



THE CONSTITUTIONAL LIMITS OF INTERIOR ADMINISTRATIVE POLICING

Barnes v. Felix, Structural Accountability, and
the End of the “Two-Second” Defense.

A Structural Confrontation: Police Power vs. Civil Authority

The Geography

Recent critical incidents—including fatal shootings—are occurring hundreds of miles from ports of entry, in residential neighborhoods and parking lots where ordinary policing standards apply in full.

The Distinction

Congress's power over immigration is not a roving license for interior policing. Outside narrow border zones, federal agents are not exempt from judicial warrant requirements or Terry stop limitations.

The Catalyst

Barnes v. Felix (2025) has destabilized the enforcement model by rejecting the “moment-of-threat” snapshot defense.

The Verdict: Border exceptionalism does not travel with the badge.



Immigration Enforcement is a Civil Regulatory Regime



CIVIL REGULATORY AUTHORITY (ICE/DHS)

- **Nature of Law:** Removal proceedings are civil, not criminal.
- **Tools:** Detainers are civil requests; administrative warrants are agency-signed.
- **Primary Function:** Regulatory compliance.



GENERAL POLICE POWER (STATE/LOCAL PD)

- **Nature of Law:** Enforcement of penal code.
- **Tools:** Judicial warrants issued by neutral magistrates.
- **Primary Function:** Public safety and crime prevention.

The Gap: Federal silence does not create executive power. The Supreme Court has repeatedly held that **civil authority does not dissolve Fourth Amendment protections**. An agency cannot manufacture “general-purpose street-policing authority” from a civil mandate.

The Warrant Problem: Executive Permission is Not Judicial Process



Executive Branch
No Probable Cause Finding
Civil Instrument

Article III Branch
Probable Cause Found
4th Amendment Satisfied

The Defect

Administrative warrants do not satisfy the Fourth Amendment's warrant clause. They do not authorize entry into non-public spaces (homes, curtilage) without consent.

Legal Reality

Johnson v. United States establishes that officers cannot judge the necessity of their own intrusions.

The Risk

Current operations treat the Administrative Warrant as if it carries the intrusive power of a Judicial Warrant.

"A system of policing without judges."

The Catalyst: *Barnes v. Felix* and the Rejection of Amnesia



REJECTION OF THE “TWO-SECOND SNAPSHOT”

Barnes v. Felix (2025)

◆ The Old Doctrine ◆

Courts previously froze analysis at the “**Two-Second Snapshot**”—the exact moment force was used—ignoring prior tactical errors.



◆ The Barnes Holding ◆

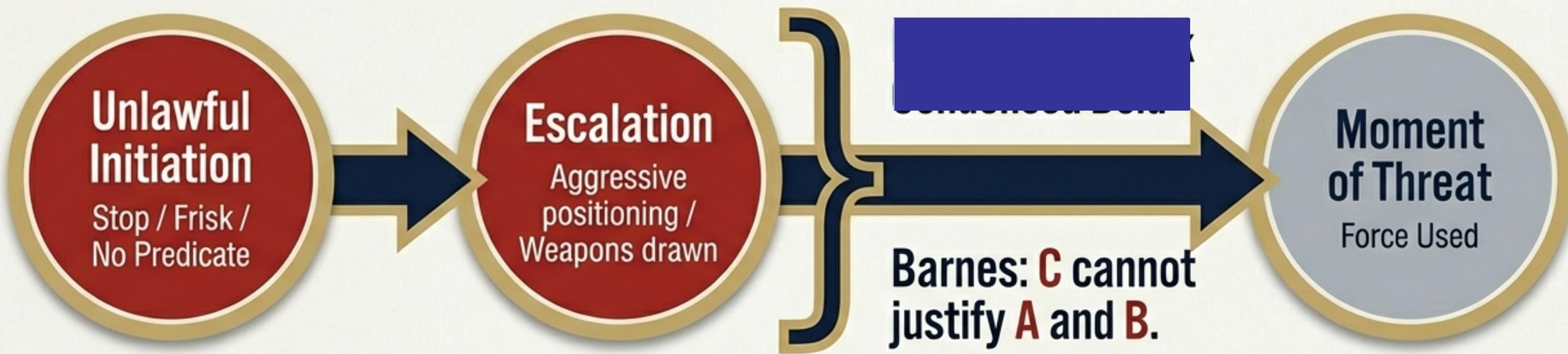
Unanimous rejection of the snapshot defense. Fourth Amendment reasonableness requires evaluating the “**Totality of Circumstances**,” including the tactical choices that created the confrontation.



