

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 17 EAP 2021

**COMMONWEALTH OF PENNSYLVANIA,
Appellant,**

v.

**RYAN POWNALL,
Appellee.**

Appeal from the Judgment of Superior Court Entered on
September 4, 2020 at No. 148 EDA 2020 Quashing the Commonwealth's
Appeal of the Order Entered on December 30, 2019 in the Court of
Common Pleas, Philadelphia County, Criminal Division at No. CP-51-CR-
0007307-2018.

**BRIEF FOR *AMICI CURIAE* CURRENT AND
FORMER ELECTED PROSECUTORS, ATTORNEYS
GENERAL, AND LAW ENFORCEMENT LEADERS
IN SUPPORT OF APPELLANT COMMONWEALTH
OF PENNSYLVANIA**

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INTEREST OF AMICI

Amici Curiae, current and former elected prosecutors, Attorneys General, and law enforcement leaders, file this brief in support of the Commonwealth's appeal.¹

As elected prosecutors, Attorneys General, and law enforcement leaders past and present, *amici* understand the essential role that prosecutors and the courts can and should play in promoting accountability and building trust with communities. To maintain that trust, prosecutors have a responsibility to address the problem of unwarranted, unjustified, and unnecessary police violence and enforce constitutional limitations on the use of force. Prosecutors must pursue criminal cases when excessive force, in particular excessive deadly force, is used, and seek accountability for that misconduct. Courts likewise have a duty to ensure the law limits police behavior to what is constitutionally permissible. Specifically, courts must make clear to law enforcement, and the public, that deadly force is permissible only when officers have probable cause to believe such force is needed to prevent an immediate threat of serious harm or death to the

¹ This brief is filed pursuant to Pa. R.A.P. 531.

officer or others. This is the standard the U.S. Supreme Court clearly established in *Tennessee v. Garner*, 471 U.S. 1 (1985).

Because the issues this case raises have national significance, *amici* come from jurisdictions across the country. We share a steadfast belief in the starting point that police are not legally permitted to use deadly force beyond the boundaries the U.S. Supreme Court has established. Any lesser standard not only contravenes federal constitutional law, it fails to promote accountability among public safety officials.

The question here, though expansive in its implications, is actually narrow in scope. To resolve it requires only the application of the touchstone of all Fourth Amendment analysis – reasonableness – as established by the Supreme Court’s decision in *Garner*. We ask this Court to do just that. And by issuing such a decision, the Court will not only uphold settled constitutional law, it will greatly enhance public safety and community trust in our vitally important law enforcement institutions.

A full list of *amici* is attached as Exhibit A.

INTRODUCTION

In the last year, the increasingly tense and frayed relationships between communities of color and police have been on full display. Officer Derek Chauvin’s murder of George Floyd, in public view, illustrated starkly

that some police officers needlessly inflict violence on residents without fear of consequences. For months after that tragic killing, people took to the streets to demand that those with power and authority – including prosecutors and judges – hold police officers who use excessive force accountable. They insisted that no one be above the law in practice, not just in theory. They were clear that without accountability, there can be no public trust between law enforcement and the community, and especially, communities of color.

The case before this Court presents the important question of whether Pennsylvania law allows officers who cause serious harm to avoid consequences. The case is predicated on how one interprets and applies 18 Pa.C.S.A. § 508(a)(1), which states that police may use deadly force when “(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and (ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.”

The disjunctive phrasing “*or otherwise indicates* that [the fleeing person] will endanger human life or inflict serious bodily injury” suggests an officer may use deadly force in the absence of an imminent threat of

death or injury, and simply where the fleeing person was involved in a forcible felony or possesses a deadly weapon, but is otherwise non-threatening. Because this interpretation would be squarely at odds with *Garner*, the Commonwealth argues – and *amici* agree – that the statute must be read and applied in a manner consistent with the U.S. Constitution.²

This case has enormous implications for how the public views officials within the criminal justice system – and the legitimacy and fairness of the system itself. It involves the intersection of the Pennsylvania statute justifying police use of deadly force when making arrests, and the constitutional limits on that force.

