

# UPDATE

## NEW YORK STATE SHERIFFS' ASSOCIATION



*Decisions of Interest to Sheriffs, Undersheriffs  
and Supervisors*



*June 5, 2025*

# Affidavit of Military or Non Military Service Required Before Court Will Grant Default Judgment

A plaintiff commenced an action seeking damages for personal injuries sustained as a result of the alleged negligent acts of a hair salon. One request for summary judgment was denied, since the plaintiff failed to submit an affidavit that the defendant was not in active military service as required under 50 USC §3931.

She filed a second motion for summary judgment, and this time included an affirmation regarding the defendant's military status. The court noted that while the absence of a valid nonmilitary service affidavit may be an irregularity and not a jurisdictional defect, the nonmilitary service affidavit is still a requirement under federal law for any civil action in order to protect military personnel from default judgments (50 USC §3931).

Here, the court had no concerns about the validity of the service of process, and said that the moving papers for default judgment were all in order. With the added affidavit of nonmilitary service, the court did not have a problem granting a default judgment since the defendant did not appear in the case.

This case demonstrates why it is important to include in the affidavit or certificate of service information regarding the military status of the person served...without it, a court is not permitted to issue a default judgment.

Herrera v Daza, Kings County Supreme Court, March 17, 2025

*The federal law is copied here for your review:*

## **§3931. Protection of servicemembers against default judgments**

### **(a) Applicability of section**

This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

### **(b) Affidavit requirement**

#### **(1) Plaintiff to file affidavit**

**In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit-**

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) Appointment of attorney to represent defendant in military service

If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

(3) Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this chapter.

(4) Satisfaction of requirement for affidavit

The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

(d) Stay of proceedings

In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that-

(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) Inapplicability of section 3932 procedures

A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 3932 of this title.

(f) Section 3932 protection

If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 3932 of this title.

(g) Vacation or setting aside of default judgments

(1) Authority for court to vacate or set aside judgment

If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that-

(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

(B) the servicemember has a meritorious or legal defense to the action or some part of it.

(2) Time for filing application

An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) Protection of bona fide purchaser

If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of

a provision of this chapter, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

## **False Arrest Claim Survives: Standard for Seizure For Purposes of Federal Law Differs From the Standard for Purposes of our State Constitution**

On October 16, 2023, Mr. Clinton experienced “a manic episode during a disagreement with his sister” at his mother’s apartment. During the episode, his sister called 911 and told the dispatcher that Mr. Clinton “suffered from mental illness” and that “they required EMS and police officer assistance.” Shortly after the call was placed, New York City police officers arrived at the apartment and began speaking to Mr. Clinton’s mother and sister. Clinton’s mother and sister advised the Officers that Plaintiff was experiencing a manic episode and required medical assistance, and the officers assured Plaintiff’s mother that they were there to assist, would take care of Plaintiff, and that they would handle it.. During this exchange, however, Mr. Clinton “walked right past the Officers” and left the apartment. The Officers saw Mr. Clinton exit the apartment but apparently did not understand at that point that he was the reason for the call.

The officers followed the plaintiff as he was walking down the block, and he ran when he noticed the Officers rapidly approaching him from behind. The Officers then began chasing after Mr. Clinton “at full speed” while “screaming and cursing at him as they ran towards him. As Mr. Clinton fled from the Officers, he ran into a busy intersection and was struck by a truck hauling a tractor trailer, knocking him unconscious. He was taken to a hospital where he was treated for severe injuries.

In this action, he sued the officers for false arrest and several other torts, and the court had to determine if the facts as he alleged were sufficient to state a valid claim. The court did not determine liability or the truthfulness of the facts, and just had to decide if the facts as alleged allowed the case to go forward.

### **Plaintiff Fails to Adequately Plead False Arrest or Deprivation of Liberty Pursuant to Section 1983**

The court found that the Plaintiff failed to adequately plead a claim for false arrest *pursuant to Section 1983* because he does not allege that he was seized — as seizure is defined by federal law. A claim for false arrest pursued under section 1983 arises out of plaintiff's Fourth Amendment right to be free from unreasonable seizures, which includes the right to remain free from arrest absent probable cause. A Fourth Amendment seizure occurs when there is a governmental termination of freedom of movement through means intentionally applied. The word 'seizure, however, does not apply to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee. That is no seizure.

