

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Case No. 23-CV-00473-CNS-MBD

ESTATE OF RICHARD WARD by and through its personal representative Kristy Ward Stamp,
and KRISTY WARD STAMP,

Plaintiffs,

v.

PUEBLO COUNTY SHERIFF DAVID J. LUCERO, in his official capacity; PUEBLO
COUNTY BOARD OF COUNTY COMMISSIONERS; DEPUTY CHARLES MCWHORTER,
in his individual and official capacity; DEPUTY CASSANDRA GONZALES, in her individual
and official capacity; DEPUTY JACOB MAHAN, in his individual and official capacity;
DEPUTY CHRISTINE SPENCER, in her individual and official capacity; DEPUTY
NICHOLAS BERUMEN, in his individual and official capacity; DEPUTY ROBERT
QUINTANA, in his individual and official capacity; SERGEANT JOSH RAGAN, in his
individual and official capacity; CAPTAIN SHELLEY BRYANT, in her individual and official
capacity Defendants.

Defendants.

**BRIEF OF *AMICI CURIAE* GIFFORDS LAW CENTER
TO PREVENT GUN VIOLENCE AND BRADY CENTER
TO PREVENT GUN VIOLENCE IN SUPPORT OF PLAINTIFFS**

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STATEMENT OF INTEREST¹

Amici Curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) and Brady Center to Prevent Gun Violence (“Brady”) are nonprofit organizations dedicated to reducing and eliminating gun violence. Giffords Law Center and Brady are focused on reducing gun violence in all its forms, including the use of deadly armed force by law enforcement against civilians, particularly on behalf of marginalized groups who disproportionately experience the tragic effects of deadly and excessive force by the police.

Giffords Law Center is a nonprofit policy organization serving lawmakers, advocates, legal professionals, gun-violence survivors, and others who seek to reduce gun violence and improve the safety of their communities.² The organization was founded more than 30 years ago following a gun massacre at a San Francisco law firm and was renamed as Giffords Law Center in 2017 after joining forces with the gun-safety organization founded by former Arizona Congresswoman Gabrielle Giffords. Today, through partnerships with gun-violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends laws, policies, and programs proven to effectively reduce gun violence. For years, Giffords Law Center has researched the connection between community trust in law enforcement and gun violence and advocated for policies to build trust and reduce gun violence. Giffords Law Center has contributed

¹ *Amici* certify that (1) Plaintiffs consented to the filing of this brief and Defendants objected to the filing of this brief, (2) no counsel for a party authored the brief in whole or in part, (3) no party or party’s counsel contributed money that was intended to fund preparing or submitting the brief, and (4) no person other than *amici* or their counsel made a money contribution to preparation and submission of this brief.

² Giffords Law Center’s website, www.giffords.org/lawcenter, is a clearinghouse for comprehensive information about federal, state, and local firearms laws and Second Amendment litigation nationwide.

technical expertise and informed analysis as an *amicus* in numerous cases involving firearm regulations and constitutional principles affecting gun policy.

In January 2020, Giffords Law Center published a report about how trust between a community and the police plays a critical role in combatting gun violence.³ The report analyzed aggregated research on police practices and found that officers' unlawful use of force corrodes community trust and confidence in law enforcement, particularly in communities of color. The report demonstrated that law enforcement's use of unlawful force in policing communities ultimately causes increased violence.

Founded in 1974, Brady is the nation's most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, legal advocacy, and policy action. Brady works to free America from gun violence by passing and defending gun violence prevention laws, reforming the gun industry, and educating the public about responsible gun ownership. Brady has a substantial interest in ensuring that the U.S. Constitution is construed to protect Americans' fundamental right to live. Further, recognizing that gun violence is intersectional, Brady has a substantial interest in advocating for solutions that not only reduce gun violence but also advance equity. Brady has filed *amicus curiae* briefs in many cases involving the regulation of firearms.

INTRODUCTION

This case involves an unacceptable use of deadly force by a police officer against a person who posed no physical danger to police officers—or anyone else—at the scene. The officer who

³ See Giffords Law Center, *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>.

shot and killed Mr. Ward in a middle school parking lot during school dismissal time plainly overreacted. Under these circumstances, summary judgment in favor of the police officers who were responsible for this deadly tragedy would damage public trust in the basic fairness of their local police force. The police acted wrongly here and killed a man in the midst of his community at a particularly delicate time and location. That fact is bad enough. But granting summary judgment here would sweep this highly public police misconduct under the rug. Police officers should make people feel safe. Impunity here would instead engender the feeling that the police themselves constitute a serious threat to lives and safety.

Tragically, this feeling is widespread. Many Americans are killed each year by police gun violence. Individuals from marginalized communities disproportionately bear the brunt of this violence, leaving behind communities in which many have understandably lost trust in law enforcement. Public safety is compromised as a result. Curbing gun violence requires clear rules for police officers' use of force against civilians and mechanisms for civilians to hold accountable those officers who act outside the boundaries of the law.

Community gun violence increases when police misconduct toward civilians ruptures the trust between police and the communities they serve. Communities in which civilians suffer deadly and injurious force by police are less likely to report crimes to law enforcement and less likely to turn to law enforcement when they need it most. This breakdown in trust imperils civilians and police officers alike by undermining law enforcement's ability to be responsive to community safety needs.

Deadly police shootings, like the one in this case, fuel the devastating breakdown in trust between police and the community. In this case, an officer shot and killed Mr. Ward—an

individual who was unarmed and suffered from multiple, diagnosed mental health conditions—in a middle school parking lot, right in front of his mother. Police aggressively yanked Mr. Ward from his mother’s vehicle, escalating the encounter, even after he expressed his fear of law enforcement due to prior encounters with police. Deputy McWhorter shot Mr. Ward multiple times in the chest and left him to bleed out without providing any aid—just as the last bell of the school day rang and students filed by. The Pueblo County Sheriff’s Department awarded Deputy McWhorter a Purple Heart for his conduct. These brazen and unjustified acts of force are exactly the kind of flagrant misconduct by law enforcement that significantly erode community trust.

