No. 23-1239

IN THE
Supreme Court of the United States

JANICE HUGHES BARNES, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF ASHTIAN BARNES, DECEASED,

Petitioner,

v.

ROBERTO FELIX, JR.; COUNTY OF HARRIS, TEXAS

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF AMICUS CURIAE COLOR OF CHANGE IN SUPPORT OF PETITIONER

Raffi Melkonian
Counsel of Record
Michael Adams-Hurta
Rose Doda
WRIGHT CLOSE & BARGER, LLP
One Riverway, Suite 2200
Houston, Texas 77056
(713) 572-4321
melkonian@wrightclosebarger.com
hurta@wrightclosebarger.com
doda@wrightclosebarger.com

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INTEREST OF *AMICUS CURIAE* [1]

Color Of Change is the nation's largest online racial justice organization, driven by millions of members around the United Sates. Using an integrated and intersectional approach, Color Of Change fights the policies and racism that undermine the progress of Black communities, and it champions solutions that move the country forward, in the economy, our democracy, and the media landscape. Color Of Change advocates in cases of discrimination and is involved in efforts to ensure that federal legislation and policy are fair and enforced without discrimination based on race, gender, sexual orientation, class, or religious beliefs. As the nation's largest online racial justice organization, Color Of Change's track record of addressing issues at the intersection of race, gender and sexual orientation make it well suited to address the questions of justice and accountability presented in this case.

The related issues of the use of excessive force by police officers and qualified immunity stand at the center of Color of Change's mission. At its core, Section 1983 was enacted as a civil rights statute to protect newly freed Black citizens in the aftermath of the Civil War. Qualified immunity and artificial rules limiting the scope of Section 1983 clash with that historic purpose by limiting the scope of recovery for Black citizens facing police misconduct. That is why, for example, Color of Change has led efforts to pass

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[1] No counsel for any party has authored this brief in whole or in part, and no person other than the *amici* or their counsel have made any monetary contribution intended to fund the preparation or submission of this brief.

Federal legislation to amend Section 1983 to eliminate or modify the defense of qualified immunity in federal cases.

Color of Change also believes that low-level traffic stops, like the one at issue in this case, are a serious problem in American policing. Police have wide discretion to conduct traffic stops for a broad array of minor traffic offenses. That untrammeled discretion often leads to unnecessary violence as it did here.

Moreover, there is strong evidence that the police are more likely to pull over Black drivers than drivers of other races for alleged traffic violations. Color of Change's advocacy work has shown that such stops fail to make our communities safer and too often cost Black drivers such as Philando Castile, Samuel DuBose, Daunte Wright, Tyre Nichols, and many more their lives. Cases like this one demonstrate that serious danger.

SUMMARY OF ARGUMENT

A $6.45 toll debt cost Ashtian Barnes his life. In 2016, a Harris County Deputy Constable shot the unarmed 24-year-old during a routine traffic stop—all over someone else's unpaid tolls on a rental car. Mr. Barnes' death shattered his family, leaving his mother Janice and two sisters to grasp at pieces of their broken world. While no court ruling can truly compensate for such a senseless loss of life, it can serve a higher purpose: ensuring no other family endures this nightmare. The Court should vacate the judgment below.

Mr. Barnes' death, though deeply tragic, was all but inevitable. In recent years, the troubling practice of police officers stopping citizens for minor, non-dangerous traffic offenses—offenses that would not typically warrant arrest, such as failing to pay a toll—has rightly drawn heightened scrutiny. These low-level traffic stops are often justified as measures to enforce traffic laws and promote public safety, but their true impact and necessity warrant serious examination. Evidence suggests that these stops are often made where there is no safety reason. Worse, they can often escalate into dangerous situations, leading to unnecessary confrontations and even violence. Often, these are caused, like here, by police searching for marijuana. And there is strong evidence that Black Americans are more often the target of these escalations than other groups.

