CASE NO. 21-10644

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DE'ON L. CRANE, Individually and as the Administrator of the Estate of Tavis M. Crane and on behalf of the Statutory Beneficiaries, G.C., T.C., G.M., Z.C., and A.C, the surviving children of Tavis M. Crane; ALPHONSE HOSTON; DWIGHT JEFFERSON; VALENCIA JOHNSON; Z.C., Individually, by and through her guardian ZAKIYA SPENCE,

Plaintiffs - Appellants

VS.

CITY OF ARLINGTON, TEXAS; CRAIG ROPER,

Defendants - Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS – FORT WORTH DIVISION
CIVIL ACTION NO**.** 4:19-CV-00091-P

BRIEF OF AMICI CURIAE THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL, TEXAS ASSOCIATION OF COUNTIES, TEXAS ASSOCIATION OF COUNTIES RISK MANAGEMENT POOL, COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS, TEXAS MUNICIPAL POLICE ASSOCIATION, LOUISIANA MUNICIPAL ASSOCIATION, AND NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, IN SUPPORT OF DEFENDANTS APPELLEES THE CITY OF ARLINGTON AND CRAIG ROPER'S PETITIONS FOR REHEARING EN BANC

Laura O'Leary
State Bar No. 24072262
loleary@fhmbk.com

FANNING HARPER MARTINSON
BRANDT & KUTCHIN, P.C.
One Glen Lakes
8140 Walnut Hill Lane, Suite 200
Dallas, Texas 75231
(214) 369-1300 (office)
(214) 987-9649 (telecopier)
ATTORNEYS FOR AMICI CURIAE
THE TEXAS MUNICIPAL LEAGUE
INTERGOVERNMENTAL RISK POOL,
TEXAS ASSOCIATION OF COUNTIES,
TEXAS ASSOCIATION OF COUNTIES RISK
MANAGEMENT POOL, COMBINED LAW
ENFORCEMENT ASSOCIATIONS OF TEXAS,
TEXAS MUNICIPAL POLICE ASSOCIATION,
LOUISIANA MUNICIPAL ASSOCIATION, AND
NATIONAL ASSOCIATION OF POLICE
ORGANIZATIONS

SUPPLEMENTAL STATEMENT OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Amici Curiae the Texas Municipal League Intergovernmental Risk Pool, Texas Association of Counties, Texas Association of Counties Risk Management Pool, Combined Law Enforcement Associations of Texas, Texas Municipal Police Association, Louisiana Municipal Association, and National Association of Police Organizations are represented by:

Laura O'Leary
FANNING HARPER MARTINSON
BRANDT & KUTCHIN, P.C.
One Glen Lakes
8140 Walnut Hill Lane, Suite 200
Dallas, Texas 75231

/s/ Laura O'Leary
Laura O'Leary
Attorney of Record for
the Texas Municipal League
Intergovernmental Risk Pool,
Texas Association of Counties,
Texas Association of Counties Risk
Management Pool, Combined Law
Enforcement Associations of Texas,
Texas Municipal Police Association,

Louisiana Municipal Association, and National Association of Police Organizations

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Other

IDENTITY AND INTEREST OF AMICI CURIAE

The Texas Municipal League Intergovernmental Risk Pool ("TMLIRP") is a self-insurance pool formed by over 2,500 participating governmental entities in the State of Texas under the provisions of the Interlocal Cooperation Act, Texas Government Code Section 791.001, *et seq*. TMLIRP members include various governmental entities in Texas, including over 930 municipalities that have law-enforcement liability coverage through TMLIRP.

The Texas Association of Counties ("TAC") is a Texas non-profit corporation with all 254 Texas counties as members. The following associations are represented on the TAC Board of Directors: County Judges and Commissioners Association of Texas; North and East Texas Judges and Commissioners Association; South Texas Judges and Commissioners Association; West Texas Judges and Commissioners Association; Texas District and County Attorneys Association; Sheriffs' Association of Texas; County and District Clerks' Association of Texas; Texas Association of Tax Assessor-Collectors; County Treasurers' Association of Texas; Justice of the Peace and Constables Association of Texas; and Texas Association of County Auditors.