The Fourth Amendment provides a basic constitutional guarantee that law enforcement will not engage in unreasonable searches or seizures. The “proper application” of the Fourth Amendment’s reasonableness standard “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). “The operative question in excessive force cases is ‘whether the totality of the circumstances justifie[s] a particular sort of search or seizure.’” *Cnty. of L.A. v. Mendez*, 581 U.S. 420, 427–28 (2017) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985)). This reasonableness standard protects officer conduct that is reasonable under the circumstances, while allowing individuals to hold officers accountable for *unreasonable* conduct. Both applications of the reasonableness standard advance community trust, which is critical for effective law enforcement.

In a similar vein, a careful application of the qualified immunity doctrine is also vital to effective law enforcement. The doctrine does not shield from liability officers who knowingly

violate the Fourth Amendment or who are plainly incompetent in the discharge of their duties in the communities they serve. *See Ziglar v. Abbasi*, 582 U.S. 120, 152 (2017) (noting that the doctrine of qualified immunity seeks to avoid undue interference with the ability of officers to discharge their duties by protecting “all but the plainly incompetent or those who knowingly violate the law”) (citation omitted). By foreclosing immunity for officers who violate clearly established constitutional rights, a proper application of the qualified immunity doctrine makes clear to communities that officers who inexcusably use deadly force against an unarmed individual in contravention of clearly established constitutional rights will be held accountable. This, too, advances trust and supports effective law enforcement.

Granting Defendants’ motion for summary judgment—endorsing the notion that this deadly police shooting did not violate the Fourth Amendment or that the officer who used deadly force in this case is insulated from liability on the basis of qualified immunity—would have grave consequences. Effective policing is built on a foundation of community trust. Holding that the officer’s use of deadly force against an unarmed civilian in the circumstances presented here was reasonable threatens to widen the gulf between judicial evaluation of reasonableness under the Fourth Amendment and community understanding of what is reasonable. These understandings must be aligned to ensure the legitimacy of judicial determinations and to foster the trust that is the foundation of effective policing and public safety. Similarly, a broad holding that the officer is entitled to qualified immunity despite the unbridled use of violence against an unarmed civilian would harm community trust in law enforcement by granting immunity precisely when the community would expect liability to be imposed in order to vindicate the violation of a clearly established right.

Amici fully support the brief filed by Plaintiff Estate of Richard Ward (the “Estate”) opposing the motion for summary judgment filed by the officer who shot Mr. Ward and other officers at the death scene.⁴ Allowing claims like those brought by the Estate to proceed to trial is necessary to show those harmed by police violence, and the broader community, that the legal system can and will give them the opportunity to be heard by a jury. Such a trial would encourage trust in and respect for the legal system. Accordingly, *amici* respectfully urge this Court to deny Defendants’ motion for summary judgment and permit the Estate’s Fourth Amendment claims to proceed.

BACKGROUND

On February 22, 2022, Mr. Ward accompanied his mother, Ms. Ward, and her boyfriend to Liberty Point International Middle School in Pueblo, Colorado, to pick up Mr. Ward’s younger brother from school. ECF No. 112 ¶ 27. While the trio waited in Ms. Ward’s SUV, parked in the student pick-up loop at the school, Mr. Ward stepped out of his mother’s SUV for a brief walk in the school parking lot. *Id.* ¶ 29. Upon returning, he mistakenly entered a similar-looking SUV, realized his error almost immediately, and apologized to the driver before returning to his mother’s vehicle. *Id.* ¶¶ 29–31. This innocent mistake set off a lethal chain of events, in which law enforcement’s over-the-top response led to an officer shooting and killing Mr. Ward.

Deputy Charles McWhorter of the Pueblo County Sheriff’s Office arrived at the parking

⁴ The arguments raised by *amici* in this brief are limited to the portions of Defendants’ motion seeking summary judgment on the Fourth Amendment excessive force claims raised by the Estate in the Second Amended Complaint, specifically Claims One and Two. ECF No. 150, Defendants’ Motion for Summary Judgment (“Defs.’ MSJ”), at 11–18. This brief does not address the separate Fourth Amendment unlawful arrest and unlawful seizure claims raised by Plaintiff Kristy Ward Stamp (“Ms. Ward”).

lot in his police SUV. ECF No. 156-4, 00:00-00:05. He exited his SUV and approached Ms. Ward's SUV. *Id.* at 00:06-00:28. Mr. Ward opened the rear passenger door as Deputy McWhorter approached. *Id.* at 00:29-00:31. Deputy McWhorter and Mr. Ward engaged in a conversation for approximately two minutes, during which time Deputy Cassandra Gonzales arrived in her police SUV and took a position a few feet behind Deputy McWhorter. *Id.* at 00:32-02:23; ECF No. 112 ¶¶ 39, 64. Deputy McWhorter first asked Mr. Ward for his identification. ECF No. 156-4, 02:10-02:11; ECF No. 112 ¶ 40. Mr. Ward began looking in his pockets for identification. ECF No. 156-4, 02:11-02:12; ECF No. 112 ¶ 40. McWhorter then asked Mr. Ward if he had any weapons. ECF No. 156-4, 02:13-02:20; ECF No. 112 ¶ 41. Mr. Ward responded that he did not think so, but he might have had a pocketknife. *Id.* McWhorter advised Mr. Ward not to pull weapons out; he did not command Mr. Ward to stop reaching in his pockets. ECF No. 156-4, 02:19-02:20; ECF No. 112 ¶ 42. Continuing to search his pockets, Mr. Ward came upon a prescribed anti-anxiety pill (Lorazepam) and placed it in his mouth. ECF No. 112 ¶¶ 45–46; ECF No. 156-7. Deputy McWhorter shouted, "What did you just put in your mouth?" ECF No. 156-4, 02:21-02:22; ECF No. 112 ¶ 47. Mr. Ward truthfully responded that it was medication.⁵ ECF No. 156-2, 00:39-00:45; ECF No. 112 ¶ 48.