In this case, the Fifth Circuit applied its "moment of threat" doctrine to hold that it could examine only the "precise moment" Officer Felix shot the bullet that killed Mr. Barnes when analyzing an excessive force claim under Section 1983. Thus, the Court could not consider the fact that the risk the officer allegedly faced was part of a series of events that *he* needlessly started. As Barnes' Brief on the Merits comprehensively shows, the moment of threat doctrine is unjust and unnecessary.

Color of Change writes to show that this narrow focus creates a legal environment where the root causes of police misconduct remain unaddressed, eroding public trust in the justice system. The Court should resolve the split in this case, bring the Fifth Circuit into alignment with the majority of circuits that properly allow district courts to analyze the full

context of the police encounter, and thus help ensure that citizens do not face unneccesary violence during interactions with police.

ARGUMENT

I. Unnecessary traffic stops like the one in this case are unjustified.

Traffic stops for minor infractions, such as for toll violations, broken taillights, or expired registrations, are a pervasive aspect of policing in the United States.[2] These seemingly routine stops disproportionately affect marginalized communities, particularly Black and Brown drivers. Worse, they often escalate into more severe encounters, sometimes resulting in excessive use of force or even fatal outcomes for the drivers. The practice not only diverts law enforcement resources from addressing serious crimes but also erodes public trust in the police. It perpetuates racial disparities and undermines the principles of justice and equity. Re-evaluating the necessity and implementation of traffic stops for minor infractions is crucial for fostering safer, fairer, and more effective policing practices.[3] This case can

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[2] Sam McCann, *Low-Level Traffic Stops are Ineffective—and Sometimes Deadly. Why are They Still Happening?*, Vera Inst. for Just. (Mar. 29, 2023), https://www.vera.org/news/low-level-traffic-stops-are-ineffective-and-sometimes-deadly-why-are-they-still-happening (explaining that there is a "renewed push to examine the underlying logic of low-level traffic stops").

[3] Some jurisdictions have already begun to limit low-level traffic stops. For example, in 2013, the police chief of Fayettville, North Carolina, told his officers to no longer stop cars for non-hazardous traffic violations. *See* David D. Kirkpatrick et al.,

help encourage police departments and municipalities to take steps to reduce the harm of low-level traffic stops around the country.

A. Low-level traffic stops are common and dangerous.

In 2020, 53.8 million United States residents over the age of sixteen encountered law enforcement officers, according to the Department of Justice.[4] That's about one in five people considered old enough to drive a car.[5] Routine traffic stops—like the one for unpaid tolls in this case—make up a hefty portion of those encounters. Roughly 20 million people are pulled over by law enforcement every year in routine traffic stops.[6] One statewide study found that almost half of traffic stops were for minor or non-moving

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Cities Try to Turn the Tide on Police Traffic Stops, N.Y. Times, Apr. 15, 2022, https://www.nytimes.com/2022/04/15/us/police-traffic-stops.html. *See also* Vera Inst. for Just., *Sensible Traffic Ordinances for Public Safety (STOPS)*, https://www.vera.org/ending-mass-incarceration/criminalization-racial-disparities/public-safety/redefining-public-safety-initiative/sensible-traffic-ordinances-for-public-safety (last visited Nov. 19, 2024) (listing jurisdictions that have limited traffic stops by either local or state legislation, police order, or prosecutorial policy).

[4] U.S. Dep't of Just. Bureau of Just. Stats., *Contacts Between Police and the Public*, 2020 1 (revised Mar. 1, 2024) [hereinafter BJS Report], https://bjs.ojp.gov/media/document/cbpp20.pdf.

[5] *Id.*

[6] Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 Nature Hum. Behaviour 736, 736 (2020).

infractions that had little to do with traffic safety, such as broken taillights, expired registration—or, as in this case, unpaid tolls.[7] As for the rest of traffic stops, studies show that despite their prevalence, such routine traffic stops have almost no effect when it comes to preventing criminal activity.[8]

On the other hand, police encounters can have deadly consequences. Most law enforcement officers never use deadly force.[9] But the relatively few that do levy a steep tax on the human lives those very officers are meant to serve: records show at least 1,164 people have been shot and killed by police officers within the last twelve months alone.[10] At least 31 of those were unarmed.[11] And while fatal police shootings may