The Texas Association of Counties Risk Management Pool ("RMP") is an intergovernmental risk pool sponsored by the Texas Association of Counties and created pursuant to Chapter 41 of the Texas Government Code, Chapter 791 of the

Government Code, Chapter 2259 of the Government Code, Chapter 119 of the Texas Local Government Code, Chapter 504 of the Texas Labor Code, Chapter 154 of the Local Government Code, Chapter 157 of the Local Government Code and other applicable law. 212 county members and 174 special district and other local government entity members participate in this self-funded risk pool through interlocal agreements. The Pool provides workers' compensation, property, casualty, and other risk coverages to counties (including their officers, employees and volunteers), district court judges, district attorneys, volunteer firefighters, volunteer fire departments, and special districts.

The Combined Law Enforcement Associations of Texas ("CLEAT"), is the largest organization and Police Union in Texas representing Police Officers, Detention Officers and other Law Enforcement Professionals in Texas with over 25,000 members across the State of Texas. These members pay dues for legal representation, political advocacy, and retirement benefits. The main purpose for CLEAT is to protect the rights and privileges of employment of all Law Enforcement Professionals in the State of Texas both criminally and civilly. CLEAT advocates for the fair and consistent application of the law for First Responders.

The Texas Municipal Police Association ("TMPA") was founded in 1950 and is the largest law enforcement association in Texas with over 31,000

members. TMPA strives to act as the voice of Texas Law Enforcement. TMPA provides powerful legislative advocacy, local political support to strengthen the voice of officers in their communities, comprehensive approved TCOLE training to promote professionalism in law enforcement, and superior legal protection. TMPA's members are peace officers and public safety employees across the State of Texas and include state, county, and local officers who are charged with the responsibility of protecting citizens from crime. TMPA's mission is to promote professionalism in law enforcement through education and representation. Based upon its focus for over 70 years, TMPA is well qualified to offer its perspective on the issues facing law enforcement in litigation.

The Louisiana Municipal Association ("LMA") is an association that is comprised of 305 local governmental entities throughout the State of Louisiana (303 cities, towns, and villages, and two parishes). It was formed in 1926 for the protection and promotion of the interests of its member entities and their citizens, and it is dedicated to fulfilling its threefold mission of education, advocacy, and service, including a constituency of over 8,000 municipal police officers. Furthermore, the LMA wholly owns two subsidiaries, one of which is Risk Management, Inc. ("RMI"). Since 1987, RMI has administered self-funded indemnity programs developed to serve the municipalities of Louisiana, providing a broad spectrum of liability coverage, including law enforcement professional

liability for over 1,700 municipal police officers in the state. For nearly 97 years, the LMA has focused exclusively on issues relating to municipal governance and, as such, has insight and perspective on issues of municipal liability that this Court would find helpful.

The National Association of Police Organizations ("NAPO") is a nationwide alliance of organizations committed to advancing the interests of law enforcement officers. Since NAPO's founding in 1978, it has become the strongest unified voice supporting law enforcement in the United States. The organization represents over 1,000 police units and associations, over 241,000 sworn officers, and more than 50,000 citizens mutually dedicated to fair and effective law enforcement.[1]

Amici represent various levels of local government, including law enforcement agencies and officers. *Amici* and their members have a strong interest in obtaining clear and consistent guidance from this Court relating to appropriate use of force and acceptable traffic stop procedures, in furtherance of community and law enforcement safety, and to enable officers to make reasonable and lawful decisions in protecting the public without fear of civil lawsuits. The Supreme

[1] No counsel for any party in this matter: (1) authored this brief in whole or in part; or (2) contributed money that was intended to fund the preparation or submission of this brief. No person, other than TMLIRP, TAC, RMP, CLEAT, TMPA, LMA, NAPO and their members or counsel, contributed money that was intended to fund the preparation or submission of this brief. *Amici* submit this brief pursuant to FED. R. APP. P. 29(b)(3).

Court and this Court have repeatedly recognized that: (1) qualified immunity represents the norm; (2) courts should deny a defendant qualified immunity only in rare circumstances; and (3) the inquiry into clearly established law must be undertaken in light of the specific context of the case, not as a general proposition. *Amici* are well suited to demonstrate why the panel's reversal of the district court's grant of qualified immunity to the police officer in this matter sets a troubling precedent which increases the dangers law enforcement officers daily face.

Amici submit this brief to emphasize the exceptional importance of the questions presented in Appellees' Petitions for Rehearing En Banc and to urge the Court to grant rehearing en banc.