Here, Plaintiff did not adequately plead that he was seized because he does not allege either that he was physically apprehended or that he submitted to the Officers' authority. There is no allegation that the Officers made any physical contact with Plaintiff or physically restrained his movement. And in fleeing immediately after seeing the Officers, he was evading the Officers' authority, not submitting to it.

### **State Law Claim Upheld**

However, the court did conclude that this plaintiff did adequately plead that he was seized without probable cause in violation of article I, §12 of the New York state constitution. To prevail on a claim of false arrest under New York law, the plaintiff must show that:

1. the defendant intended to confine him
2. the plaintiff was conscious of the confinement
3. the plaintiff did not consent to the confinement, and
4. the confinement was not otherwise privileged.

Under New York law, neither actual malice nor want of probable cause is an essential element of an action for false imprisonment. Rather, probable cause is an absolute defense to a false arrest claim.

#### ☐ Plaintiff Adequately Plead That He Was Seized Under New York Law

- ☐ Under New York law, it is not required that an individual be physically restrained or submit to a show of authority before finding a seizure. One may be seized if the police action results in a significant interruption of the individual's liberty of movement. Thus, unlike under federal law, "a verbal command...coupled with other behavior" may constitute a seizure. For example, our Court of Appeals has held in an earlier case that shouting "freeze" with guns drawn constituted a significant interruption of the defendant's freedom of movement.
- ☐ Even so, a verbal command, standing alone, will not usually constitute a seizure. In one case, the police officer merely walked toward the defendant and directed him to stop as the defendant walked away. That situation, the court held, did not rise to the level of a seizure. But the court noted that the language used by police may, in some instances, be so forceful and intimidating that it constitutes the

seizure of an individual. *The test is whether a reasonable person would have believed, under the circumstances, that the officer's conduct was a significant limitation on his or her freedom.*" so, tone of voice, display of force or firearms, how many officers were involved, would all be taken into consideration by the court.

- ☐ Here, the court said that a reasonable person could conclude that Plaintiff's freedom of movement was limited. Essentially, the court determined that the issue should be decided by a jury. The facts that the officers were running, screaming and cursing all weighed against them in this finding.
- ☐ The court said that the officers did not have probable cause to make an arrest.
  - ☐ The court found no facts or circumstances that would warrant a person of reasonable caution to believe that Plaintiff had committed or was committing a crime at the time the Officers chased him down the street. The frantic concerns of plaintiff's family that he was suffering from a "manic episode" was not enough to establish grounds for an arrest.
- ☐ The court could not determine at this stage of the case whether the officers were entitled to qualified immunity.
  - ☐ Qualified immunity protects an official from liability under federal causes of action but is not generally understood to protect officials from claims based on state law.
  - ☐ Nevertheless, a similar doctrine exists under New York common-law. New York law grants government officials qualified immunity on state-law claims except where the officials' actions are undertaken in bad faith or without a reasonable basis.
  - ☐ This court said it could not decide now if the officers acted reasonably and in good faith. While the court said that after discovery between the parties it might be able to make such a decision, it upheld the plaintiff's case for the time being.

Other alleged civil violations were dismissed, but some were similarly upheld for determination at a trial.

Clinton v The City of New York, U.S. District Court for the Southern District of New York, May 9, 2025

*Should the officers have simply allowed the plaintiff to flee the scene without chasing him? Is that what the plaintiff's family asked the officers to do?*

## **Monell Claim against County for Failure to Disclose Exculpatory Evidence Results in 28 Million Dollar Judgment for the Plaintiff**

The New York Law Journal reports that a 28 million dollar verdict has been rendered against the City of Buffalo regarding a criminal prosecution years ago.

Several black teenagers were accused of murder, but the jury found that Erie County was liable since crucial crime scene photographs that undermined the prosecution's case were withheld from most of the defendants. The winning plaintiff, Williams, served 22 years in state prison before his parole release, and four other defendants also spent decades behind bars.



The case against Erie County was based on the 1978 Supreme Court decision in Monell, which allows municipalities to be sued for constitutional violations caused by official policies or widespread practices. The plaintiff argued that the City of Buffalo failed to properly train, supervise or discipline detectives in the lawful handling of suspects and

witnesses, particularly regarding coercive interrogation and fabrication of evidence. They also sought to prove that the county prosecutors systematically failed to disclose exculpatory and impeachment material in violation of the Brady discovery rule.