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[7] Policing Project at N.Y.U. L. Sch., *An Assessment of Traffic Stops and Policing Strategies in Nashville* 7 (n.d.), https://bjs.ojp.gov/media/document/cbpp20.pdf; Alex Chohlas-Wood et al., *An Analysis of the Metropolitan Nashville Police Department's Traffic Stop Practices* 3 (2018), https://policylab.hks.harvard.edu/media/nashville-traffic-stops.pdf.; *see also* Frank R. Baumgartner et al., *Suspect Citizens: What 20 Million Traffic Stops Tell Us About Policing and Race* (2018).

[8] Chohlas-Wood, *supra* note 7, at 9–10.

[9] Gene Demby, *Some Key Facts We've Learned About Police Shootings Over the Past Year*, NPR (Apr. 13, 2015, 1:57 PM), https://n.pr/2IQ1RBV.

[10] Hayden Godfrey et al., *Fatal Force*, Wash. Post (last updated Nov. 6, 2024), https://www.washingtonpost.com/graphics/investigations/police-shootings-database/. The number of police-shooting deaths has grown every single year since 2020: 2020 (1020), 2021 (1050), 2022 (1095), 2023 (1161). *Id.*

[11] *Id.*

garner a higher share of public attention, police injure tens of thousands of people every year.[12]

Despite these staggering rates of damage inflicted on individuals, police are rarely prosecuted, and even more rarely convicted. Between 2005 and 2015, only 54 officers were criminally charged, despite the thousands of fatal police shootings that occurred during those same years.[13] Fewer than half of those officers were ultimately convicted.[14]

Civil suits brought by victims in appropriate cases are often the only path for justice.

B. The costs of these traffic stops are not borne equally.

There's a third piece to this puzzle, on top of the frequency of police encounters and the consequences that might ensue from such encounters: who is being stopped for traffic infractions and thus facing the risk of those consequences? The overwhelming evidence

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[12] Elinore J. Kaufman et al., *US Emergency Department Encounters for Law Enforcement–Associated Injury*, 152 JAMA Surgery, no. 6, 513, 603 (2017).

[13] Kimberly Kindy & Kimbriell Kelly, *Thousands Dead, Few Prosecuted*, Wash. Post, Apr. 11, 2015, https://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/.

[14] *Id.*

says the disproportionate answer is Black individuals.[15]

A recent Department of Justice report identified patterns of police force that disproportionately affected Black individuals and communities.[16] Another study shows a higher likelihood Black drivers will be stopped (relative to their share of the population) than white drivers.[17] And a 200 million-record database of traffic stop and search data from across the country has come to the same conclusion.[18] And during those stops, Black drivers are more likely to be searched, but *less* likely

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[15] *See, e.g.*, Giffords L. Ctr., *In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence* (2020), https://files.giffords.org/wp-content/uploads/2020/01/Giffords-Law-Center-In-Pursuit-of-Peace.pdf; *see also* Rob Arthur, *New Data Shows Police Use More Force Against Black Citizens Even Though Whites Resist More*, Slate (May 30, 2019, 2:41 PM), https://slate.com/news-and-politics/2019/05/chicago-policedepartment-consent-decree-black-lives-matter-resistance.html.

[16] BJS Report, *supra* note 4, at 5, 11; *see also* Giffords L. Ctr., *supra* note 15, at 55 (discussing recent Department of Justice investigations that "uncovered pervasive patterns of unconstitutional policing practices" especially against communities of color).

[17] Pierson, *supra* note 6, at 737; Chohlas-Wood, *supra* note 7, at 4–6.

