

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-1239

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

v.

ROBERTO FELIX, JR., ET AL.

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

MOTION OF THE UNITED STATES
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting vacatur and remand and requests that the United States be allowed ten minutes of argument time. Petitioner consents to this motion and has agreed to cede ten minutes of her argument time to the United States. Accordingly, if this motion were granted, the argument time would be divided as follows: 20 minutes for petitioner, 10 minutes for the United States, and 30 minutes for respondent.

This case concerns the set of circumstances that may be considered in evaluating an excessive-force claim under the Fourth

Amendment. The United States has filed a brief as amicus curiae supporting vacatur and remand, contending that the assessment of the reasonableness of an officer's use of force under the Fourth Amendment should account for the totality of circumstances known to a reasonable officer at the moment force was used, and should not categorically exclude the officer's own conduct preceding the use of force.

The United States has a substantial interest in the Court's resolution of this case. The Fourth Amendment standard for excessive-force claims applies to both federal and state law-enforcement officers. The United States often defends federal law-enforcement officers who face personal liability for alleged Fourth Amendment violations. The United States also prosecutes excessive-force cases under 18 U.S.C. 242 and brings civil actions to address systemic Fourth Amendment violations by law enforcement under 34 U.S.C. 12601.

The United States has previously presented oral argument as amicus curiae in cases concerning the interpretation and application of the Fourth Amendment, including in cases involving claims of excessive force. See, e.g., Torres v. Madrid, 592 U.S. 306 (2021); Plumhoff v. Rickard, 572 U.S. 765 (2014); Scott v. Harris, 550 U.S. 372 (2007). We therefore believe that participation by the United States in oral argument in this case would be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

DECEMBER 2024