Deputy McWhorter briefly touched Mr. Ward's right arm, then immediately released it and grabbed Mr. Ward by the head and neck. ECF No. 156-2, 00:39-00:45. Deputy McWhorter dragged Mr. Ward from his mother's SUV. ECF No. 112 ¶ 47. The Deputies did not request that Mr. Ward step out of the vehicle, nor did they give Mr. Ward the opportunity to leave the vehicle

⁵ Mr. Ward was diagnosed with several mental illnesses, including bipolar disorder, ADHD, and severe anxiety. *See* ECF No. 150-13 at 4. He was undergoing treatment with a physician and taking prescription medications. *Id.*

of his own will. ECF No. 156-2, 00:00-00:45; ECF No. 156-4, 00:30-02:25. As the Deputies dragged Mr. Ward from the SUV, Mr. Ward flailed his arms in an attempt to regain his balance. ECF No. 156-2, 00:39-00:45. The Deputies threw Mr. Ward to the snow-covered ground, and Mr. Ward wrapped an arm around Deputy McWhorter's leg. Mr. Ward said, "Get off me boy," trying to defend himself from Deputy McWhorter's assault. *Id.* at 00:55-00:56. In an attempt to surrender, Mr. Ward stated "Stop man, I'm done." *Id.* at 00:59-01:02; ECF No. 156-4, 02:42-02:44. During the approximately 30 seconds of this struggle, Ms. Ward pleaded with the Deputies to "Stop" and "Stop now." ECF No. 156-2, 00:38-01:03; ECF No. 156-4, 02:20-02:46; ECF No. 152-9, 142:11-23.

Within seconds of dragging Mr. Ward from the SUV, Deputy McWhorter drew his pistol from his holster and fired three bullets into Mr. Ward's chest at close range. ECF No. 112 ¶¶ 62–63; ECF No. 152-2, 00:39-01:04. Mr. Ward initially was alive and still breathing after Deputy McWhorter shot him, but neither Deputy McWhorter nor Deputy Gonzales rendered any aid to Mr. Ward; they simply stood over him and watched him bleed out. ECF No. 112 ¶¶ 71-79; ECF No. 152-2, 01:04-05:50. The officers refused to allow either Ms. Ward or her boyfriend to exit their vehicle as recently-released middle schoolers filed by Mr. Ward as he was bleeding to death on the ground. ECF No. 112 ¶ 82; ECF No. 152-2, 01:39-04:30. The medical personnel who arrived nearly three minutes later pronounced Mr. Ward dead. ECF No. 112 ¶¶ 79–80.

SUMMARY OF ARGUMENT

Defendants should not be entitled to qualified immunity or otherwise escape constitutional liability for at least three reasons.

First, each of the factors set forth in *Graham* for evaluating the reasonableness of force

used by an officer during a seizure confirms that Defendants’ use of deadly force was unreasonable. *See* 490 U.S. at 395–97. None of the purported offenses that Defendants have asserted in their briefing (“disorderly conduct,” “harassment,” “first-degree trespass,” “tampering with physical evidence,” “attempted theft,” and “conspiracy to commit theft”) were sufficiently severe to justify the use of deadly force against Mr. Ward given the factual circumstances. Nor did Mr. Ward pose an immediate threat to the officers or any others. Instead, Deputy McWhorter acted recklessly when he violently removed Mr. Ward from a parked vehicle and restrained him, creating the very situation he relied on to justify his use of deadly force.

Second, a grant of qualified immunity as a matter of law would not appropriately balance the “evils” that the Supreme Court has found to arise in the context of constitutional challenges to police misconduct: imposing liability on innocent officers versus insulating from liability officers who have violated an individual’s constitutional rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 813 (1982). The doctrine of qualified immunity seeks to avoid undue interference with officers’ ability to discharge their duties by protecting “all but the plainly incompetent or those who knowingly violate the law.” *Ziglar*, 582 U.S. at 152. Here, holding that the officers are entitled to qualified immunity on the Fourth Amendment claims would rupture this balance because they violated Mr. Ward’s clearly established Fourth Amendment right prohibiting use of excessive force—in this case, deadly force—against an individual who posed no threat.

Third, holding that the officers are entitled to qualified immunity as a matter of law would undermine core Fourth Amendment interests by exacerbating the community harms caused by unconstitutional police misconduct. Credible research and empirical data show that the use of excessive force by police—and a subsequent failure to hold police officers accountable for that

conduct—breaks down the essential trust between communities and law enforcement. Distrust in law enforcement dramatically decreases witness engagement and crime reporting rates, perpetuating a corrosive cycle of negative police encounters, increased community distrust and gun violence, and compromised public safety.

ARGUMENT

I. THE USE OF DEADLY FORCE AGAINST MR. WARD VIOLATED HIS CONSTITUTIONAL RIGHTS.

Granting summary judgment to Defendants in this case would contravene Fourth Amendment principles. The Fourth Amendment provides a basic constitutional guarantee that law enforcement will not engage in unreasonable conduct. “[T]he question is ‘whether the totality of the circumstances justifie[s] a particular sort of ... seizure.’” *Graham*, 490 U.S. at 396 (quoting *Garner*, 471 U.S. at 8–9). This reasonableness standard protects officer conduct that is reasonable under the circumstances, while allowing for officers to be held accountable for conduct that is not. Both advance community trust, which is critical for effective law enforcement.

“Determining whether the force used to effect a particular seizure is reasonable requires [a] balancing of the individual’s Fourth Amendment interests against the relevant government interests.” *Mendez*, 581 U.S. at 427 (cleaned up). “[I]t is plain that reasonableness depends on not only when a seizure is made, but also how it is carried out,” i.e., “the totality of the circumstances.” *Garner*, 471 U.S. at 8–9. Moreover, “[t]he use of deadly force ... frustrates the interest of the individual, and of society, in judicial determination of guilt and punishment.” *Id.* at 9. “The use of deadly force” frustrates these interests in particular because it “is a self-defeating way of apprehending a suspect and so setting the criminal justice mechanism in motion.” *Id.* at 10. A victim of lethal force is deprived of the constitutional right to be adjudicated guilty or

innocent of the suspected offense, if any, that motivated the police encounter in the first place. And the victim can no longer serve as a source who could otherwise be critical in solving the specific crime and possibly other related crimes.

In examining the reasonableness of an officer's deadly use of force, "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham*, 490 U.S. at 397 (citations omitted); *see also A.M. v. Holmes*, 830 F.3d 1123, 1151 (10th Cir. 2016) ("We assay a plaintiff's excessive-force claim for objective reasonableness, asking 'whether the officer[s] actions [were] objectively reasonable in light of the facts and circumstances confronting [him], without regard to underlying intent or motivation.'" (quoting *Weigel v. Broad*, 544 F.3d 1143, 1151 (10th Cir. 2008))). Courts consider: "[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officer or others, and [3] whether he is actively resisting or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (the "*Graham* factors"); *see also Simpson v. Little*, 16 F.4th 1353, 1360–61 (10th Cir. 2021). Here, all the *Graham* factors weigh against granting qualified immunity.