Under Monell, litigants must prove that a municipality knew that its practices were harmful, but were deliberately indifferent to that risk. The Law Journal cited several scholars who said that Monell claims are rarely proven, and will certainly require the Buffalo and Erie County to review its law enforcement policies and how they are implemented.

## **Failure to Serve Summons and Complaint Within 120 Days of Commencement, Further Failure to Exercise Due Diligence, Leads to Denial of Default Judgment Motion**

Plaintiff sued for damages resulting from a car crash against individual defendants Paredes, Santiago and Cortes, and also against Rigo Limo-Auto. The accident happened on August 21, 2022, and action was commenced on October 5, 2023 by filing the appropriate papers in the county clerk's office. The defendants were all served, and in this motion the plaintiff sought a default judgment against Rigo Limo-Auto, which had not answered the complaint.

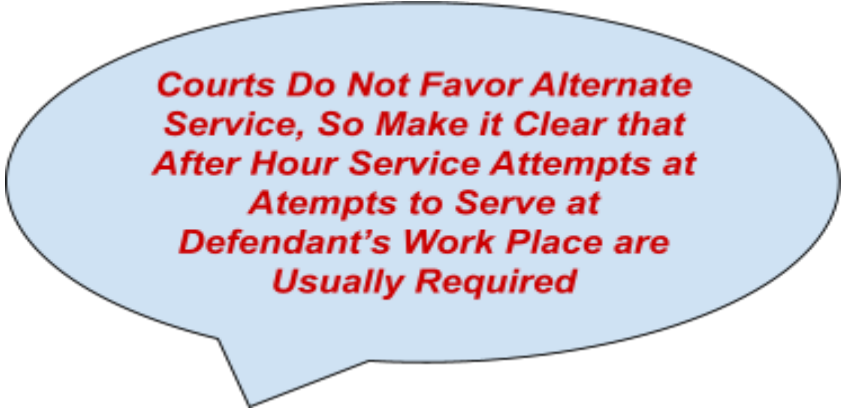
### **Service on Rigo Limo-Auto**

CPLR 304 provides that an action is commenced by filing a summons and complaint or summons with notice. CPLR 306-b provides that service of the summons and complaint must be completed within 120 days of commencement of the action. In this case, the summons and complaint were served on June 17, 2024, two hundred and fifty-six (256) days after the action was commenced. The plaintiff never sought an extension of time to effectuate service.

The court denied the request for default judgment, concluding that since service of the commencement papers upon Rigo Limo-Auto occurred well beyond the 120-day period prescribed by CPLR 306-b, the court lacked jurisdiction over this defendant

### **Service on Santiago**

On March 5, 2024, plaintiff filed an affidavit of service of the commencement papers upon defendant Santiago with the court clerk. The affidavit by plaintiff's licensed process server averred that he made two attempts to serve Santiago with the commencement papers at Santiago's residence but there was no one there each



***Courts Do Not Favor Alternate Service, So Make it Clear that After Hour Service Attempts at Attempts to Serve at Defendant's Work Place are Usually Required***

time. The first attempt was made on Tuesday, February 13, 2024, at 7:00 pm; the second was made on Thursday, February 22, 2024, at 4:00 pm. The two attempts proving unsuccessful, on Wednesday, February 28, 2024, at 11:00 a.m., he affixed the commencement papers to the door of the defendant's residence. On February 28, 2024, he mailed the commencement papers to

the defendant at the same address where the delivery was attempted. He then filed the affidavit of service with the clerk.

CPLR §308(4) provides as follows:

*“where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing”*

The court said that a plaintiff may only resort to service pursuant to CPLR §308(4) where service pursuant to CPLR §308 (1) and (2) cannot be made with due diligence. Of the two attempts at service on the defendant one was made during the work week during normal business hours when it could reasonably have been expected that the defendant would either be working or be in transit to or from work. The court concluded that the affidavit of the plaintiff’s process server failed to demonstrate that the process server attempted to ascertain the defendant’s’ business address and to effectuate personal service at that location, pursuant to the provisions of CPLR §308(1) and (2). Having failed to demonstrate the exercise of due diligence before attempting service of the summons and complaint pursuant to CPLR 308(4), plaintiff’s motion for a default judgment must be denied.