◆ The Shift ◆

The Court restored the logic of *Graham* and *Garner*: An officer cannot create the conditions of necessity through **unlawful conduct** and then claim self-defense.

Visualizing *Barnes*: Causation is Re-Legalized



◆ The Insight ◆

Pre-Barnes, courts looked only at the moment of threat. *Post-Barnes*, if the officer created the danger through unlawful initiation (Point A), the necessity defense at Point C collapses.

“Fourth Amendment reasonableness **cannot be confined to a two-second snapshot.”**

Beyond Shootings: The Entire Spectrum is Under Review

Verbal
Commands

Investigatory
Stops

Coercive
Questioning

Threats &
Intimidation

Lethal
Force

Scope: The *Barnes* ruling applies to all Fourth Amendment seizures, not just deadly force.

Implication: Every step on this spectrum is now a causal link in the chain of liability. Non-lethal physical force (shoving, grabbing) and weapon displays are subject to the same chronological analysis.

Constitutional Violations Do Not Require Handcuffs



SEIZURE



ARREST

- ◆ **The Law:** A seizure occurs whenever liberty is restrained by a show of authority—even if no arrest follows (*Torres v. Madrid*).
- ◆ **The Behavior:** “**Boorish enforcement culture- ◆ **The Link:** Under *Barnes*, this “preliminary” intimidation is often the cause of the escalation. It is no longer invisible background noise.**

Force does not need to succeed in custody to trigger constitutional scrutiny.

The Initiation Defect: Stop-and-Frisk Without Law



The Standard: *Terry v. Ohio* requires specific, articulable reasonable suspicion of criminal activity. Curiosity is not a predicate.

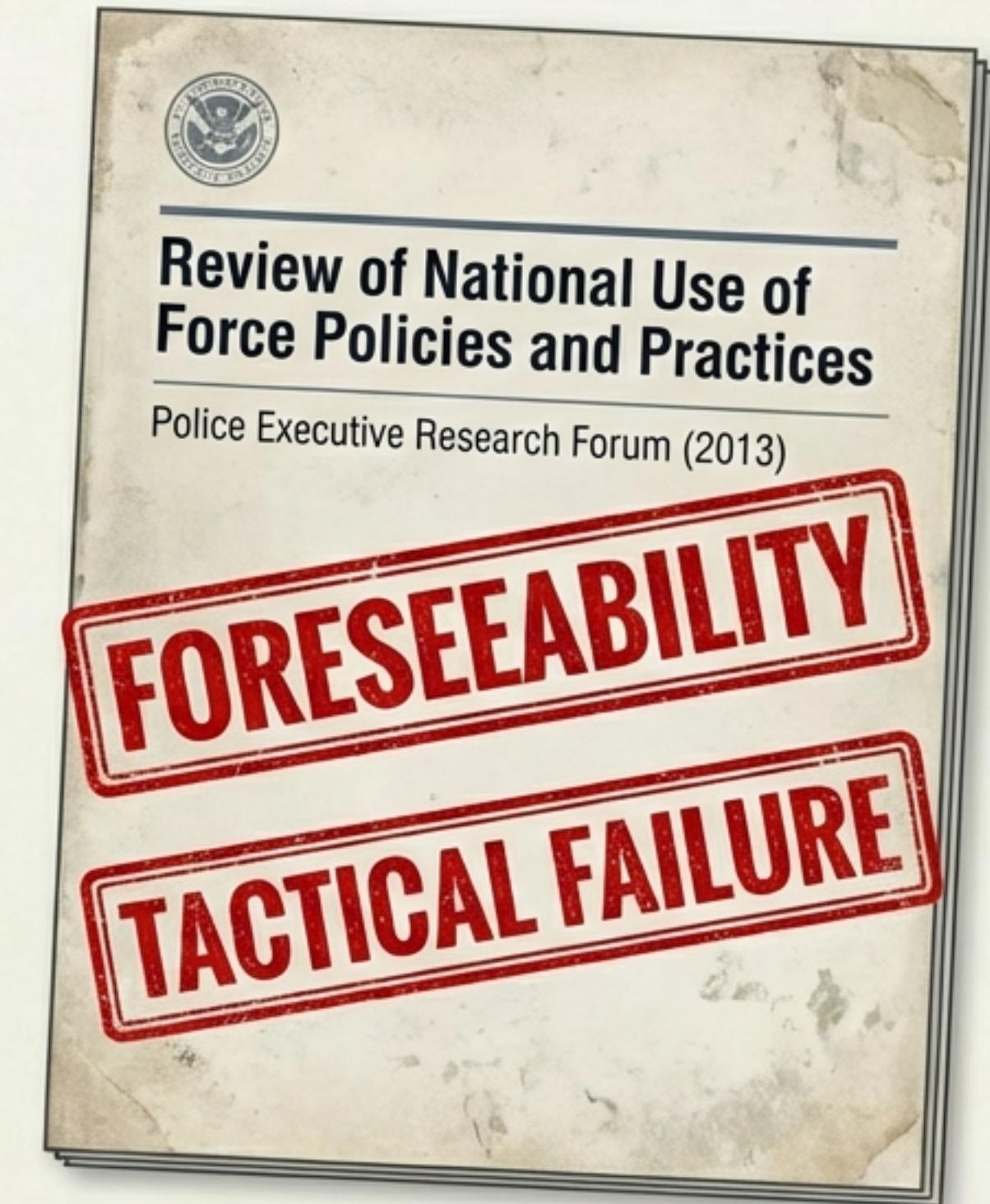
ID Demands: There is no general obligation to identify in the US. *Hiibel* applies only after a lawful stop is established.

