J., concurring). The question presented—which has divided twelve circuits—is:

Whether courts should apply the moment of the threat doctrine when evaluating an excessive force claim under the Fourth Amendment.

CERT. GRANTED 10/4/2024