Romany v Paredes, Kings County Supreme Court, April 15, 2025

## **Court Suppresses Evidence as Officers Had No Reasonable Suspicion For Arrest**

An unidentified driver exited her vehicle, initiated a dispute with the defendant, and informed police officers that he had tailgated her, run a stop sign, and nearly struck children with his vehicle. Accordingly, the defendant was arrested and charged with reckless endangerment, reckless driving, and operating a motor vehicle while under the influence of alcohol or drugs. Defendant moved to suppress evidence. The motion was granted. Based on the arresting

officer's testimony and body-worn camera footage, the court found that neither the arresting officer nor her partner witnessed the alleged traffic violations or had reasonable suspicion to believe the defendant had committed, was committing, or was about to commit a crime when they forcibly stopped and detained him.

### **Findings of Fact**

At a pre-trial suppression hearing, officer Leon testified; her partner that night was not called to testify. Leon testified about her service as an NYPD police officer and training she received on how to detect signs of intoxication and conduct a chemical breath test. On June 2, 2024, at approximately 8:57PM, Leon and her partner were assigned to a footpost in NYC. The weather was clear, and the area was illuminated by streetlights, and her BWC was in good working order. While directing drivers of double-parked cars to move, Leon observed a vehicle driven by an unnamed driver stopped in front of defendant's vehicle. The unnamed driver exited her vehicle and confronted the defendant, "cursing obviously out of anger" and "screaming at him". The unnamed driver had stopped traffic and then told the officers that the defendant was tailgating her, ran a stop sign, and almost hit her kids. Leon directed the defendant to pull over, and when she went to the car, she smelled an odor of alcohol emanating from the vehicle. She also testified that when the defendant rolled down his back window, she noticed a grille in his back seat. Lyon testified that when she and her partner smelled an odor of alcohol, the encounter became a car stop. When asking the defendant for his license and registration, the officer saw the defendant covering his mouth and slurring his speech, and "looking downwards".

Leon called for supervisors to verify the arrest but they were not able to understand what the defendant was saying (defendant and Leon spoke Spanish). The supervisors directed that defendant exit the car, at which point they also smelled the odor of alcohol and saw that the defendant's eyes were "bloodshot". Defendant was placed under arrest, and a chemical test was administered at the police station. The result was 0.136, indicating that the defendant was intoxicated.

On cross examination, the officer testified that she was unaware of defendant's normal speech pattern and did not know whether he spoke with a lisp or had any medical conditions. Officer Leon did not recall observing defendant run a stop sign, nor did she or her partner issue him a summons for such violation. Leon confirmed, however, that her partner stated that a summons could not be issued because they did not observe defendant run a stop sign.

### **Probable Cause to Arrest and Suppression of Evidence**

In *People v. De Bour*, 1976, our Court of Appeals provides a four-tier analysis for police-civilian encounters.

- The first level permits a police officer to approach a civilian and request information, provided there is an articulable, objective, and credible reason to do so, not necessarily indicative of criminality. A request for information is a general, non threatening encounter in which an individual is approached for an articulable reason and asked briefly about his or her identity. Should a police officer's questions become extended and accusatory and

the officer's inquiry focuses on the possible criminality of the person approached, this is not a simple request for information but rather a common-law inquiry. The court here noted

### **People v DeBour Sets the Standard for Judging Police Officer Interactions with the Public**

that our Court of Appeals has recognized and affirmed a person's right to refuse a police officer's request for information and the right to be let alone.

- A level two encounter, or common law inquiry, must be supported by a "founded suspicion that criminal activity is afoot".
- The third level permits a police officer to forcibly stop and detain a person when the officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime.
- The fourth level permits a police officer to arrest and take into custody a person if the officer has probable cause to believe that the person has committed a crime or an offense in his or her presence. An arrest not supported by probable cause is unlawful and therefore invalid, requiring the suppression of any fruits that flow from the arrest.

Clearly, the officers had grounds to approach the defendant, based on the statements and actions of the "unnamed driver". But when Leon directed the defendant to pull over, consequently restricting his movement and/or ability to drive away, she escalated the encounter from level one to level three of the De Bour analysis, said the Court.

Not all such stops by police amount to a "level three" encounter, and there are cases where traffic and other items would justify such action. But here there were no such factors, so DeBour demands a showing that the officer had a reasonable suspicion that the civilian has committed, is committing, or is about to commit a crime.

