

# Excessive Force and the Fourth Amendment: Supreme Court Clarifies Scope of Legal Test

July 8, 2025

On May 15, 2025, the Supreme Court issued a decision in *Barnes v. Felix*, a case addressing the question of when a police officer's use of force violates the Fourth Amendment's prohibition on unreasonable seizures. Lower courts had disagreed about what circumstances surrounding the use of deadly force a court could consider in assessing its reasonableness, with some courts [looking](#) "only to the circumstances existing at the precise time an officer perceived the threat inducing him to shoot." In *Barnes*, the Supreme Court rejected this narrow rule, [indicating](#) instead that courts "must consider all the relevant circumstances, including the facts and events leading up to the climactic moment," in assessing the reasonableness of an officer's use of force (including deadly force).

This Sidebar provides an overview of the Fourth Amendment's application to police officers' use of force and lower court disagreement regarding the scope of the relevant legal test; summarizes the Supreme Court's decision in *Barnes v. Felix*; and provides considerations for Congress.

## Overview of Fourth Amendment Use-of-Force Doctrine

The Fourth Amendment [provides](#), in relevant part, that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" The provision is most well known for its application in the context of searches of the home or person of a criminal suspect. A "[search](#)" for purposes of the Fourth Amendment generally involves government (1) intrusion upon a person's reasonable expectation of privacy or (2) trespass upon a constitutionally protected space.

The Court has also [recognized](#) that a law enforcement officer's application of force to effect a stop or arrest of a criminal suspect can constitute a "seizure" of the person within the meaning of the constitutional provision. A "[seizure](#)" generally constitutes the government's meaningful interference with a person's possessory interests in property or self. Accordingly, a [claim](#) that a law enforcement officer has used excessive force "in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen" [is](#) "analyzed under the Fourth Amendment" (though uses of force following arrest or incarceration are analyzed under [other](#) constitutional provisions). Put [differently](#), the Fourth Amendment protects the "right to be free from the use of excessive force in the course of an arrest."

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LSB11336

## “Reasonableness” Requirement

The Court has recognized that the lawful stop and arrest powers of a police officer “necessarily” [include](#) “the right to use some degree of physical coercion or threat thereof[.]” The Court has stressed, however, that the permissibility of an officer’s use of force in a given situation [must](#)—as the text of the Fourth Amendment suggests—be “reasonable.” The reasonableness requirement in the use-of-force context aligns with the Court’s overall [observation](#) that “the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’”

The Court has [characterized](#) the “reasonableness” standard as one that “is not capable of precise definition or mechanical application.” Rather, the Court has said that determining whether a use of force is “reasonable” is a case-dependent assessment, [requiring](#) a balancing of “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” This judicial balancing will [depend](#) on “the facts and circumstances of each particular case[.]”

Beyond this general reasonableness requirement, the Supreme Court has announced some specific principles that lower courts employ to guide their assessment of the reasonableness of both lethal and nonlethal uses of force by police officers. First, reasonableness is [judged](#) “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” In other words, the constitutional calculus must [allow](#) “for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving[.]”

Second, the reasonableness inquiry is an objective one, meaning that the appropriateness of a use of force is [gauged](#) by what is “‘objectively reasonable’ in light of the facts and circumstances confronting” an officer. As such, the [officer’s](#) “underlying intent or motivation” is irrelevant. The Court has also identified several [factors](#) to be included in the assessment of the facts and circumstances surrounding a particular use of force: (1) “the severity of the crime at issue,” (2) “whether the suspect poses an immediate threat to the safety of the officers or others,” and (3) whether the suspect “is actively resisting arrest or attempting to evade arrest by flight.”

The Court has [said](#) that use of lethal force is permissible where “the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others[.]” [Thus](#), “if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

In the context of deadly force—most often involving the discharge of a firearm—such force may be generally deemed reasonable [where](#) the suspect is brandishing a dangerous weapon in a threatening way or is reasonably believed to be reaching for a weapon (even if the suspect does [not](#), in fact, have one). Courts have found that mere possession of a weapon does [not](#), however, always justify the use of deadly force if there is no indication of a threat to others from it. The Court has [not](#) insisted that an officer use the least amount of force available, provided that the amount of force actually used is reasonable.