The Reality: Interior operations frequently involve generalized ID checks and 'consensual' encounters that are actually coercive seizures.

Civil vs. Criminal: Administrative authority does not authorize roving stop-and-frisk powers. *Brignoni-Ponce* explicitly bans dragnet stops away from the border.

Institutional Notice: The 2013 PERF Report

- ◆ **The Evidence:** In 2013, CBP/DHS commissioned a review that **explicitly warned:**
- ◆ Specific tactics (vehicle positioning, failure to disengage) create self-defense shootings.
- ◆ **The Warning:** Agents were placing themselves in avoidable danger, then shooting their way out.
- ◆ **The Legal Impact:** This establishes Foreseeability. The government cannot plead ignorance when known tactics lead to predicted violence.



The Legal Trap: Foreseeability destroys “Necessity”



The Equation: Barnes (Totality of Circumstances) + PERF (Notice of Risk) = **No Plausible Deniability.**

Key Concept: Self-created danger is not constitutional justification; it is **constitutional failure.**

The Remedy Shift: Accountability Migrates, It Does Not Disappear



- ◆ **The Contraction:** *Goldey v. Fields* confirms the Court is narrowing implied damages remedies (Bivens).
- ◆ **The Migration:** Liability shifts to the Federal Tort Claims Act (FTCA) and state tort law.
- ◆ **The Consequence:** FTCA claims incorporate state negligence standards, which often impose **sharper constraints on force** than the constitutional floor. The government—not just the agent—is on the hook.

The Collapse of the Immunity Narrative



**Unlawful
Initiation**

- ◆ **The Standard:** Supremacy Clause immunity protects conduct that is "Necessary and Proper."
- ◆ **The Failure:** Unlawful initiation (stops without suspicion) and reckless escalation are neither necessary nor proper.
- ◆ **The Logic:** An officer who lacks the authority to stop or frisk cannot rely on immunity to sanitize the resulting escalation. Immunity does not attach to *ultra vires* (unauthorized) acts.

The Current Reality: Noem v. Vasquez Perdomo

- ◆ **The Status:** Noem (emergency docket) allows operations to continue but expressly leaves the question of legality unresolved.
- ◆ **The Paradox:** Enforcement accelerates while the constitutional ground is crumbling.
- ◆ **The Risk:** This widens the gap between operational tempo and legal authority. Proceeding with contested practices increases the pressure on downstream litigation.

Conclusion: The Future of Interior Policing

- ◆ **The Core Conflict:** Administrative power is operating without the necessary check of Judicial Constraint.
- ◆ **The Future:** The line between law and power has not disappeared. Barnes requires courts to look at the whole story.

“The question is not whether agencies will respect the line—but whether they will force the judiciary to draw it again, at much at much higher cost.”