The court concluded that neither officer witnessed the defendant commit a traffic violation or crime when they forcibly stopped and detained him, and the encounter became a "car stop" when the officers smelled the odor of alcohol. But the court ruled that an illegal stop cannot be remedied after the fact by testimony that is tailored to overcome constitutional objections. Here, the officers' actions were based on the statements of the unnamed driver, and did not meet the DeBour levels of proof.

Of course when the arrest occurred, encounter then advanced to level four, which permits a police officer to arrest and take into custody a person if the officer has probable cause to believe that a person has committed a crime or offense in his or her presence. The court said no such probable cause was shown here.

- First, although Leon testified that she and her partner smelled alcohol emanating from defendant's car, a review of her BWC footage suggested otherwise. When asked by her

supervisor whether she had smelled alcohol, Officer Leon's response was "umm." Her partner then interjected, telling the supervisor that she had smelled alcohol, but she immediately qualified it as "a little bit." Later, after supervising officers had ordered Defendant out of his vehicle, Officer Reyes Leon stated, "I just smelled it when he came out [of] the car."

- Second, the defendant was ordered out of his vehicle on the false premise that Officer Leon and her partner had observed him run a stop sign and nearly "hit kids". Notably, the partner declined to issue the defendant a summons, stating "he didn't really do anything."
- Finally, Officer Leon's testimony regarding the defendant's behavior was inconsistent with her BWC footage. She testified that the defendant covered his mouth, slurred his speech, and looked downward to avoid eye contact with her; she also testified that she observed him "slouching". But the BWC did not show the defendant covering his mouth while speaking to any of the officers. Defendant spoke at a reasonable pace and volume; and he made eye contact while speaking with Officer Leon. He responded to questions without hesitation. When Defendant exited his vehicle, his movement was impeded by a cord attached to his pants; despite that, he was steady on his feet and stood upright. Although Defendant looked downward when standing beside the vehicle, he looked up without hesitation when asked to do so. As officers shone flashlights directly at Defendant's face, he widened his eyes, and his eyes did not appear to be bloodshot. The court concluded that Officer Leon's testimony that the supervisors smelled the alcohol as well was unsupported by her BWC footage.

In this case, a civilian's allegations that the defendant had committed traffic violations and the odor of alcohol described by one officer as "a little bit," absent indicia such as a flushed face, slurred speech, or an unsteady balance, do not automatically demonstrate impairment. To eradicate any speculation or uncertainty, or to establish probable cause that the defendant was intoxicated, the officers could have administered a portable breath test or conducted a sobriety test at the scene. Indeed, Officer Leon asked her partner at least twice whether they could conduct a sobriety test, but no one obliged; nor did any of the officers request that the defendant undergo such tests.

So, the court found that the prosecutor failed to establish probable cause to arrest the defendant for allegedly violating reckless endangerment, reckless driving or operating a motor vehicle while under the influence of alcohol or drugs. The court granted defendant's motion to suppress all evidence regarding these charges.

People v Sanchez, Bronx Criminal Court, April, 15, 2025

## US Supreme Court Rejects Moment of Threat Rule, Directs Court to Review Police Use of Force by Reviewing the Totality of Circumstances

A police officer's use of deadly force violates the [Fourth Amendment](#) when it is not "objectively reasonable." *Graham v. Connor*, 490 U. S. 386, 397 (1989). And that inquiry into reasonableness, the US Supreme Court has held, requires assessing the "totality of the circumstances."

The question before the Supreme Court in this case is whether that framework permits courts, in evaluating a police shooting (or other use of force), to apply the so-called "moment-of-threat" rule used in many federal courts. Under that rule, a court looks only to the circumstances existing at the precise time an officer perceived the threat inducing him to shoot. Now, the Supreme Court has rejected that approach as improperly narrowing the requisite [Fourth Amendment](#) analysis. To assess whether an officer acted reasonably in using force, a court must consider all the relevant circumstances, including facts and events leading up to the climactic moment.

### Facts of this Case

On the afternoon of April 28, 2016, Roberto Felix, Jr., a law enforcement officer patrolling a highway outside Houston, received a radio alert about an automobile on the road with outstanding toll violations. Felix soon spotted the car, a Toyota Corolla, and turned on his emergency lights to initiate a traffic stop. The driver, Ashtian Barnes, pulled over to the highway's shoulder.