Amici urge this Court to rule that § 508(a)(1) must be interpreted consistently with *Garner's* application of the Fourth Amendment: when law enforcement officers use deadly force to apprehend fleeing suspects, the officers should only be insulated from criminal liability if the force was reasonably needed to address an immediate threat of serious injury or death. Holding otherwise would allow police to kill without consequence,

² *Amici* acknowledge that the first two issues on which this Court granted review are jurisdictional. This brief will not reach those issues. It will instead focus on the substantive constitutional question and its public safety implications. These arguments are pertinent to the third issue on which the Court has granted review, involving statutory construction.

even when there is no reasonable risk of death or bodily harm. Such a result would both pave the way for the unconscionable use of deadly force and risk undermining community trust in the justice system.

At a time when our country is engaging in deep discussions of how to promote community safety, it is particularly critical for this Court to clarify that no one is above the law. Any other ruling sends a troubling message that would undermine our ability, as prosecutors, Attorneys General, and law enforcement leaders, to seek justice, preserve public confidence in the criminal legal system, and thereby promote public safety.

PROCEDURAL BACKGROUND

The Commonwealth charged the Defendant in this case, Ryan Pownall, with murder and related crimes arising from Pownall's shooting of David Jones during the course of Pownall's duties as a former Philadelphia Police Officer. The Commonwealth alleged that Jones was unarmed and fleeing when Pownall shot him.

Prior to trial, Defendant Pownall gave notice that he would present a justification defense under 18 Pa.C.S. § 508(a)(1), which states that police may use deadly force when "(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and (ii) the person to be arrested has committed or attempted a forcible felony or is attempting to

escape and possesses a deadly weapon, *or otherwise indicates* that he will endanger human life or inflict serious bodily injury unless arrested without delay.” 18 Pa.C.S. § 508(a)(1) (emphasis added).

As a result of this use of “or” in the statute, the Commonwealth filed a Motion *in Limine* arguing this portion of the statute – and the standard criminal jury instruction using the same language – is unconstitutional and could not be the sole basis for instructing the jury. The Commonwealth contended the statute conflicts with *Tennessee v. Garner*, 471 U.S. 1 (1985), where the U.S. Supreme Court held, under the Fourth Amendment, that officers may not effect a seizure of a fleeing person by way of deadly force unless there is probable cause to believe that person presents an immediate threat of serious harm or death to the officer or others.

The Commonwealth proffered an alternative instruction:

4. It is the Commonwealth’s burden to disprove the defense of justification. Accordingly, you may not find the defendant guilty
 - a. unless the evidence convinces you beyond a reasonable doubt that he did not believe that deadly force was necessary to prevent death or serious bodily injury to himself, or that he believed deadly force was necessary but that belief was unreasonable; and
 - b. unless the evidence also convinces you beyond a reasonable doubt that he did not believe deadly force was necessary to prevent David Jones from escaping or he did believe deadly force was necessary but that belief was unreasonable; and
 - i. that David Jones committed or attempted to commit a forcible felony and was attempting to escape; and possessed a deadly

weapon; and indicated that he would endanger human life or inflict serious bodily injury unless arrested without delay.

Commonwealth's Motion *in Limine*, 11/25/19, ¶ 47 (emphasis added).

The trial court denied the Commonwealth's motion. The Commonwealth then filed an interlocutory appeal to the Superior Court, which ultimately quashed the Commonwealth's appeal in a 3-page *per curiam* judgment order. This Court subsequently granted the Commonwealth's Petition for Allowance of Appeal.

ARGUMENT

- I. **The Fourth Amendment permits an officer to use deadly force during an arrest *only if* there is probable cause to believe the person poses an immediate threat of serious physical harm or death to the officer or to others; any contrary interpretation of the Pennsylvania statute would be at odds with Constitutional protections.**

The “‘central requirement’ and the ‘touchstone’ of the Fourth Amendment is reasonableness.”³ In *Graham v. Connor*, for example, the Supreme Court balanced the competing individual and law enforcement interests, holding that “the question” to be asked in evaluating Fourth Amendment excessive force cases is “whether the

³ *Commonwealth v. Revere*, 888 A.2d 694, 707 (Pa. 2005) (quoting *Illinois v. McArthur*, 531 U.S. 326, 330 (2001)).