As to the first *Graham* factor (the severity of the crime at issue), the offenses for which the Deputies contend they were investigating Mr. Ward at the time that they seized him are manifestly insufficient in severity to justify deadly force. "[W]here the offense is a misdemeanor, the first *Graham* factor ordinarily would weigh against the use of significant force." *Est. of Taylor v. Salt Lake City*, 16 F.4th 744, 764 (10th Cir. 2021) (collecting cases); *see also Perea v. Baca*, 817 F.3d 1198, 1203 (10th Cir. 2016) (finding that suspect's "minor offense—at most—supported the use of minimal force"); *Fogarty v. Gallegos*, 523 F.3d 1147, 1160 (10th Cir. 2008) (noting where

suspect's infractions were "among the least severe crimes . . . the amount of force used should have been reduced accordingly"). In their briefing here—years after Deputy McWhorter shot and killed Mr. Ward—Defendants assert that Mr. Ward was "under investigation" for multiple offenses.⁶ Defs. MSJ at 15. Defendants cite no record contemporaneous with Deputy McWhorter's shooting of Mr. Ward that corroborates this laundry list of cited offenses. Many, moreover, are petty offenses or misdemeanors that could not justify deadly force.

Defendants' reliance on a first degree trespass offense, a class five felony under Colorado law, also does not support the use of deadly force against Mr. Ward, particularly considering the factual circumstances here.⁷ See *Halik v. Brown*, No. 19-CV-02354, 2020 WL 5848797, at *8 (D. Colo. Sept. 30, 2020) ("Although Plaintiff was ultimately charged with vehicular eluding, which is a class five felony under Colorado law, the allegations must be construed in Plaintiff's favor, and, as alleged, the crime does not appear to have been severe enough to justify the amount of force used."). Furthermore, the rationale for treating a severe offense differently under the first *Graham* factor, that an individual has a "strong incentive to evade arrest, given the seriousness of the crime," does not apply here. *Henry v. Storey*, 658 F.3d 1235, 1239 (10th Cir. 2011). Mr. Ward had no incentive or opportunity to evade arrest when Deputy McWhorter approached him and began interrogating him about the vehicle he had mistakenly entered. In fact, Mr. Ward was a passenger in a parked vehicle, remained in the vehicle while being questioned, followed the

⁶ The Deputies identify the following purported offenses: Disorderly Conduct, COLO.REV.STAT. § 18-9-106; Harassment, COLO.REV.STAT. § 18-9-111; First-Degree Trespass, COLO.REV.STAT. § 18-4-502; Tampering with Physical Evidence, COLO.REV.STAT. § 18-8-610; Attempted Theft, COLO.REV.STAT. § 18-4-401; and Conspiracy to Commit Theft, COLO.REV.STAT. § 18-2-201, "among other potential crimes." Defs. MSJ at 15.

⁷ The offense of entering a motor vehicle was downgraded to a misdemeanor offense on March 1, 2022, less than a week and a half after Deputy McWhorter shot Mr. Ward.

Deputy's instructions, and responded to the Deputy's questions.

The second *Graham* factor, the level of threat posed, also does not weigh in Defendants' favor, because Mr. Ward did not pose an immediate threat to the safety of the officer or others. Under Tenth Circuit precedent, "[i]n analyzing whether the second *Graham* factor supports the use of force, courts may consider whether an officer's reckless or deliberate conduct immediately connected with the use of force unreasonably created the need to use force." *Andersen v. DelCore*, 79 F.4th 1153, 1165 n. 6 (10th Cir. 2023) (citations omitted); *see also Pauly v. White*, 874 F.3d 1197, 1221 (10th Cir. 2017) (holding that "threat made by the [suspects], which would normally justify an officer's use of force, was precipitated by the officers' own actions and that [an officer's] use of force was therefore unreasonable"); *Allen v. Muskogee, Okl.*, 119 F.3d 837, 841 (10th Cir. 1997) (denying defendants' motion for summary judgment because "a reasonable jury could conclude on the basis of some of the testimony presented that the officers' actions were reckless and precipitated the need to use deadly force"). Mr. Ward did not threaten the officers. He responded to questions and followed instructions, taking his medication as he did so, no doubt to quell his nerves and help deal with the stress of the situation. Deputy McWhorter acted recklessly and unreasonably in response, pulling Mr. Ward from his car and throwing him to the ground. That conduct escalated the encounter and ultimately Defendant McWhorter shot and killed Mr. Ward. Deputy McWhorter could have asked Mr. Ward to exit his vehicle and avoided the physical altercation entirely, or used any number of other more reasonable options for force short of shooting Mr. Ward multiple times at close range. The bottom line is that, whether together or separately, Mr. Ward's conduct does not come anywhere near close to justifying a police officer's use of deadly force.

The third *Graham* factor also dooms Defendants’ case. Under that factor, the use of some force may be reasonable in instances where a suspect is resisting arrest, but the force used must be “reasonable and proportionate given [the] resistance.” *Perea*, 817 F.3d at 1203; *see also Cortez v. McCauley*, 478 F.3d 1108, 1126 (10th Cir. 2007) (“[T]he excessive force inquiry evaluates the force used in a given arrest or detention against the force reasonably necessary to effect a lawful arrest or detention under the circumstances of the case.”). Although Deputy McWhorter and Mr. Ward were engaged in a struggle at the time Deputy McWhorter shot Mr. Ward, it was Defendant McWhorter who precipitated the physical encounter by unnecessarily and violently dragging Mr. Ward from the car without giving him any opportunity to comply with verbal instructions first. The subsequent use of deadly force was obviously neither reasonable nor proportionate. Mr. Ward was unarmed and could have been subdued by Deputies McWhorter and Gonzales—if that were even necessary under the circumstances here—through non-lethal, alternative means.

Analysis of the *Graham* factors leads to the inescapable conclusion that Officer McWhorter used unconstitutionally excessive force against Mr. Ward, who complied with the officer’s orders, did not resist arrest, and did not pose any reasonable threat to anybody.

II. DEFENDANTS’ DEADLY USE OF FORCE HARMS THE PUBLIC INTEREST AND OUTWEIGHS ANY RISK FROM HOLDING POLICE OFFICERS ACCOUNTABLE FOR MISCONDUCT.