[18] Stanford Open Policing Project, *Findings* (last visited Nov. 19, 2024), openpolicing.stanford.edu/findings.

to be found in possession of contraband items like drugs or weapons.[19]

At the intersection of these three puzzle pieces—the relative uselessness of routine traffic stops in addressing criminal activity, the potential life-or-death consequences that stem from a police encounter, and the unequal burden among those affected—is this case: an unarmed Black man, stopped by police for a minor and non-moving traffic violation (on a car that wasn't his), is fatally shot.[20]

Ashtian Barnes joins a tragic list of Black men fatally shot by police after being stopped for minor traffic violations: Philando Castile for a broken brake light in Minnesota; Walter Scott for a broken taillight in South Carolina; Samuel DuBose for a missing tag in Ohio; Daunte Wright for expired registration tags in Minnesota; and others.[21] Each of these examples

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[19] Pierson, *supra* note 6, at 739. *See also* Stanford Open Policing Project, *supra* note 18 (noting that "police require less suspicion to search black and Hispanic drivers than white drivers").

[20] It bears noting that a less obvious consequence of these low-level traffic stops is that Black citizens feel marginalized. As one study quoted a 70-year old Vietnam veteran: "It's dehumanizing. . . . I never thought I'd say this, but I think one of my greatest fears nowadays is a traffic stop. You know? [A] [b]roken taillight can result in you losing your life." Peter Vielehr et al., *Driving while Black: A Report on Racial Profiling in Metro Nashville Police Department Traffic Stops* 78 (2016), https://publicdefender.nashville.gov/wp-content/uploads/2016/11/driving-while-black-gideons-army.pdf.

[21] Editorial Board, *Police Should Stop Making Minor Traffic Stops that Too Often Turn into Major Tragedies*, USA Today (July 13, 2021, updated Jan. 31, 2023),

shows how a routine traffic stop may escalate into a fatal encounter in a matter of seconds. What happens in those critical seconds—seconds in which a person's life or death is unilaterally decided by a police officer holding a gun—should not be ignored.

The doctrine of qualified immunity already functions as "an absolute shield for law enforcement officers." *Kisela v. Hughes*, 584 U.S. 100, 109 (2018) (Sotomayor, J., dissenting). As Barnes' Brief on the Merits details, traditional qualified immunity already provides expansive protection for police officers. Under the Fifth Circuit's approach to the doctrine of qualified immunity and excessive force claims, those critical seconds, in which police may create an emergency and then shoot with impunity, are further weaponized to provide near complete immunity. That result is unacceptable.

C. Toll violations are universally understood to be unrelated to public safety.

Toll violations do not endanger public safety. The best evidence of this is that most states make even repeated toll violations misdemeanors that are punished with driving penalties (like suspended licenses) rather than prison sentences. Mr. Barnes was driving in Texas, and Texas law is a perfect example of this basic understanding. Texas law

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https://www.usatoday.com/story/opinion/todaysdebate/2021/07/13/police-traffic-stops-minor-infraction-major-tragedy/7903717002/; *What to Know about the Death of Daunte Wright*, N.Y. Times, Feb. 21, 2022, https://www.nytimes.com/article/daunte-wright-death-minnesota.html.

emphasizes that toll violations—even if Mr. Barnes actually was a toll violator rather than an innocent person renting a car—are not serious crimes that require arrest. In fact, there is no provision in the Texas Transportation Code to stop a car for toll violations except in extreme circumstances.

The Texas Transportation Code's remedies for toll violations makes the point. One of the primary methods Texas uses to enforce tolls is to shame toll violators. Under Texas Transportation Code § 372.102, a toll entity may "publish a list of the names of the registered owners or lessees of nonpaying vehicles." Tolls may be paid back to the state over a "specified period." Tex. Transp. Code § 372.103. And there is only one time the Texas Transportation Code mentions a traffic stop for nonpayment—"where a peace officer" observes a vehicle "operated in violation of an order" entered after a habitual toll violator finding. *Id.* § 372.112 ("Impoundment of Motor Vehicle"); § 372.110 (orders prohibiting operation of motor vehicle). That too is the only scenario where the Texas Transportation Code mentions a criminal charge: where a tolling entity has issued an order prohibiting the operation of a motor vehicle whose owner has been "finally determined to be a habitual violator." *Id.* § 372.110(a), (d). And that charge is a "Class C misdemeanor"—under Texas law "an individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed $500." Tex. Penal Code § 12.23. To summarize the Texas Legislature's policy choices regarding toll violations makes the minor nature of the supposed offense in this case clear: in the event a registered owner of a car fails to pay more than 100 tolls in a year, the car can be impounded or the owner can be

arrested for a fineable offense only. There is no evidence in this record that Mr. Barnes fell anywhere near these provisions: indeed, there could not be, because his girlfriend was renting the car connected to the toll violations.