officers' actions [were] 'objectively reasonable' in light of the facts and circumstances confronting them" as "judged from the perspective of a reasonable officer on the scene."⁴

Applying this reasonableness principle, the U.S. Supreme Court established baseline standards for when police may use deadly force against a person attempting to flee an arrest, declaring that "there can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment."⁵ Grounding its decision in a person's Fourth Amendment right to be free from unreasonable seizures, the Court established minimum levels of justification police must have before using deadly force on a person fleeing arrest. A statute that dips below the standards set out in *Garner* violates the Fourth Amendment.⁶

⁴ *Graham v. Connor*, 490 U.S. 386, 397 (1989). See also Kit Kinports, *The Origins and Legacy of the Fourth Amendment Reasonableness-Balancing Model*, 71 Case W. Res. L. Rev. 157, 180 (Fall 2020) (detailing the Supreme Court's use of the reasonableness standard when judging a police officer's use of force).

⁵ *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). See also *Graham v. Connor*, 490 U.S. 386, 388-89 (1989); *Saucier v. Katz*, 533 U.S. 194, 195 (2001); *Scott v. Harris*, 550 U.S. 372, 386 (2007).

⁶ See Geraldine N. Lewis, *Tennessee v. Garner: Invoking the Fourth Amendment to Limit Police Use of Deadly Force*, 6 Pace L. Rev. 671, 673 (1986).

In *Garner*, the Court explained that “[t]he intrusiveness of a seizure by means of deadly force is unmatched. The suspect’s fundamental interest in his own life need not be elaborated upon. The use of deadly force also frustrates the interest of the individual, and of society, in judicial determination of guilt and punishment.”⁷ Even though the Court acknowledged the important law enforcement interest in effectuating arrests, it was “not convinced that the use of deadly force is a sufficiently productive means” of achieving those goals. The Court concluded that “the use of deadly force is a self-defeating way of apprehending a suspect” and “constitutionally unreasonable” when used against all felony suspects.⁸

The Court made clear that an officer may never constitutionally “seize an unarmed, nondangerous suspect by shooting him dead.”⁹ If a person does not pose an “immediate threat to the officer and no threat to others,” then deadly force is not permitted. As to when deadly force may be used to arrest a fleeing suspect, the Court required there to be, at a minimum, “probable cause” that the person poses a “threat of serious physical harm,

⁷ *Garner*, 471 U.S. at 9-10.

⁸ *Id.* at 10-11.

⁹ *Id.* at 11.

either to the officer or to others,” based on the totality of the circumstances.¹⁰

The Court therefore rejected a *per se* rule permitting the use of deadly force upon a person who committed a felony and tries to resist or flee. *Garner* and its reasoning dictate that any such rule is unconstitutional.

In Pennsylvania, 18 Pa.C.S.A. § 508(a)(1) governs when police are legally permitted to use deadly force when making arrests. The statute provides that police may use deadly force when “(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and (ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.”

The question in this case is how this Court should interpret the Pennsylvania statute to align it with the limitations set out in *Garner*. That case requires that there must be probable cause of an immediate threat of serious injury or death before deadly force may be used against a fleeing

¹⁰ *Id.* at 11-12.

person. Pennsylvania's use of force statute must therefore be interpreted and applied consistently with *Garner* to avoid being unconstitutional.¹¹

Allowing an instruction construing § 508(a)(1) in a way inconsistent with *Garner* would not only violate the Fourth Amendment, it would also lead to impracticable and morally intolerable outcomes:

- Jurors could acquit officers of homicide charges even if the officers who used lethal force faced no serious, let alone life-threatening, danger to themselves or others.
- Any forcible felony combined with flight would justify any use of lethal force by an officer.
- Relatively minor forcible felonies could lead to disproportionate deadly force. This state's jury instructions indicate that a

¹¹ *Amici* do not take a position on precisely how the Court should construe the statute to render it consistent with *Garner*; *amici* will rely on the Commonwealth's briefing in this respect. *Amici* also acknowledge that, in the courts below, the Defendant argued that construing the statute to bring it into line with *Garner* would violate the Defendant's rights under the Due Process and *Ex Post Facto* clauses. The Commonwealth addressed this question thoroughly in briefing to the Superior Court, and *amici* anticipate the Commonwealth will do the same here. Accordingly, *amici* will rely on the Commonwealth's argument and not address this question separately.