## “Totality-of-the-Circumstances” vs. “Moment of Threat” Analysis

The Supreme Court has counseled that every use-of-force case involves a “totality-of-the-circumstances” inquiry. The Court has [explained](#) that the “totality of the circumstances” involves an appraisal of the “whole picture” and the “surrounding circumstances” leading up to the use of force—not a fact or factor “in isolation.” A broader vantage point, the Court [observed](#), is predicated on the notion that “the whole is often greater than the sum of its parts[.]” Accordingly, under the totality-of-the-circumstances methodology, a [court](#) is to “examine the events leading up to the arrest” from the “standpoint of an objectively reasonable police officer.”

Beyond this general understanding of the totality-of-the-circumstances test, the Supreme Court has declined to adopt per se rules in the use-of-force context. For example, in a 2007 use-of-force decision, the Court applied the totality-of-the-circumstances approach in considering the reasonableness of an officer's use of his police cruiser to ram a fleeing suspect's car. The Court [rejected](#) the notion of "a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute 'deadly force,'" [concluding](#) that even though ramming the suspect's car "posed a high likelihood of serious injury or death" to the suspect, the maneuver was reasonable given the threat to innocent bystanders posed by the high-speed car chase. In addition, in 2017, the Court [rejected](#) a categorical rule that would permit an excessive force claim if an officer committed an independent Fourth Amendment violation that "provoke[d] a violent confrontation."

Within these general parameters, lower courts have taken different approaches to applying the totality-of-the-circumstances test in use-of-force cases. For example, some lower courts [adopted](#) a more fluid totality-of-the-circumstances approach, while many courts have embraced a [factor-based](#) and distinctive [deadly-force](#) standard. Courts have also [diverged](#) as to [whether](#) police conduct leading up to or provoking the need for force is relevant to this inquiry.

Most relevant here, in contrast to a totality-of-the-circumstances test with a wide aperture, some courts reviewing use of deadly force claims have [limited](#) their inquiry to the specific time frame when the officer believed that the use of such force was necessary, with the circumstances leading up to the use of force being irrelevant under this test. Pursuant to this "moment of danger" or "moment of threat" approach, the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) has [explained](#), "[t]he excessive force inquiry is confined to whether the officers or other persons were in danger at the moment of the threat that resulted in the officers' use of deadly force." "[T]he focus of the inquiry," the court [added](#), "should be on the act that led the officer to discharge his weapon." The U.S. Courts of Appeals had been [split](#) on the time frame that matters: the Fifth Circuit, along with the Second, Fourth, and Eighth Circuits, employed a "moment of threat" test, while the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits adopted the broader totality-of-the-circumstances test. The Supreme Court resolved this disagreement in *Barnes v. Felix*.

### ***Barnes v. Felix***

On April 28, 2016, an officer [initiated](#) a traffic stop and [asked](#) the driver for his license and proof of insurance. The driver was seen "digging around" inside of the vehicle and [stated](#) that he "might" have the requested documentation in his trunk. The officer [ordered](#) the driver to open the trunk; the driver popped the trunk while inside the vehicle and with the left blinker illuminated, indicating that keys were in the ignition. The left blinker [then](#) turned off. The officer [instructed](#) the driver to exit the vehicle; the driver's side door opened, and the left blinker reilluminated. The officer [stepped](#) onto the sill of the vehicle; drew his weapon, pointing it toward the driver; and ordered the driver not to move. The vehicle began to [move forward](#), and the officer fired multiple shots into the vehicle as it was moving, killing the driver.

### **Procedural History**

The decedent's parents [filed suit](#), asserting pursuant to 42 U.S.C. § 1983 that the use of deadly force was unconstitutional under the Fourth Amendment. The [district court](#) and the [Fifth Circuit](#), applying circuit precedent, analyzed the reasonableness of the use of deadly force according to the "moment of threat" doctrine. The courts [found](#) that the officer reasonably feared for his safety, specifically the possibility that he would be hurt or run over by the vehicle; thus, he was justified in using deadly force and entitled to qualified immunity.