Texas is not some kind of outlier on toll violations. Throughout the country, the chief consequence for failing to pay a toll is a fine or non-prison misdemeanor.[22] In Florida, for example, the failure to pay a toll is punishable as a "noncriminal traffic infraction," where the citation is mailed to the toll violator by mail.[23] So too in Massachusetts.[24]

Because legislatures have decided that toll violations are not dangerous offenses, the priority of police departments should be to ensure that no one is hurt enforcing this kind of law. But the facts in this case and in many others show that police deparments are not following that wisdom.

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[22] *See generally* Kansas Leg. Rsch. Dep't, *Other States' Laws on Collecting Unpaid Tolls* (Mar. 14, 2016), https://www.kslegresearch.org/KLRD-web/Publications/Transportation/TollCollectionEnforcement-memo-table.pdf.

[23] Kristina E. Music Biro, 28 Fla. Jur. 2d Highways, § 273, *Tolls on roads and bridges – penalty for failure to pay*.

[24] *See* Teresa J. Farris et. al., 12 Mass. Prac., Motor Vehicle Law and Practice § 16.32 ("[A] person charged with a toll violation will receive written notice from a DOT violations clerk").

D. Reducing the incidence of low-level stops would be good for citizens and for the police.

One of the most compelling arguments against low-level traffic stops is the potential for these interactions to escalate into violent confrontations. Traffic stops are inherently unpredictable. An officer approaching a vehicle has limited information about the driver and passengers, which can lead to heightened anxiety and tension on both sides. Even minor misunderstandings or perceived threats can quickly spiral out of control.

Low-level traffic stops also have a significant impact on the relationship between law enforcement and the communities they serve. Frequent stops for minor offenses can create a sense of harassment and discrimination, particularly in communities of color. As explained above, research has shown that Black and Hispanic drivers are more likely to be stopped by police than their white counterparts, even though they are no more likely to be found with contraband. This disproportionate targeting can erode trust in law enforcement, making community members less likely to cooperate with police or report crimes. When citizens view traffic stops as arbitrary or biased, it undermines the legitimacy of the police force and hampers efforts to build positive relationships between officers and the public.

Conducting low-level traffic stops also places a significant burden on law enforcement resources. Each traffic stop requires time and attention that could be better spent addressing more serious crimes. Enforcing the circuit courts' majority rule

nationwide—so that *Graham v. Connor*, 490 U.S. 386 (1989), is given full respect in analyzing traffic-stop violence—may or may not affect the amount that police officers use the traffic stop as a law-enforcement tool. But such an effect would be of no harm to the public or the police. Indeed, by redirecting efforts away from minor traffic violations, police departments can allocate resources more efficiently and focus on issues that have a greater impact on public safety.

II. The Court should distinguish between true emergencies and non-emergent uses of force.

Protecting officers through the "moment of threat" doctrine is especially inappropriate because that rule provides a *second* layer of atextual protection from suits under Section 1983. Under the qualified immunity doctrine as it currently stands, it makes no difference if the officer has himself caused the danger or if there is no split-second life-or-death choice the officer is forced to make. To the contrary, officers making "calculated choices about enacting or enforcing unconstitutional policies" receive the "same protection as a police officer who makes a split-second decision to use force in a dangerous setting." *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2422 (2021) (Thomas, J., statement respecting denial of certiorari). Whether or not that is right, that is the current law. *See also Gonzalez v. Trevino*, 42 F.4th 487, 495 (5th Cir. 2022) (Oldham, J., dissenting) ("And it's not at all clear that we should apply the same-qualified immunity inquiries for First Amendment cases, Fourth Amendment cases, split-second-decisionmaking cases, and deliberative-conspiracy cases"), *rev'd on*

other grounds, 602 U.S. 656 (2024); *Wearry v. Foster*, 52 F.4th 258, 259 (5th Cir. 2020) (Ho, J., concurring in denial of en banc) (officers should not be liable when they "are forced to make split-second, life-and-death decisions in a good-faith effort to save innocent lives"); *Gonzalez v. Trevino*, 60 F.4th 906, 913 (5th Cir. 2023) (Ho, J., dissenting from denial of rehearing en banc) (heroic officers who "stop violent criminals" should not be liable for excessive force).