forcible felony includes property crimes or a breach of the peace.¹²

- Any fleeing person who commits a minor crime also could be killed by the police simply because that person possesses a deadly weapon. A fleeing shoplifter, for example, could be shot by the police because that shoplifter happens to have a gun or knife that was present but unused during the crime. Nor does the weapon even need to be particularly deadly under state law. A BB gun,¹³ pepper spray,¹⁴ and glass bottle¹⁵ have all met the definition in Pennsylvania. The definition of deadly weapon does not even require that the person “in control of the object intended to injure or kill” with it.¹⁶

¹² See Pa. SSJI (Crim), §9.508B and E.

¹³ *Commonwealth v. Shull*, 148 A.3d 820, 831 (Pa. Super. Ct. 2016).

¹⁴ *Commonwealth v. Chambers*, 188 A.3d 400, 405 (Pa. Super. Ct. 2018).

¹⁵ *Commonwealth v. Rhoades*, 8 A.3d 912, 916-17 (Pa. Super. Ct. 2010).

¹⁶ *Commonwealth v. Solomon*, 151 A.3d 672, 677 (Pa. Super. Ct. 2016). See also 18 Pa.C.S.A. § 2301 (defining “deadly weapon” as “[a]ny firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury”).

In sum, this case is as clear-cut as it is important. The U.S. Supreme Court established a clear and bright line rule in *Garner* when it held that officers may only use deadly force to apprehend fleeing suspects when there is probable cause such people pose a risk of serious injury or death. Pennsylvania's use of force statute plainly violates this rule unless it is construed so as to account for *Garner*. And this Court is not only constitutionally required to apply that construction, it must also do so as part of the process of fortifying trust between law enforcement and the communities they are sworn to protect.

Should the Court apply an interpretation contrary to *Garner*, it would create a morally untenable result. A person whom police suspect of committing a crime who flees, but poses no danger, should be arrested and prosecuted. But they cannot be put to death, even if the officer is concerned that they will later be difficult to identify or apprehend. To be sure, police often have to make split-second decisions that can be the matter of life and death for all involved, including themselves. But when they make those split-second decisions, they should err on the side of preserving life. A rule that allows for them to shoot to apprehend in the absence of danger presents the wrong message and incentive.

II. Numerous courts and states have restricted the use of deadly force consistent with the Constitution and *Garner*.

If § 508(a)(1) is interpreted to restrict use of deadly force to situations where there is a case-specific reasonable fear of death or serious bodily harm, it would be consistent with numerous use of force statutes from around the country and with many court decisions applying *Garner*.

For example, in Colorado, a “peace officer is justified in using deadly physical force” if the officer has “objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.”¹⁷ In Kentucky, the use of force statute restricts deadly force to prevent escape unless the arrest “is for a felony involving the use or threatened use of physical force likely to cause death or serious physical injury” and the officer “believes that the person to be arrested is likely to endanger human life unless apprehended without delay.”¹⁸

There is also case law from several states that, in the context of criminal prosecutions, restricts the use of deadly force within the limits set

¹⁷ See Colo. Rev. Stat. § 18-1-707.

¹⁸ See Ky. Rev. Stat. § 503.090. See also Cal. Penal Code § 196, §835; Idaho Code § 18-4011; 720 Ill. Comp. Stat. 5/7-5; La. Rev. Stat. Ann. § 14:20; Minn. Stat. § 609.066; O.R.S. § 161.245; Vt. Stat. tit. 20, § 2368 (effective July 1, 2021).

out in *Garner*. The California Court of Appeals, shortly after the *Garner* decision issued, announced that “*Garner* necessarily limits the scope of justification for homicide . . . and other similar statutes from the date of that decision.”¹⁹ State courts have adopted the same result and reasoning with respect to *Garner* and criminal justification statutes in Ohio, New Mexico, and Connecticut.²⁰ Similarly, in Nevada, after *Garner* was decided, that state’s attorney general issued a guidance opinion explaining that Nevada’s statute providing a justification defense for an officer facing homicide charges “would be unconstitutional if applied contrary to the holding from *Tennessee v. Garner*.”²¹

¹⁹ *People v. Martin*, 214 Cal.Rptr. 873, 882 (Cal. Ct. App. 1985).