A determination that Defendants are entitled to qualified immunity, as a matter of law, on the Estate’s Fourth Amendment claims would thwart the goal of striking a “balance between the evils inevitable in any available alternative.” *Harlow*, 457 U.S. at 813; *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). “[T]he balancing of competing interests” is “the key principle of the Fourth Amendment.” *Michigan v. Summers*, 452 U.S. 692, 700 n.12 (1981) (citation omitted). As the

Supreme Court has explained, “[i]n situations of abuse of office, an action for damages may offer the only realistic avenue for vindication of constitutional guarantees.” *Harlow*, 457 U.S. at 814. Nevertheless, the imposition of civil liability on potentially innocent police officers imposes costs on “society as a whole,” including “expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office.” *Id.* at 814; *see also Ziglar*, 582 U.S. at 150–51 (explaining that “[t]he qualified immunity rule seeks a proper balance between two competing interests” of vindication of constitutional guarantees and “social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties”) (citation omitted). And “there is the danger that fear of being sued will ‘dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties.’” *Harlow*, 457 U.S. at 814 (citation omitted) (alteration in original).

But qualified immunity is not meant to be an “absolute shield” that leaves individuals whose constitutional rights are violated with no legal redress. The doctrine therefore requires courts to consider the public interest, including the interest in providing redress for harm caused by a police officer’s violations of the Fourth Amendment. *Kisela v. Hughes*, 584 U.S. 100, 121 (2018) (Sotomayor, J., dissenting); *see also Cox v. Wilson*, 971 F.3d 1159, 1165 (10th Cir. 2020) (Lucero, J., dissenting) (“[T]he relentless transformation of qualified immunity into an absolute shield must stop.”); *Witt v. Town of Brookside*, No. 2:21-CV-00773, 2021 WL 4820654, at *21 (N.D. Ala. Oct. 15, 2021) (“Given the clarity of the wrongfulness of this conduct, qualified immunity will not operate as ‘an absolute shield for law enforcement officers[.]’”); *Thompson v. Clark*, No. 14-CV-7349, 2018 WL 3128975, at *6–7 (E.D.N.Y. June 26, 2018) (“The legal

precedent and policy justifications of qualified immunity, it has been charged, fail to validate its expansive scope. The law, it is suggested, must return to a state where some effective remedy is available for serious infringement of constitutional rights.”) (citing *Kisela*, 584 U.S. at 121). Courts that neglect the public interest risk sanctioning “unqualified impunity,” allowing officials to “duck consequences for bad behavior,” rendering unjust decisions, and denying relief to civilians who have meritorious constitutional claims. *Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part); *see also Ventura v. Rutledge*, 398 F. Supp. 3d 682, 697 n.6 (E.D. Cal. 2019).

Weighed against the theoretical risk of “undue inhibition” by police officers, the balance here does not support insulating Defendants from liability, but rather favors the public interest in holding accountable an officer who unreasonably used deadly force against an unarmed civilian. Despite the absence of any legitimate law enforcement purpose, and that Mr. Ward “did not attempt to rise from the ground, to strike Defendants, or even to flee” (ECF No. 112 ¶ 55), Deputy McWhorter drew his pistol from its holster and “fired three bullets into Mr. Ward’s chest, point blank” (*id.* ¶ 62). Tenth Circuit law recognizes that “the Fourth Amendment prohibits the use of force without legitimate justification, *as when a subject poses no threat or has been subdued.*” *McCowan v. Morales*, 945 F.3d 1276, 1289 (10th Cir. 2019) (citation omitted); *see also Est. of Ceballos v. Husk*, 919 F.3d 1204, 1215 (10th Cir. 2019); *Tenorio v. Pitzer*, 802 F.3d 1160, 1166 (10th Cir. 2015); *Est. of Burnett v. City of Colorado Springs*, 616 F. Supp. 3d 1111, 1124 (D. Colo. 2022) (denying qualified immunity over excessive force claim where decedent was “unarmed and did not threaten the Officers”).

Forcibly removing an individual from a vehicle, throwing him to the ground, and then shooting him three times violates clearly established law. *See Ullery v. Bradley*, 949 F.3d 1282, 1292, 1294 (10th Cir. 2020) (explaining that the Tenth Circuit “consider[s] both binding circuit precedent and decisions from other circuits in determining whether the law is clearly established”); *Cantu v. City of Dothan*, 974 F.3d 1217, 1235 (11th Cir. 2020) (holding that “the use of lethal force was so obviously excessive that any reasonable officer would have known that it was unconstitutional, even without pre-existing precedent involving materially identical facts” where “Lawrence was not committing a dangerous felony, or even a non-dangerous one” and “was just trying to drop off at an animal shelter a stray dog he had found in a parking lot earlier that day”); *Mercado v. City of Orlando*, 407 F.3d 1152, 1157, 1160 (11th Cir. 2005) (concluding that officer did not need “case law to know that by intentionally shooting Mercado in the head, he was violating [his] Fourth Amendment rights” where the plaintiff had a knife, had threatened suicide, and refused to drop a knife without any threatening moves toward the officers).

The consequences of awarding Defendants qualified immunity, and allowing them to escape constitutional liability, for killing Mr. Ward are grave. In addition to leaving Mr. Ward’s loved ones and estate without redress for his wrongful death, such a decision would put community members on notice that officers can abuse and even kill them with impunity, rendering “the protections of the Fourth Amendment hollow.” *Mullenix v. Luna*, 577 U.S. 7, 26 (2015) (per curiam) (Sotomayor, J., dissenting).

III. POLICE USE OF DEADLY AND EXCESSIVE FORCE DIMINISHES COMMUNITY TRUST IN LAW ENFORCEMENT, ELEVATING THE RISK OF GUN VIOLENCE AND COMPROMISING PUBLIC SAFETY.

The unjustified use of deadly and excessive force by officers against civilians undermines

core public interests reflected in the Fourth Amendment and decisions interpreting and applying its constitutional guarantee against unreasonable conduct. The Fourth Amendment’s reasonableness standard seeks to protect the public interest in crime prevention. *See Garner*, 471 U.S. at 25–26. And the doctrine of qualified immunity seeks to protect “[t]he public interest in deterrence of unlawful conduct and in compensation of victims” of police conduct that is objectively unreasonable. *See Harlow*, 457 U.S. at 819. Granting summary judgment for Defendants on either the Estate’s Fourth Amendment claims challenging the use of excessive force or on the basis of qualified immunity would deepen community distrust in law enforcement, ultimately resulting in harm to public safety. Credible research and empirical data show that the use of excessive force by police—and a subsequent failure to hold police officers accountable for that conduct—breaks down the essential trust between communities and law enforcement. This breakdown in community trust is particularly acute in communities of color, where police disproportionately use deadly force and excessive force. Distrust in law enforcement perpetuates a corrosive cycle of negative police encounters, increased community distrust, gun violence, and compromised public safety.