Parking his own car just behind, Felix walked to the Corolla's driver-side door and asked Barnes for his license and proof of insurance. Barnes replied that he did not have his license with him, and that the car was a rental in his girlfriend's name. As he spoke, Barnes rummaged through some papers inside the car, causing Felix to tell him several times to stop "digging around." Felix also commented that he smelled marijuana, and asked if there was anything in the car he should know about. Barnes responded that he might have some identification in the trunk. So Felix told him to open the trunk from his seat. Barnes did so, while also turning off the ignition. All that happened in less than two minutes (this was supported by dashcam footage).

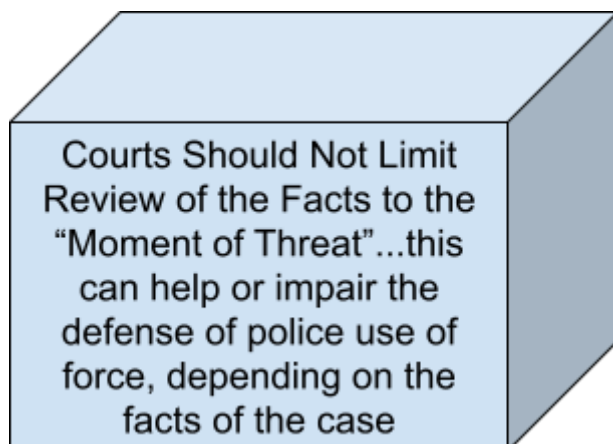
Then things began moving even faster. With his right hand resting on his holster, Felix told Barnes to get out of the car. Barnes opened the door but did not exit; instead, he turned the ignition back on. Felix unholstered his gun and, as the car began to move forward, jumped onto

its doorsill. He twice shouted, “Don’t fucking move.” And with no visibility into the car (because his head was above the roof), he fired two quick shots inside. Barnes was hit, but managed to stop the car. Felix then radioed for back-up. By the time it arrived, Barnes was dead. All told, about five seconds elapsed between when the car started moving and when it stopped. And within that period, two seconds passed between the moment Felix stepped on the doorsill and the moment he fired his first shot.

Barnes’s mother, Janice Barnes, sued Felix on her son’s behalf, alleging that the officer violated Barnes’s [Fourth Amendment](#) rights by using excessive force against him.

The District Court granted summary judgment to Officer Felix. The court explained that to prevail on her claim, Mrs. Barnes needed to show that Felix’s use of force was “objectively unreasonable.” In the usual excessive-force case, the court noted, the inquiry into reasonableness would involve considering a variety of circumstances. But when an officer has used *deadly* force, the court continued, the Fifth Circuit has developed a much narrower approach. In such cases, the court is allowed to ask only about the situation existing “*at the moment of the threat*” that sparked the fatal shooting. The District Court identified that moment as the two seconds before Felix fired his first shot, when he was standing on the doorsill of a moving vehicle. At that moment, the court found, an officer could reasonably think himself at risk of serious harm. And under the Fifth Circuit’s rule, that fact alone concluded the analysis. The court explained that it could not consider what had transpired up until those last two seconds, including Felix’s decision to jump onto the sill. Although a more robust examination might have aided in assessing the reasonableness of the shooting, the court was duty bound by Circuit precedent to limit its focus to the “exact moment Felix was hanging onto Barnes’s” moving car.

The Court of Appeals affirmed, explaining that it too was bound” by this Circuit’s moment of threat doctrine. Under that rule, the panel agreed, the inquiry is confined to whether the officer was in danger at the moment of the threat that resulted in his use of deadly force. Any prior events leading up to the shooting, including actions the officer took, were simply “not relevant.” And here, as the District Court found, the precise moment of the threat was the “two seconds” when Felix was clinging to a moving car. Because Felix could then have reasonably believed his life in danger, the panel concluded, his decision to shoot did not violate Barnes’s constitutional rights.



In a concurring opinion at the Circuit Court level, one judge expressed concern with the Fifth Circuit’s moment-of-threat doctrine: he thought that rule inconsistent with this Court’s directive to assess the reasonableness of an officer’s use of force, including deadly force, by looking to the totality of circumstances. Under the totality approach, the concurring judge wrote, a court could consider not just the precise millisecond when an officer deploys force, but everything that had transpired up until that time. And with that

wider focus, this concurring judge would have found that Felix's shooting of Barnes was unreasonable.