²⁰ See *State v. White*, 29 N.E.3d 939 (Ohio 2015) (“Because a police officer’s justification to use deadly force is limited by the Fourth Amendment, the appropriate instruction on deadly force is taken from *Tennessee v. Garner*, 471 U.S. 1 [(1985)]”; *State v. Mantelli*, 42 P.3d 272, 278 (N.M. Ct. App. 2002) (*Garner* “wrought a change in New Mexico law on the use of deadly force” requiring the use of a modified jury instruction in prosecution of police officer); *State v. Smith*, 807 A.2d 500, 518-19 (Conn. App. Ct. 2002) (jury instructions in the trial of a police officer for manslaughter had to comply with *Graham*’s objectively reasonable requirement); see also *State v. Pagotto*, 762 A.2d 97 (Md. App. 2000) (in the prosecution of an officer for manslaughter, explaining that *Graham*’s reasonableness requirement from the civil context provides “the proper prospective from which we must view a police officer’s use of force” in a criminal case).

²¹ Op. Atty. Gen. Opinion No. 85-11 (Aug. 20, 1985), 1985 WL 195273.

Therefore, if this Court decides that immediate deadly force is only reasonable to prevent imminent deadly harm or serious bodily injury, it will place Pennsylvania squarely in line with a substantial number of jurisdictions that have applied *Garner* to use of force statutes to ensure that they are safely within the constitutional structure set out by the Supreme Court.

III. Laws that justify unreasonable deadly force undermine public trust in the criminal legal system and are in tension with the job of prosecutors and other law enforcement officials to treat everyone equally.

The primary duty of any prosecutor is to seek justice and serve “the public interest . . . by pursuing appropriate criminal charges of appropriate severity.”²² Holding those in positions of power and authority accountable, in particular law enforcement officers, is an integral part of the prosecutor’s job. As current and former elected prosecutors, Attorneys General, and law enforcement leaders, we understand that, if efforts to hold police accountable are undermined, trust in government conduct diminishes. And that trust is integral to promoting and preserving public safety.

²² See American Bar Association, *Criminal Justice Standards for the Prosecution Function*, §3-1.2(b) (2017), <https://bit.ly/34aD1tL>.

Distrust of law enforcement among communities disproportionately impacted by the criminal legal system, exacerbated by a lack of meaningful police accountability, deters cooperation with law enforcement investigations – leaving vulnerable community members unprotected.²³ Conversely, trust in law enforcement can increase the likelihood that community members will turn to law enforcement after a crime has occurred and be more willing to participate and cooperate in ensuing investigations. As researchers have aptly observed:

[P]eople are more willing to cooperate with the police when they view the police as legitimate social authorities If people view the police as more

²³ Tyler, T., and Wakslak, C. (2004), *Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and the Acceptance of Police Authority*, 42 *Criminology* 253, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.2004.tb00520.x>; Xie, M. & Baumer, E. (2019), *Neighborhood Immigrant Concentration and Violent Crime Reporting to the Police: A Multilevel Analysis of Data from the National Crime Victimization Survey*, 57 *Criminology* 237, <https://perma.cc/QS5R-K867>; Theodore, N. (2013), *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, <https://perma.cc/XEE8-P42V>; Fontaine, J., Leitson, D., Jannetta, J., and Paddock, E. (2017), *Mistrust and Ambivalence between Residents and the Police: Evidence from Four Chicago Neighborhoods*, The Urban Institute, 15-16, <https://www.urban.org/research/publication/mistrust-and-ambivalence-between-residents-and-police>.

legitimate, they are more likely to report crimes in their neighborhood”²⁴

Likewise, when courts interpret laws in a way that permits egregious law enforcement conduct and fails to protect those who are disempowered and most vulnerable, the public can lose confidence in the equal enforcement of the rule of law and the fairness and legitimacy of courts. When courts fail to interpret laws in a manner consistent with these principles, they can undermine the legitimacy of the judicial system.