A. The Use of Excessive Force by Police Compromises Public Safety by Breaking Community Trust.

Excessive force by police against civilians undermines community safety and deepens public distrust in law enforcement.⁸ Studies show that police officers “must have active public cooperation, not simply political support and approval” to successfully protect the public.⁹

⁸ *See* Giffords Law Center, *supra* n.3.

⁹ Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 Ohio St. J. Crim. L. 231, 266–67 (2008) (finding that community members who view police as legitimate are more likely to cooperate with police

Community members who perceive police officers as engaging in unreasonable conduct are less likely to view police as legitimate.¹⁰ This breakdown in trust between communities and the police is exacerbated when police officers escape accountability for misconduct against the communities they serve.¹¹

Law enforcement officers use deadly force with alarming frequency. On average, approximately 1,100 civilians are killed annually by law enforcement.¹² So far in 2025, on-duty police officers have killed 103 people in 49 states and the District of Columbia.¹³ Officers killed at least 1,260 people in 2024.¹⁴ Police killings of civilians understandably impact the public's perception of law enforcement. In 2020, the American public's confidence in police officers fell below 50% for the first time.¹⁵ This was due to a "widespread perception that bad officers are not held accountable when things go wrong."¹⁶ The doctrine of qualified immunity plays an outsized role in perpetuating this cycle of impunity, mistrust, and violence. Unsurprisingly, this perceived

officers and comply with the law).

¹⁰ Tom R. Tyler & Cheryl J. Wakslak, *Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and Acceptance of Police Authority*, 42 *Criminology* 2 (Mar 7, 2006), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.2004.tb00520.x>.

¹¹ See Rebecca L. Sokol, et al., *The Association Between Perceived Community Violence, Police Bias, Race, and Firearm Carriage Among Urban Adolescents and Young Adults*, *Preventative Med.* 154 (Jan. 2022), <https://pubmed.ncbi.nlm.nih.gov/34863814/> (individuals with higher levels of police distrust were more likely to acquire a firearm for protection).

¹² See David Hemenway, et al., *Variation in Rates of Fatal Police Shootings Across US States: The Role of Firearm Availability*, 96 *J. Urban Health* 63, 63–64 (2018), https://pmc.ncbi.nlm.nih.gov/articles/PMC6391295/pdf/11524_2018_Article_313.pdf.

¹³ *Mapping Police Violence*, <https://mappingpoliceviolence.squarespace.com/> (last visited Feb. 15, 2025).

¹⁴ *Id.*

¹⁵ James Craven, et al., *How Qualified Immunity Hurts Law Enforcement*, CATO Inst. (Feb. 15, 2022), <https://www.cato.org/study/how-qualified-immunity-hurts-law-enforcement>.

¹⁶ *Id.*

lack of accountability erodes the public's trust in the police and also in the justice system overall.¹⁷

Law enforcement's use of excessive force causes significant physical and psychological harm to individuals directly harmed while also harming the communities in which police use such force.¹⁸ Evidence and examples demonstrate unequivocally that distrust in law enforcement triggered by community experience and awareness of police brutality dramatically decreases the likelihood that members of the community will report crimes, a phenomenon that expert literature refers to as the "Jude Effect."¹⁹ This phenomenon leads to lower rates of solved homicides and other violent crimes.²⁰ As the rate of unsolved murders climbs, faith in the fairness, skill, legitimacy, and honest commitment of police forces plummets further, while vigilante justice

¹⁷ Cheryl Boudreau, et al., *Police Violence and Public Perceptions: An Experimental Study of How Information and Endorsements Affect Support for Law Enforcement* (June 2019).

¹⁸ See, e.g., Denise Herd, *Cycles of Threat: Graham v. Connor, Police Violence, and African American Health Inequities*, 100 Boston U. L. Rev. 1047, 1953–56 (2020), <https://www.bu.edu/bulawreview/files/2020/05/09-HERD.pdf> (police use of excessive force leads to increased physical injuries, lower resistance to diseases and increased levels of chronic stress and psychological harm, and exploring how these outcomes result in reduced opportunities for education and employment and increased incidents of crime); see generally Giffords Law Center, *supra* n.3.

¹⁹ Matthew Desmond, et al., *Police Violence and Citizen Crime Reporting in the Black Community*, 81 Am. Soc. Rev. 857, 870–73 (2016), https://scholar.harvard.edu/files/mdesmond/files/american_sociological_review-2016-desmond-857-76.pdf (reporting an estimated net loss of 20,000 emergency 911 calls in the year following the beating of Frank Jude).

²⁰ Police Exec. Research Forum, *Review of the Chicago Police Department's Homicide Investigation Process* 99 (2019), https://iapail.wpengine.com/wp-content/uploads/2023/04/Chicago-Homicide-Investigations-Assessment-Report_FINAL_to-CPD.pdf (“[L]ack of witness cooperation,” including because of police distrust, is “one of the primary reasons for uncleared homicides[.]”); see also Wesley Lowery, et al., *Murder with Impunity: An Unequal Justice*, Washington Post (July 25, 2018), <https://www.washingtonpost.com/graphics/2018/investigations/black-homicides-arrests/> (last visited Feb. 21, 2025) (discussing the “vicious cycle” where law enforcement continually fails to solve homicides involving Black Americans, distrust of law enforcement deepens, fewer arrests occur, and investigation cooperation declines).

spreads.²¹

The Jude Effect occurs when a police force loses the trust and cooperation it needs to protect and serve effectively. This term refers to the dramatic decline in 911 calls that took place in a community in Milwaukee after a highly publicized incident in which off-duty police brutally beat a man named Frank Jude.²² This same effect was also observed in Chicago after the on-duty police killing of 17-year-old Laquan McDonald and in Baltimore after Freddie Gray died of a severe spinal cord injury inflicted in police custody. As explained in a U.S. Department of Justice (“DOJ”) investigative report regarding the Chicago Police Department, Laquan McDonald’s death—resulting from 16 shots to the back by an officer—represented “a tipping point—igniting longstanding concerns about [the] officers’ use of force, and the City’s systems for detecting and correcting the unlawful use of force.”²³ The report concluded that “trust has been broken” between police and the community, and that this “breach in trust has in turn eroded [the] ability to effectively prevent crime.”²⁴ From 2014 to 2016, the rate of murders solved by police fell by nearly half (from 50% to 29%), while homicides in Chicago increased by 85%.²⁵

²¹ See generally Jill Leovy, *Ghettoside: A True Story of Murder in America*, 8–12 (2015).