The Supreme Court took the case, to determine whether, in resolving [Fourth Amendment](#) excessive-force claims, courts may apply the moment-of-threat rule as described above. It said that they may not because that rule constricts the proper inquiry into the "totality of the circumstances."

The court stated the basic rule: a claim that a law enforcement officer used excessive force during a stop or arrest is analyzed under the [Fourth Amendment](#), and the touchstone of that amendment is reasonableness, as measured in objective terms. So the question in a case like this one, is whether the force deployed was justified from the perspective of a reasonable officer on the scene, taking due account of both the individual interests and the governmental interests at stake.

That inquiry into the reasonableness of police force requires analyzing the "totality of the circumstances." It said that there is no "easy-to-apply legal test" or "on/off switch" in this context; rather, the [Fourth Amendment](#) requires "that a court slosh its way through" a factbound morass. In other words, the court must decide whether a use of force was objectively reasonable and must pay careful attention to the facts and circumstances relating to the incident, as then known to the officer. *Graham*. For example, the severity of the crime prompting the stop can carry weight in the analysis; so, too, can actions the officer took during the stop, such as giving warnings or otherwise trying to control the encounter. "And the stopped person's conduct is always relevant because it indicates the nature and level of the threat he poses, either to the officer or to others", said the court.

Most notable here, the "totality of the circumstances" inquiry into a use of force has no time limit:

*"Of course, the situation at the precise time of the shooting will often be what matters most; it is, after all, the officer's choice in that moment that is under review. But earlier facts and circumstances may bear on how a reasonable officer would have understood and responded to later ones. Or as the Federal Government puts the point, those later, 'in-the-moment' facts 'cannot be hermetically sealed off from the context in which they arose.' ... Taking account of that context may benefit either party in an excessive-force case. Prior events may show, for example, why a reasonable officer would have perceived otherwise ambiguous conduct of a suspect as threatening. Or instead they may show why such an officer would have perceived the same conduct as innocuous. The history of the interaction, as well as other past circumstances known to the officer, thus may inform the reasonableness of the use of force."*

The Court's decision in a 2014 case illustrated the Court's point here.

- The excessive-force claim there concerned the fatal shooting of a driver at the end of a dangerous car chase lasting more than five minutes.
- The driver had sped away from a traffic stop on a well-used road, and tried to outrun as many as six police cruisers at speeds sometimes exceeding 100 miles per hour.
- Eventually, the fleeing car ran into one of the cruisers and came to a near standstill.

- The driver, though, still tried to escape, pumping the gas in a way that sent his wheels “spinning” and then putting the car into reverse.
- At that point, one of the officers fired several shots into the car.
- In a suit brought against the officer, the driver’s daughter contended that those shots were taken when the chase was already over. But the Supreme Court rejected that claim based on everything that had happened during the incident—the driver’s “outrageously reckless” behavior over the prior “five minutes,” as well as his last-second efforts to again take flight. Given all of those events, the Court explained, a reasonable officer would have concluded that the driver was intent on resuming his getaway and, if allowed to do so, would again pose a deadly threat to others. “In short, the shooting was justified at the moment it occurred partly because of what had transpired in the preceding period,” held the court.

The moment-of-threat rule applied in the courts below prevents that sort of attention to context, and thus conflicts with the Supreme Court’s instruction to analyze the totality of the circumstances: no rule that precludes consideration of prior events in assessing a police shooting is reconcilable with the fact-dependent and context-sensitive approach the Supreme Court has prescribed. “A court deciding a use-of-force case cannot review the totality of the circumstances if it has put on chronological blinders.”

Officer Felix argued that while prior events are not “off limits” in the reasonableness inquiry, the lower courts still were correct by essentially determining that any earlier errors of police should not be used to diminish his rights to defend himself. And the court refused to consider his argument that whether or how an officer’s own creation of a dangerous situation factors into the reasonableness analysis.

Instead, the Supreme Court concluded that the courts below in this case never confronted the issue, precisely because their inquiry was so time-bound. In looking at only the two seconds before the shot, they excluded from view any actions of the officer that allegedly created the danger necessitating deadly force. So, for example, the courts below did not address the relevance, if any, of Felix stepping onto the doorsill of Barnes’s car.

The Supreme Court remanded the case to the courts below to consider the reasonableness of the shooting, using the lengthier timeframe it prescribed.

Barnes v Felix, US Supreme Court, May 15, 2025