A decision sanctioning law enforcement killing of people who pose no physical danger is likely to undermine public trust in law enforcement, in

²⁴ See, e.g., Tyler, T., and Fagan, J. (2008), *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, Ohio State Journal of Criminal Law, 263, https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4027&context=fss_papers; Murphy, K., Hinds, L., and Fleming, J. (2008), *Encouraging public cooperation and support for police*, Policing and Society, 18, <https://www.tandfonline.com/doi/abs/10.1080/10439460802008660>; O'Brien, T. C., & Tyler, T. R. (2019), *Rebuilding trust between police & communities through procedural justice & reconciliation*, Behavioral Science & Policy, 5(1), 42, <https://behavioralpolicy.org/wp-content/uploads/2020/01/Rebuilding-trust-between-police-communities-through-procedural-justice-reconciliation.pdf> (finding that “individual experiences and community-level judgments about police... in the neighborhood were associated with... willingness to cooperate”); See generally Emily Ekins, *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey*, Cato Institute, 41 (2017), <https://bit.ly/3vktWu2>.

prosecutors, and in the courts. By employing an unconstitutional and overbroad approach to justifying the use of deadly force, this Court would create the appearance that it does not value its role in protecting the public against governmental abuse. Indeed, it would erode public trust in the ability of the criminal justice system to hold law enforcement accountable at a time when confidence in law enforcement is at an all-time low.²⁵

Such an interpretation also would likely erode public trust in prosecutors' ability to hold law enforcement accountable. Such trust is needed now more than ever. In just the first five months of 2021, law enforcement officers in the United States have shot and killed over 350 people, and over six thousand people since the start of 2015.²⁶ Last year, police killed 1,126 people, but only 16 officers faced criminal charges for those killings.²⁷

²⁵ See "Public Trust and Law Enforcement—A Discussion for Policymakers," Congressional Research Service (July 13, 2020), available at <https://fas.org/sgp/crs/misc/R43904.pdf> (last visited 9/22/20); Jeffrey M. Jones, "In U.S., Confidence in Police Lowest in 22 Years," Gallup (June 19, 2020), <https://bit.ly/34dUhya>; N'dea Yancey Bragg, "Americans' confidence in police falls to historic low, Gallup poll shows," USA Today (Aug. 12, 2020), <https://bit.ly/3fGzZT9> (last visited June 22, 2021).

²⁶ *Police Shootings Database*, Washington Post (Updated May 21, 2021), <https://wapo.st/3495bVY> (last visited May 24, 2021).

²⁷ Mapping Police Violence, <https://policeviolencereport.org/> (last visited June 22, 2021).

As these numbers demonstrate, prosecutors rarely bring charges against police officers who kill civilians.²⁸ If this Court does not construe section 508(a)(1) to bring it into line with *Garner*, it will become extraordinarily difficult for Pennsylvania prosecutors to hold police accountable for needless and unwarranted violence. In nearly every case involving a suspected forcible felony and any resistance, or a fleeing person who possesses a weapon, police will have an air-tight justification defense. An interpretation of § 508(a)(1) that ignores *Garner* would further shrink the possibility of criminal charges as an avenue for proper accountability.

If Pennsylvania prosecutors are effectively unable to prosecute law enforcement, public trust in the fairness and capabilities of the office is likely to decline. This would be devastating, as the job of prosecutors, and law enforcement overall, depends on public trust. Prosecutors rely upon public trust to achieve their mission of upholding justice and promoting public safety for all members of the community. Indeed, “trust between the community and the prosecutor’s office is essential to maintain the office’s

²⁸ See Melissa Chan, *A Police Officer Killed Their Mother, and Her Sons Want to Know Why He Hasn’t Faced Trial*, Time (July 18, 2019) (citing a national statistic showing police are charged when using deadly force in less than two-percent of all cases), <https://bit.ly/2SqtVWR>.

legitimacy and credibility.”²⁹ Prosecutors who engage with their communities see enhanced public confidence in the criminal justice system, which in turn makes the public “more likely to report crimes and to cooperate as witnesses.”³⁰ Individuals in the criminal justice system are more likely to accept consequences and punishment when they believe that they are fairly administered.