One judge also wrote a concurring opinion expressing [concern](#) that the "moment of threat" doctrine unduly limited the scope of the courts' review to the two seconds when the danger materialized and when

the officer responded; that the doctrine categorically [foreclosed](#) consideration of relevant facts surrounding the use of deadly force; and that the doctrine was [inconsistent](#) with the general “totality-of-the-circumstances” test that ordinarily applies to an evaluation of the constitutionality of a “search” or “seizure.” The judge also pointed out that the circuit courts were [split](#) on the test to be applied in excessive force cases.

The decedent’s mother filed a [petition](#) for Supreme Court review, which the Court [granted](#). The Court [agreed](#) to address “[w]hether courts should apply the moment of the threat doctrine when evaluating an excessive force claim under the Fourth Amendment.”

## Supreme Court Opinion

The Supreme Court unanimously [rejected](#) the “moment of threat” framework for assessing excessive force claims under the Fourth Amendment. The Court [held](#) that a court cannot “‘narrow’ the totality-of-the-circumstances inquiry” or “[put on](#) chronological blinders” by “focus[ing] on only a single moment.” While “the precise time of the shooting will often be what matters most,” the Court [acknowledged](#), a [court](#) “must look too, in this and all excessive-force cases, at any relevant events coming before.” The Court indicated this review is needed because “earlier facts and circumstances” may provide [context](#) as to why the officer believed in latter moments that the use of force was necessary, and thus may inform the reasonableness inquiry. The Court [concluded](#) that the “moment of the threat” approach “conflicts” with the Court’s prior direction to “analyze the totality of the circumstances.”

Justice Kavanaugh, joined by Justices Thomas, Alito, and Barrett, authored a concurring opinion [agreeing](#) “that the officer’s actions during the traffic stop in this case should be assessed based on the totality of the circumstances,” while underscoring “the dangers of traffic stops for police officers.” Accordingly, in Justice Kavanaugh’s view, courts analyzing the reasonableness of an officer’s actions in the course of a traffic stop, particularly one where the driver suddenly attempts to pull away, should “appreciate the extraordinary dangers and risks facing police officers and the community at large.”

## Considerations for Congress

Some in Congress have previously shown interest in the policing practices of federal, state, and local law enforcement officers, including the use of force against criminal suspects. For example, [legislation](#) that passed the House in 2020, and [similar bills introduced](#) in recent years, would have, among other things, limited the use of deadly force by federal officers to a standard of necessity under the totality of the circumstances, defined to include “all credible facts . . . leading up to and at the time of the use of force.”

In general, Congress could seek to address the use of force by federal law enforcement officers and could consider encouraging the adoption of particular force standards by state and local agencies pursuant to its [Spending Clause](#) authority, for example, though Congress typically may not [require](#) states and localities to adopt or enforce federal policies. Legislation addressing police use of force could exceed the existing Fourth Amendment baseline for permissible uses of force—for example, imposing a necessity standard for deadly use of force as the legislation discussed above would have done—but legislation authorizing uses of force that would contravene judicially recognized Fourth Amendment standards could face possible legal challenges. Legislation limiting particular uses of force could also pose administrability and enforcement hurdles and practical challenges, depending on the nature of such limitations.

Congress might also consider addressing existing civil enforcement mechanisms and the judicially created legal doctrine of [qualified immunity](#) (which generally shields government officials, including law enforcement, from civil liability based on alleged deprivations of statutory or constitutional rights under certain circumstances). For instance, some [proposals](#) in the 119<sup>th</sup> Congress would [seek](#) to eliminate qualified immunity for claims brought under 42 U.S.C. § 1983, while other [proposals](#) would codify a version of such [immunity](#) for law enforcement officers.

As an alternative to legislation, Congress could leave resolution of legal issues related to police use of force to the courts.

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