This case illustrates the point. Even if the "moment of threat" doctrine did not exist in this case, Officer Felix would have the opportunity to argue that his constitutional violations were not clearly established, and to appeal the denial of qualified immunity on an interlocutory basis. Under the Fifth Circuit's rule, Officer Felix can start by arguing that he committed no violation because of the moment of threat rule, and then argue that his violations were not clearly established violations of Section 1983 in the broader context. That double protection puts too heavy a thumb on the scale against liability. If the point of qualified immunity and the law of excessive force is to protect peace officers that are pursuing criminals and preventing active crimes even from the risk of suit, those arguments should apply with less force when officers' actions or decisions create the emergencies. For example, aggressive policing tactics, unnecessary escalations, or violations of protocol can precipitate situations where officers then claim the need to use force in response. In such cases, applying qualified immunity unjustly protects officers from the consequences of their misconduct, as their initial actions directly contributed to the perceived need for force. The status quo is not even good for the police themselves. As Barnes' Brief explains, the moment of

threat doctrine conflicts with police departments' own training to ensure officer safety.

Allowing cases to proceed to trial—whether by adjusting qualified immunity doctrine or by doing away with the "moment of threat" doctrine in cases where officers create emergencies—will deter reckless or aggressive policing tactics and promote more responsible and measured behavior.[25] Public confidence in law enforcement is significantly eroded when officers are perceived as being above the law. Ensuring accountability for created emergencies can help rebuild trust and improve community-police relations. By narrowing the scope of qualified immunity's effect through elimination of the "moment of threat" doctrine, courts can provide a more just avenue for victims to hold officers accountable for their actions.

This case underscores the dire need to recalibrate excessive force to better reflect the varied circumstances under which police officers operate. Officers who engage in proactive, deliberative misconduct or who implement unconstitutional policies should not be afforded the same protections as those who make quick decisions in high-pressure situations not of their making. As Justice Thomas and other jurists have noted, the blanket application of

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[25] *Cf.* Joanna C. Schwartz, *What Police Learn From Lawsuits*, 33 Cardozo L. Rev. 841, 844–45 (2012) (explaining that "lawsuits are a valuable source of information" to police departments because they use lawsuit data "to identify problem officers, units, and practices," to "explore personnel, training, and policy issues that may have led to the claims," and to "craft interventions aimed at remedying those underlying problems").

qualified immunity across all contexts dilutes its original intent and unjustly shields officers from accountability when they have knowingly created dangerous scenarios. This approach fails to deter misconduct and allows systemic issues within law enforcement practices to persist unaddressed.

Moreover, by ensuring that situations where officers create emergencies at least reach a jury, courts would promote a culture of accountability and transparency within law enforcement agencies. This change would incentivize departments to prioritize training and policies that emphasize de-escalation and adherence to constitutional protocols. The distinction in the application of qualified immunity would ensure that victims of police misconduct have a viable path to seek justice and compensation, reinforcing the principle that law enforcement is not above the law. Ultimately, such reforms—to both traffic-stop policies and other policing practices—would enhance public trust in the justice system and contribute to safer, more equitable communities.

CONCLUSION

The Judgment below should be vacated and the case remanded for further proceedings.

Respectfully submitted,

/s/ Raffi Melkonian
Raffi Melkonian
Counsel of Record
Michael Adams-Hurta
Rose Doda
WRIGHT CLOSE & BARGER, LLP
One Riverway, Suite 2200
Houston, Texas 77056
Telephone: 713-572-4321
Facsimile: 713-572-4320

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