As conscientious prosecutors and law enforcement leaders, *amici* place public safety and the preservation of fundamental constitutional rights at the core of every decision we make. It is that duty that requires us to speak out in this case in support of the constitutional principle that a person may not be killed by the police in the absence of any immediate threat of serious injury or death to the public or the officer. We urge this Court to follow the law, and require an application of § 508(a)(1) that is

²⁹ Building Community Trust: Key Principles and Promising Practices in Community Prosecution and Engagement, Fair & Just Prosecution, 2018, https://fairandjustprosecution.org/wp-content/uploads/2018/03/FJP_Brief_CommunityProsecution.pdf.

³⁰ *Id.* See generally Cory Smith, *Police Work With Protesters to Build Trust in Communities of Color*, NBC Dallas-Fort Worth (Nov. 17, 2016, updated Nov. 18, 2016), <https://bit.ly/3hOXVDn> (last visited June 22, 2021); Richard Wike and Kathleen Holzwart, *Where Trust is High, Crime and Corruption are Low*, Pew Research Center (April 15, 2008), <https://pewrsr.ch/3360gpm> (last visited June 22, 2021).

consistent with *Garner*. Anything less is likely to undermine public trust in our systems of public safety.

CONCLUSION

There may be no more important task for prosecutors and criminal justice leaders than seeking justice when a person's life has been taken. Our communities rely on locally elected prosecutors and the courts to ensure that their criminal legal system treats everyone fairly and equally, and follows the dictates of the Constitution. Prosecutors around the country, in increasing number, are assuming this important responsibility.³¹

Like prosecutors, courts too have a responsibility to ensure accountability for constitutional violations, particularly those involving extreme acts of violence. Pennsylvania courts are “bound to interpret a statute, where possible, in a way that comports with the constitution's terms.”³² The situation at play here, involving the taking of a person's life

³¹ See, e.g., Roy L. Austin, Jr. and Miriam Aroni Krinsky, *Local prosecutors are the best people to defend their communities against corrupt cops*, Baltimore Sun (Sept. 23, 2020) (“Communities entrust elected prosecutors with investigating elected officials and handling high-profile local crimes.”) <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0924-states-attorney-police-misconduct-20200923-meb4n73q65ab5icaftvf4weea-story.html> (last visited June 22, 2021).

³² *Commonwealth v. Veon*, 150 A.3d 435, 443 (Pa. 2016), citing 1 Pa.C.S. § 1922 (requiring courts to presume “[t]hat the General Assembly

due to law enforcement action, is where courts should be most prepared to carry out this authority.

The outcome of this case will deeply affect public trust in law enforcement and the broader criminal legal system. This Court can substantially improve community trust in Pennsylvania’s public safety institutions by holding, as the Fourth Amendment requires, that § 508(a)(1) only protects against criminal liability for an officer who uses deadly force if and when that officer had a reasonable belief the person they killed posed an immediate threat of serious injury or death. The Constitution, the integrity of our criminal justice institutions, and the duty to preserve public safety, demand this result.

Respectfully submitted,

/s/ Daniel Segal

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July 1, 2021

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does not intend to violate the Constitution of the United States or of this Commonwealth”).

Exhibit A

Exhibit A - List of *Amici*

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I, Daniel Segal, hereby certify that this Brief for *Amici Curiae* was prepared in word-processing program Microsoft Word 2016 (for Windows), and I further certify that, as counted by Microsoft Word 2016, this Amicus Brief contains 4919 words, excluding the parts of the brief exempted by Pa. R.A.P. 2135(b).

/s/ Daniel Segal

DANIEL SEGAL

July 1, 2021

CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 127

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Daniel Segal

DANIEL SEGAL

July 1, 2021

IN THE SUPREME COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, Appellant : 17 EAP 2021
 :
 v. :
 Ryan Pownall, Appellee :

PROOF OF SERVICE

I hereby certify that this 1st day of July, 2021, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

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IN THE SUPREME COURT OF PENNSYLVANIA