²² See Desmond, *supra* n.19 at 870-73; John Diedrich & Ashley Luthern, *911 Calls Fell in Black Milwaukee Neighborhoods After Jude Beating, Study Finds*, Milwaukee J. Sentinel (Sept. 2016), <https://www.jsonline.com/story/news/investigations/2016/09/29/911-calls-fell-black-milwaukee-neighborhoods-after-jude-beating-study-finds/90907882/> (discussing how prosecutors created the term “the Jude [E]ffect” to describe the distrust they were witnessing among Black jurors during jury selection).

²³ U.S. Dep’t of Justice Civil Rights Div. & U.S. Attorney’s Office for the N.D. of Ill., *Investigation of the Chicago Police Department*, 1 (Jan. 13, 2017), <https://www.justice.gov/opa/file/925846/download>.

²⁴ *Id.* at 1–2.

²⁵ Police Exec. Research Forum, *supra* n.20, at 2–3.

Police officers who use excessive force against civilians perpetuate the Jude Effect by further eroding trust between the police as a whole and the communities they serve. Here, Deputy McWhorter violently dragged Mr. Ward out of a parked vehicle in the middle school parking lot where Mr. Ward and his mother were picking up his younger brother. Deputy McWhorter then shot Mr. Ward three times in the chest at close range. Consistent with the Jude Effect, if Deputy McWhorter is allowed to escape accountability for his egregious actions through a grant of summary judgment for him against the Estate's claims, community members will be more likely to fear and avoid future interactions with law enforcement, deterring cooperation with police and ultimately preventing crime-solving and compromising public safety.

The negative impact of excessive force on public safety is enduring. Misguided, especially unjustifiably violent, crime-control efforts, coupled with poor service delivery, can drive a community's collective belief that police are incapable of, or unconcerned with, making their community safer—regardless of whether that is true.²⁶ This lack of community trust makes it more difficult for police officers to carry out their responsibilities.²⁷ Community members “are less likely to cooperate with police when they feel unprotected by the law, and police are less able to protect people without cooperation.”²⁸ Community distrust in local police forces also contributes to increased rates of violence when people take justice into their own hands due to a belief that

²⁶ Rod K. Brunson & Brian A. Wade, “*Oh hell no, we don’t talk to police*” *Insights on the Lack of Cooperation in Police Investigations of Urban Gun Violence*, Criminology & Public Policy, 1–26 (2019), <https://nicjr.org/wp-content/uploads/2020/09/NYC-Study-2019.pdf>.

²⁷ Jay Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure*, CATO Inst. (Sept. 14, 2020), <https://www.cato.org/policy-analysis/qualified-immunity-legal-practical-moral-failure#exacerbates-crisis-accountability-law>.

²⁸ German Lopez, *There’s a Nearly 40 Percent Chance You’ll Get Away With Murder in America*, Vox (Sept. 24, 2018), <https://www.vox.com/2018/9/24/17896034/murder-crime-clearance-fbi-report>.

police cannot or will not provide effective assistance and safety.²⁹ This dangerous cycle foments even more violence and inevitably leads to further tragedy.

Even when excessive police force is not fatal, studies show that such force negatively affects the well-being of civilians and their communities.³⁰ One such study documented that over time “[r]eoccurring” and “persistent” violent police misconduct promotes physical wear and tear on the human body, including “diabetes, stroke, ulcers, cognitive impairment, autoimmune disorders, accelerated aging, and death.”³¹ It may also cause “emotions [that] might be damaging to individual mental health and might elevate distress at the population level.”³² Further, not holding officers accountable for misconduct hampers the success of local governments, “including efforts to keep communities safe, [which] directly depend on the procedurally just behavior of

²⁹ David S. Kirk & Andrew Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 Am. J. of Soc. 1190, 1198, 1216–21 (2011), <https://www.scholars.northwestern.edu/en/publications/cultural-mechanisms-and-the-persistence-of-neighborhood-violence>; see also Desmond, *supra* n.19, at 870–73.

³⁰ Sirry Alang, et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 Am. J. Pub. Health 662, 662–65 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5388955/>.

³¹ *Id.* at 663; see also Rahwa Haile, et al., “*We (still) charge genocide*”: *A Systematic Review and Synthesis of the Direct and Indirect Health Consequences of Police Violence in the United States*, 322 Social Science & Medicine 5 (2023), <https://www.sciencedirect.com/science/article/pii/S0277953623001417> (“[V]icarious exposures to police violence are also associated with multiple health-related harms. Having a loved one killed by police is terrorizing, as is the post-killing traumatization of families who have experienced the loss of a loved one, all of which are associated with lower levels of mental health. In addition, personally witnessing and viewing media reports about police violence is associated with mistrust and fear of police, as well as sadness, fear, anger and hypervigilance. Moreover, Black people and communities located in areas with greater numbers of police killings of Black people have higher risks of preterm birth, higher numbers of poor mental health days, elevated levels of cortisol, higher rates of sexually transmitted infections, and declines in emergency department visits, suggesting that police violence may operate as an ecological exposure.”).

³² *Id.*

police officers.”³³

Data trends in the concentration of violent crime illustrate the importance of community trust and participation in ensuring the common goal of public safety. Researchers have found strong evidence that “[n]eighborhoods where the law and the police are seen as illegitimate and unresponsive have significantly higher homicide rates,” even after accounting for differences in race, age, poverty, and other structural factors.³⁴ Many cities experience a similar and striking pattern of violence in which law enforcement employs practices of over-policing,³⁵ which ultimately prove ineffective by reducing community trust.³⁶ Other systemic problems follow, including higher crime and more frequent vigilantism. Fewer crimes are reported.