SUMMARY OF THE ARGUMENT

The panel opinion violates Supreme Court precedent, confuses this Court's excessive force jurisprudence, and presents police officers with the Cornelian dilemma of: (1) neglecting their duty to enforce the law and placing themselves in greater danger; or (2) risking their livelihoods in defense of civil lawsuits. In excessive force lawsuits, qualified immunity serves the "important purpose of encouraging officers to enforce the law, in 'tense, uncertain and rapidly evolving' split-second situations, rather than stand down and jeopardize community safety." *Cole v. Carson*, 935 F.3d 444, 464-65 (5th Cir. 2019) (Jones, J. dissenting)

(quoting *Graham v. Connor*, 490 U.S. 386, 396-97 (1989)).[2] The panel decision encourages police officers to stand down, jeopardizing community safety and their own.

The opinion conflicts with numerous Supreme Court and Fifth Circuit decisions concerning excessive force and qualified immunity. The Court should grant en banc review to secure uniformity of the Court's decisions.

The decision also offers an advisory opinion about potential municipal liability for constitutionally sanctioned traffic stops, in conflict with Supreme Court and Fifth Circuit decisions. The panel's improper attempt to direct municipal policy about policing practices discourages officers from fulfilling their sworn duties and introduces confusion concerning traffic stops.

Amici reflect the interests of local governmental organizations and law enforcement organizations across the nation in respectfully urging the Court to grant rehearing en banc on the issues identified in Appellees' Petitions for Rehearing En Banc.

[2] *See also Vann v. City of Southaven*, 876 F.3d 133, 143-44 (5th Cir. 2017), *substituted opinion at* 884 F.3d 307 (5th Cir. 2018) (Haynes, J. dissenting) (objecting that the opinion would require officers to stand down or be sued, noting, "[s]adly, officers are required to put themselves in harm's way in a lot of situations where most people would run away. Society lauds honest police officers precisely because they put themselves in harm's way by engaging dangerous people to keep us safe.")

ARGUMENT

A. THE PANEL DECISION CONFLICTS WITH DECISIONS OF THE SUPREME COURT AND THIS COURT; EN BANC CONSIDERATION IS NECESSARY TO SECURE UNIFORMITY OF THE COURT'S DECISIONS ON A QUESTION OF EXCEPTIONAL IMPORTANCE.

1. The Decision Repeats Errors the Supreme Court Addressed in *Mullenix*.

"'[Q]ualified immunity represents the norm,' and courts should deny a defendant immunity only in rare circumstances." *Romero v. City of Grapevine*, 888 F.3d 170, 176 (5th Cir. 2018) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982)). The Supreme Court has not hesitated to correct circuit courts that improperly deny qualified immunity. For example, by summarily reversing this Court's decision in *Mullenix v. Luna*, 577 U.S. 7 (2015), the Supreme Court demonstrated that this Court's decision was manifestly incorrect. *Morrow v. Meachum*, 917 F.3d 870, 876 (5th Cir. 2019). The Court should rehear this appeal en banc because the panel opinion repeats many of the errors the Supreme Court addressed in *Mullenix*.

As in *Mullenix*, the panel in *Crane* improperly: (1) identified a fact issue precluding summary judgment for an officer asserting qualified immunity;[3] (2) found an officer's action objectively unreasonable because the factors that justified

[3] *Cf. Mullenix*, 577 U.S. at 10; Appendix of Appellee Craig Roper's Petition for Rehearing En Banc ("Appendix") at 13-14, 16.

deadly force in other cases were absent;[4] (3) used the precise formulation of allegedly "clearly established" law that the Supreme Court has repeatedly rejected as too broad;[5] (4) used the general test from *Garner*;[6] and (5) denied qualified immunity when no Supreme Court precedent squarely governed the situation.[7]

2. The Opinion Second-Guesses Roper's Assessment of Threat.

In violation of Supreme Court and this Court's precedent, the panel imposes unrealistic and dangerous expectations on police officers by second-guessing an officer's on-scene assessment of danger. Officer Roper faced a suspect who, defying officers' repeated instructions, remained behind the wheel of a vehicle which contained three passengers, one of whom Officer Roper observed reaching under the car seat, possibly for a weapon. ROA.1021 (23:50:34-23:52:29); ROA.1004.[8]

"Recognizing that 'police officers are often forced to make split second judgments…about the amount of force that is necessary in a particular situation,' the Supreme Court has warned against 'second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation.'"

