Pre-Force Conduct and the Chronology of Force

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What It Is

Pre-force conduct refers to the decisions officers make before force is used – approach, distance, cover, positioning, pace of contact, communication, containment, warnings, and role assignment. For most of the modern federal excessive-force era, courts in some circuits focused almost exclusively on the final moment before the trigger pull. That approach is no longer valid.

Barnes v. Felix (2025) unanimously held that Fourth Amendment reasonableness requires consideration of the totality of the circumstances, and that the totality carries no artificial time limit. Courts cannot place "chronological blinders" on the excessive-force inquiry. Earlier events are part of the analysis not because they are punished separately, but because they change how a reasonable officer would understand and respond to what happened in the final moments. A subject who had been complying until police suddenly rushed them looks different from a subject who had been advancing and threatening throughout. The earlier conduct is not separate – it is context for the final force decision.

What Barnes Did and Did Not Decide

Barnes is frequently misread, in both directions.

What it did: It eliminated the categorical moment-of-threat approach, most prominently used in the Fifth Circuit, that restricted the excessive-force analysis to the seconds immediately before the trigger pull. After *Barnes*, no federal court may simply exclude pre-force conduct because it occurred before the final confrontation.

What it did not do: It did not create a nationwide rule that an officer's own tactical errors make later force unconstitutional. The Supreme Court expressly stated that the question of whether an officer's own creation of a dangerous situation affects constitutional reasonableness was not before the Court and remains unresolved. *Barnes* requires temporal breadth; it does not decide what legal significance pre-force officer conduct carries.

The unresolved question: Whether an officer's reckless or unreasonable pre-force decisions that foreseeably create the conditions for a deadly confrontation affect the constitutional reasonableness of the force that follows is still circuit-dependent. The Tenth Circuit has the most developed doctrine, holding through *Allen v. Muskogee* (1997) and *Estate of Ceballos v. Husk* (2019) that reckless or deliberate conduct immediately connected to the use of deadly force can be considered. The Fifth Circuit's former moment-of-threat rule is gone after *Barnes*, but what replaces it in that circuit is developing. Other circuits vary.

Earlier Events Cut Both Ways

The expanded temporal frame required by *Barnes* does not systematically favor plaintiffs. Earlier circumstances can make later force appear more reasonable as well as less so.

Spencer v. Glaser (4th Cir. 2026) illustrates this directly. The subject had advanced on officers with a knife and been shot; he fell and dropped the knife, then approximately 12 seconds later attempted to rise and moved toward the officer, who fired again. The Fourth Circuit held that the earlier armed advance remained relevant to how a reasonable officer could interpret the renewed movement. A changed circumstance does not erase the immediately preceding threat history; reassessment must account for relevant recent history rather than treating later conduct as occurring in a vacuum.

This cuts in both directions: prior officer conduct that creates urgency, prior subject conduct that creates a credible continuing threat, prior commands and responses, and prior changes in threat level all belong in the analysis.

The Tactical Decisions That Matter Most

Not every pre-force decision reaches constitutional significance – negligence and tactical error are not constitutional violations. The decisions most likely to become legally relevant are those that:

- directly altered the immediacy or unavoidability of the force situation;
- were made with knowledge that the subject was armed;
- foreclosed available tactical alternatives (cover, distance, containment, less-lethal options);
- occurred immediately before force and were closely connected to its occurrence; and
- reflect a pattern that courts in the relevant circuit have treated as legally significant.

Specific tactical decisions that appear repeatedly in officer-created-jeopardy analysis:

Closing distance with a known armed subject. An officer who moves from a safe standoff toward an armed subject changes the threat geometry – the subject who was dangerous but not immediately capable of reaching the officer becomes an immediate threat once distance is reduced. The decision to close distance can materially alter the force question.

Abandoning available cover. Moving from a protected position into an exposed position before operationally necessary compresses decision time and eliminates a tactical resource. The constitutional relevance depends on whether the movement was operationally justified.

Rushing a contained person. Where a knife-armed subject is contained – not threatening others, not advancing, in a fixed location – and officers initiate rapid close contact that immediately produces a deadly-

force confrontation, the factual pattern resembles *Allen* and *Ceballos*. Containment is not constitutionally mandatory, but the choice to abandon it may be part of the totality.

Inadequate identification. *Pauly v. White* (10th Cir. 2017) found that police identification before dynamic approach was relevant to the reasonableness analysis where occupants of a home did not initially know who was outside.

Warnings and Commands in the Pre-Force Sequence

Warnings serve a different function than commands. A command directs behavior; a warning communicates consequences. Where circumstances permit, courts have found that an explicit force warning – "stop or I will shoot," "drop the knife or I will deploy my Taser" – is relevant to reasonableness. The warning both informs the subject and demonstrates that officers gave the subject the opportunity to prevent force.

No constitutional rule requires a warning before every use of force. Where a person is actively attacking, warnings may be neither feasible nor relevant. Where a person is advancing toward a civilian and ignoring commands, the warning cannot extend indefinitely. But in a contained encounter with time available, the absence of a force warning – where one was feasible and would have given the subject an opportunity to prevent force – can be part of the totality.

The standard sequence that courts analyze: approach and positioning → commands → opportunity to comply → force warning → opportunity to comply → force. Where steps are omitted with adequate operational justification, that justification belongs in the record.

What Officer-Created Jeopardy Does Not Establish

The doctrine does not mean:

- Officers must always retreat when possible
- Cover is constitutionally required whenever available
- Specialist resources must be requested before any contact
- Less-lethal options must be attempted before firearms
- An officer who makes a tactical error loses the right to defend themselves
- Negligent tactics equal constitutional violations
- *Barnes* created a nationwide officer-created-jeopardy rule

The correct federal rule is narrower: the relevant totality has no artificial time limit, and in circuits with developed officer-created-jeopardy doctrine, reckless or deliberate conduct immediately connected to the need for deadly force can be considered. Beyond that, outcomes are circuit and fact dependent.

Policy Implications

1. Post-incident review must preserve and examine the full encounter chronology. Review that begins at the moment of force and works backward only through the final threat fails to capture the pre-force decisions that *Barnes* now requires courts to consider.
2. Tactical decisions require documentation of the reason, not just the action. Why officers closed distance, entered a specific space, left cover, or initiated contact at a particular pace should appear in reports. Without that context, post-incident review treats tactical choices as unexplained facts.
3. Distinguish levels of pre-force conduct clearly. Policy violation, tactical error, negligence, reckless escalation, and constitutional unreasonableness are different categories. Reviewers who conflate them either over-punish mistakes or under-identify genuine constitutional concerns.
4. Train threat assessment as a continuous process, not a binary. The pre-force chronology matters because earlier decisions change later threat geometry. Training that treats force as a discrete final decision rather than the product of cumulative decisions leaves officers without the framework to understand what earlier choices have already foreclosed.

HOW TO CITE

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