Research funded by the National Institute of Justice confirmed this localized effect in Chicago, when rates of violence were falling in most areas of the city, but high murder rates persisted in certain neighborhoods where police were deeply mistrusted by significant portions of

³³ Andrea Silva, et al., *Perceived Police Performance, Racial Experiences, and Trust in Local Government*, 344 (Oct. 27, 2020)

³⁴ Kirk & Papachristos, *supra* n.29, at 1216–21.

³⁵ Typically, crimes are carried out by an insular group of people who are often involved in cycles of retaliatory violence but comprise less than 1% of a city’s population. See Stephen Lurie, et al., *Presentation: The Less Than 1%: Groups and the Extreme Concentration of Urban Violence*, National Network For Safe Communities 13–17, 23 (Nov. 2018), https://cdn.theatlantic.com/assets/media/files/npsc_gmi_concentration_asc_v1.91.pdf.

(summarizing data collected from nearly two dozen United States cities that revealed that around 50% of the cities’ homicides and nonfatal shootings involved about 0.6% of the population, and law enforcement knew those victims and perpetrators had affiliations with groups involve in violence).

³⁶ See Giffords Law Center, *supra* n.3 (explaining that “many communities struggling with long-simmering crises of confidence in law enforcement witnessed spikes in violence after high-profile police misconduct further weakened community trust,” and explaining that these communities “have long felt brutally over-policed and under-protected,” making them “particularly susceptible to this trend”).

the community.³⁷ In short, as common sense confirms, distrust of law enforcement can be a powerful contributor to violence.

B. Police Violence Toward Marginalized Individuals and Communities Uniquely Threatens Community Trust in Law Enforcement and Public Safety.

The use of deadly and excessive force by law enforcement officers acutely erodes trust between communities of color and law enforcement. Studies show that communities of color are less likely to trust law enforcement officers, further undermining the safety and well-being of these communities and impairing the ability of law enforcement to serve them. Police officers are more likely to use physical force in structurally disadvantaged neighborhoods.³⁸ Marginalized people and communities, including socioeconomically disadvantaged communities, communities of color, and those experiencing mental health issues, are more likely to be subject to police violence. Recent DOJ investigations identified pervasive patterns of unconstitutional policing practices, including excessive use of force that disproportionately affected Black individuals and led to higher levels of distrust of the police within Black communities.³⁹ This distrust resulted in less community engagement with police and ultimately undermined police officers' ability to effectively solve and prevent violent crime.

³⁷ Kirk & Papachristos, *supra* n.29, at 1190.

³⁸ See Phillip Atiba Goff, et al., *The Science of Justice: Race, Arrests, And Police Use of Force*, Center For Policing Equity 4 (2016), https://policingequity.org/images/pdfs-doc/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf.

³⁹ For descriptions of the investigations, see Giffords Law Center, *supra* n.3, at 55–57. See also M.C. Brown II & Camille Lloyd, *Black Americans Less Confident, Satisfied with Local Police*, GALLUP (Sept. 18, 2023), <https://news.gallup.com/poll/511064/black-americans-less-confident-satisfied-local-police.aspx> (stating that Black Americans are less confident than White Americans and Hispanic Americans in their local police).

Overwhelming evidence suggests that a disproportionate number of individuals injured or killed by police officers were experiencing mental or behavioral health issues at the time of their encounters with police. A study by Johns Hopkins Center for Gun Violence Solutions and Vanderbilt University found that in injurious shootings by police in 2015–2020, 23% of people injured by police were shot in incidents involving mental or behavioral health issues and those people were twice as likely to die from their injuries.⁴⁰ This is despite research demonstrating that “[t]he majority of law enforcement encounters with people with mental illnesses are with individuals suspected of committing low-level, misdemeanor crimes, or who are exhibiting nuisance behavior.”⁴¹ These encounters often escalate quickly to use of force if law enforcement officers perceive an individual experiencing a mental health or behavioral health issue to be resisting because they are slow to comply with police instructions or otherwise acting unpredictably. Use of force against individuals experiencing mental illness is especially problematic because such individuals are already “victimized by a system that is inadequately designed to meaningfully address social needs.”⁴²

These dynamics are exemplified in this instance. Mr. Ward was diagnosed with several mental illnesses, including bipolar disorder, ADHD, and severe anxiety. *See* ECF No. 150-13 at 4. He was undergoing treatment with a physician and taking prescription medications. *Id.* Deputy

⁴⁰ Julie A. Ward, et al., *National Burden of Injury and Deaths From Shootings by Police in the United States, 2015–2020*, 114 Am. J. Pub. Health 387, 394 (2024), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2023.307560>.

⁴¹ Melissa Reuland et al., *Law Enforcement Responses to People with Mental Illness: A Guide to Research-Informed Policy and Practice*, Council of State Governments Justice Center 5 (2009), <https://csgjusticecenter.org/wp-content/uploads/2020/02/le-research.pdf>.

⁴² Ward, et al., *supra* n.40, at 395 (2024) (quoting Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 Am. Sociol. Rev. 769, 771 (2019)).

McWhorter dragged Mr. Ward from a car and threw him to the ground after Mr. Ward took a pill—medication to treat anxiety⁴³—from his pocket and put it in his mouth. Holding that Defendants did not use excessive force in violation of the Fourth Amendment or that they are entitled to qualified immunity, as a matter of law, would in effect condone the use of excessive violence toward individuals experiencing mental illness. This in turn could lead to the perception that such violence is acceptable and lawful, and further undermine trust in police, especially by members of marginalized communities.

CONCLUSION

For the foregoing reasons, Giffords Law Center and Brady respectfully urge the Court to reject Defendants’ arguments that the use of excessive force against Mr. Ward was reasonable under the Fourth Amendment and deny Defendants’ request to be shielded by qualified immunity.

Dated: February 21, 2025

Respectfully submitted,

COOLEY LLP

/s/ Maureen Alger
Maureen Alger

⁴³ The autopsy report noted that an anxiety pill was found in Mr. Ward’s pants pocket and the toxicology report identified two anxiety medications in Mr. Ward’s system at the time of his death. See ECF No. 150-13 at 6.

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2025, I filed a true and correct copy of the Giffords Law Center to Prevent Gun Violence and Brady Center to Prevent Gun Violence's *Amici Curiae* Brief in Support of Plaintiffs via CM/ECF, which will generate notice by electronic mail to all counsel who have appeared via CM/ECF.

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