---

[4] *Cf. Mullenix* at 11; Appendix at 14, 17.
[5] *Cf. Mullenix* at 12 (citing *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004) (per curiam)); Appendix at 17.
[6] *Cf. Mullenix* at 12-13 (citing *Tennessee v. Garner*, 471 U.S. 1 (1985)); Appendix at 17.
[7] *Cf. Mullenix* at 15-16; Appendix at 11, 17-20.
[8] Additionally, the car shook, its engine revved, and its tires spun. Appendix at 6, 13. The danger of the situation manifested when Officer Bowden was run over twice in seven seconds. ROA.1021 (23:53:28-23:53:35).

Romero, 888 F.3d at 177 (quoting *Graham*, 490 U.S. at 396 and *Ryburn v. Huff*, 565 U.S. 469, 477 (2012)); *see also Hathaway v. Bazany*, 507 F.3d 312, 322 (5th Cir. 2007) ("We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.").

3. Noncompliant Suspects or Passengers in Stopped Vehicles Often Present a Threat of Serious Harm.

Police officers have long been aware that someone in a stopped vehicle who moves his hands out of an officer's sight, or a noncompliant suspect who remains behind the wheel, can present a threat of serious harm sufficient to justify deadly force.

Decades ago, this Court recognized that an officer reasonably fears for his and others' safety, and need not continue giving verbal warnings, when an individual in a stationary car moves his hand out of the officer's sight. *Reese v. Anderson*, 926 F.2d 494, 500-501 (5th Cir. 1991) (no Fourth Amendment violation when an officer shot an unarmed passenger in a stopped vehicle); *see also Carnaby v. City of Houston*, 636 F.3d 183, 186 (5th Cir. 2011) (granting qualified immunity when officer fatally shot an unarmed suspect who rapidly moved his hands toward the officer); *Manis v. Lawson*, 585 F.3d 839, 841, 846 (5th Cir. 2009) (granting

qualified immunity when officer fatally shot a suspect who reached under seat of stationary car);[9] *Young v. Killeen*, 775 F.2d 1349, 1350, 1352-53 (5th Cir. 1985) (granting qualified immunity when officer who fatally shot a suspect who reached down in his car).

A reasonable officer in Roper's position knows that a noncompliant suspect at the wheel of a vehicle can easily flee or hit an officer with the car. *Plumhoff v. Rickard*, 572 U.S. 765, 769-70 (2014) (granting qualified immunity when driver refused to exit car, sped away, drove recklessly through traffic, collided with two police cars, spun its tires as his car was rocking back and forth while in contact with a police car, nearly ran into an officer, and tried again to drive away); *see also Mullenix*, 577 U.S. at 8 (high speed car chase); *Harmon v. City of Arlington*, 16 F.4th 1159, 1164 (5th Cir. 2021) (within seconds, suspect started parked car, shifted into gear, and began to drive away while officer hung on); *Jackson v. Gautreaux*, 3 F.4th 182, 184-86 (5th Cir. 2021) (over eighty-five seconds, suspect started parked car, shifted into gear, slammed into a patrol car, and accelerated toward an officer); *Vann*, 876 F.3d at 134-35, 884 F.3d at 307 (suspect ran into police cars and hit officer); *Salazar-Limon v. City of Houston*, 826 F.3d 272, 279 (5th Cir. 2016) (recognizing that noncompliant driver and passengers in a stopped

[9] The *Crane* panel also violated this Court's precedent by considering Crane's purported intent in connection with his movements in the car. Appendix, at 10, 13. A suspect's intention is irrelevant to the excessive force analysis. *Manis*, 585 F.3d at 845; *see also Thompson v. Mercer*, 762 F.3d 433, 439 (5th Cir. 2014) (officer has no way of ascertaining suspect's intent).

vehicle can pose an immediate threat to officer safety); *Thompson*, 762 F.3d at 439-40 (high speed car chase); *Martinez v. Maverick County*, 507 Fed. App'x 446, 447, 449 (5th Cir. 2013) (suspect fled in her vehicle, nearly hitting officer); *Carnaby*, 636 F.3d at 186 (suspect who refused to exit vehicle drove away, leading officers on a chase); *Hathaway*, 507 F.3d at 3315-16 (driver suddenly accelerated and hit officer); *Fraire v. Arlington*, 957 F.2d 1268, 1270-71, (5th Cir. 1992) (suspect fled in truck, nearly rammed officer's car, and nearly hit officer); *Davis v. Romer*, 600 Fed. App'x 926, 927 (5th Cir. 2015) (per curiam) (suspect refused to exit his vehicle and suddenly began driving away with officer hanging on).

4. Police Officers Need Not Wait Until a Suspect Uses Deadly Force.

The Supreme Court noted with approval a circuit court's explanation that "'the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.'" *Mullenix*, 577 U.S. at 17 (quoting *Long v. Slaton*, 508 F.3d 576, 581-82 (11th Cir. 2007)); *see also Wilson v. City of Bastrop*, 26 F.4th 709, 714 (5th Cir. 2022) (officers need not wait until a suspect turns a weapon toward someone before using deadly force); *Salazar-Limon*, 826 F.3d at 279 n.6 (officers need not wait for a suspect to turn toward them with weapon in hand before using deadly force).

The Supreme Court noted with approval a circuit court's determination that a car can be a deadly weapon and that an officer's decision to stop the car from

possibly injuring others was reasonable. *Brosseau*, 543 U.S. at 200 (citing *Smith v. Freland*, 954 F.2d 343, 347 (6th Cir. 1992)). This Court has repeatedly recognized that a vehicle can be a deadly weapon. *Jackson*, 3 F.4th at 187 ("like the drivers in *Fraire* and *Hathaway*, [the suspect] was using his car as a weapon"); *Thompson*, 762 F.3d at 439-40 (identifying suspect's truck as a "deadly weapon"); *Fraire*, 957 F.2d at 1276, n.29 ("we do not accept that [the suspect] was unarmed" because vehicles can be deadly weapons).

The panel decision violates these precedents by finding that Officer Roper could not use deadly force unless and until Crane's car began to move. Appendix at 13; *see also* p. 15 (suggesting officers should have let Crane drive away). This holding creates a dangerous "stand down" rule, under which officers faced with noncompliant suspects behind the wheel of vehicles will either have to decline to enforce the law, including their duty to arrest suspects with outstanding warrants, or wait until the suspects have clearly begun to drive away recklessly or drive toward an officer, hoping that they will be able to react quickly enough to prevent the suspect from hitting the officer or a bystander. The Court should grant en banc review to correct this dangerous rule.

5. The Panel Violates Precedent Concerning "Obvious" Cases.

Because excessive force claims are highly fact-intensive and often turn on split-second decisions to use lethal force, "the law must be *so* clearly established

that—in the blink of an eye…every reasonable officer would know it immediately." *Morrow*, 917 F.3d at 876 (emphasis in original).

In cases with highly similar facts to *Crane*, the Supreme Court and this Court have rejected the "obvious case" analysis. *Brosseau*, 543 U.S. at 199 (the case was far from obvious when an officer shot suspect who refused to leave a parked car, started the car, and may have begun to drive); *Harmon*, 16 F.4th at 1167 ("obvious" cases "are so rare that the Supreme Court has *never* identified one in the context of excessive force.") (emphasis in original); *Vann*, 884 F.3d at 310 (not an obvious case when the suspect was fatally shot when he revved his engine, rammed surrounding police cars, and hit one of the officers).

This Court should grant en banc review to address the panel's improper application of an "obvious case" analysis. Appendix, at 19.

B. THE PANEL OPINION CONFLICTS WITH SUPREME COURT DECISIONS BY OFFERING AN ADVISORY OPINION CONCERNING PRETEXTUAL TRAFFIC STOPS WHICH RAISES THE SPECTER OF MUNICIPAL LIABILITY FOR CONSTITUTIONALLY ACCEPTABLE POLICE PROCEDURES.

The Court should grant Appellees' petitions for en banc review because the panel lacked jurisdiction to opine about potential municipal liability stemming from pretextual traffic stops. The panel's advisory opinion conflicts with Supreme Court precedent, improperly attempts to direct municipal policy, and discourages officers from fulfilling their sworn duties.

The panel's discussion concerning pretextual traffic stops is unrelated to resolution of the Plaintiffs' claims, which only allege excessive force. *Cf.* ROA.310-16; Appendix at 2-3. Thus, the panel lacked jurisdiction to opine about pretextual traffic stops. *Carney v. Adams*, 141 S. Ct. 493, 498 (2020) ("The Constitution grants Article III courts the power to decide 'Cases' or 'Controversies.' Art. III, §2. We have long understood that constitutional phrase to require that a case embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions."); *Diaz v. Viegelahn (In re Diaz)*, 972 F.3d 713, 720 n.6 (5th Cir. 2020) ("Article III courts have jurisdiction over actual controversies; they are not permitted the luxury of issuing advisory opinions.").

The panel acknowledges that pretextual stops are constitutionally permissible and are "a cornerstone of law enforcement practice." Appendix at 2 (citing *Whren v. U.S.*, 517 U.S. 806, 810 (1996)). Nevertheless, in an apparent effort to influence municipal decision making, the panel inappropriately invokes secondary sources and policy decisions of distant municipalities, which do not purport to reflect the varied economic, demographic, and political considerations that communities large and small throughout the Fifth Circuit face. Appendix at 2-

3.[10] The panel dispenses with the idea that policing decisions are best performed under local control. Instead, the panel exceeds its authority and introduces needless confusion by suggesting, without any live case or controversy, that municipalities may face liability under *Monell*[11] for following law enforcement policies that bear the Supreme Court's imprimatur.

The panel's advisory opinion about pretextual traffic stops and its criticism of Officer Bowden's decision not to "send the family on"[12] after learning that Crane lacked a driver's license, create confusion for officers throughout the Fifth Circuit. Should a patrol officer who happened to pull up behind a car at a traffic light[13] drive on when she sees a passenger throw what appears to be drug paraphernalia out of a car window? Should an officer permit an unlicensed driver to continue driving, illegally, because the object thrown out of the car turned out not to be drug-related? Should an officer disregard her sworn duty to arrest a person who has confirmed outstanding arrest warrants[14] because the suspect came to her attention through a traffic stop? Should an officer make these decisions

[10] *Amici* question the reliability of the panel's perception of discrimination in traffic stops, which appears to be based on different conditions and a flawed methodology. *See, e.g.* Sherman, L. "Equal Protection by Race with Stop and Frisk: a Risk-Adjusted Disparity (RAD) Index for Balanced Policing"; Cambridge Journal of Evidence-Based Policing (2021) https://link.springer.com/article/10.1007/s41887-021-00065-4 (last visited on November 10, 2022); Rafael A. Mangual, CRIMINAL (IN)JUSTICE (2022).
[11] *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).
[12] Appendix at 4.
[13] Appendix at 4.
[14] *Utah v. Strieff*, 579 U.S. 232, 240 (2016).

based on the driver's race? The panel's decision provides no useful guidance to police officers, advocates a "stand down" rule which undermines officers' authority, and promises to increase litigation relating to traffic stops.

CONCLUSION

The Court should grant rehearing en banc and should reverse the panel's determination that "the district court erred in granting summary judgment to Officer Roper and perforce dismissing the City" of Arlington. Appendix at 20.

Respectfully submitted,

/s/ *Laura O'Leary*
LAURA O'LEARY
State Bar No. 24072262
loleary@fhmbk.com

FANNING,HARPER,MARTINSON, BRANDT & KUTCHIN, P.C.
One Glen Lakes
8140 Walnut Hill Lane, Suite 200
Dallas, Texas 75231
(214) 369-1300 (office)
(214) 987-9649 (telecopier)
ATTORNEY FOR AMICI CURIAE
THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL, TEXAS ASSOCIATION OF COUNTIES, TEXAS ASSOCIATION OF COUNTIES RISK MANAGEMENT POOL, COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS, TEXAS MUNICIPAL POLICE ASSOCIATION, LOUISIANA MUNICIPAL ASSOCIATION, AND NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS

Certificate of Service

I hereby certify that on November 11, 2022, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. I further certify that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of ESET File Security and is free of viruses.

Dated this 11th day of November, 2022.

/s/ Laura O'Leary
Laura O'Leary

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of FED. R. APP. P. 29(b)(4) because:

- this brief contains 2,597 words, as determined by the word-count function of Microsoft Word 2010, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type requirements of FED. R. APP. P. 32(a)(6) because:

- This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 with a 14 point font named Times New Roman.

/s/ *Laura O'Leary*
Laura O'Leary

Dated: November 11, 2022

738364