

No. 20-1362

IN THE
Supreme Court of the United States

DAVDRIIN GOFFIN,

Petitioner,

v.

ROBBIE K. ASHCRAFT, ET AL.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**AMICI CURIAE BRIEF FOR DC JUSTICE LAB,
DC SHY-YAB, HARRIET'S WILDEST DREAMS,
HELPING OURSELVES TO TRANSFORM,
LIFE AFTER RELEASE, AND STND4YOU, INC.
IN SUPPORT OF PETITIONER**

Mae C. Quinn*

**Counsel of Record*

YOUTH JUSTICE CLINIC

University of the District of Columbia

David A. Clarke School of Law

4340 Connecticut Avenue, NW

Washington, DC 20008

(202) 274-5073

mae.quinn@udc.edu

TABLE OF CONTENTS

Table of Authorities.....	2
Interest of Amicus Curiae.....	9
Summary of the Argument.....	12
Argument.....	13
I. Flight, a Reasonable Response of Self-Preservation by Unarmed Black Youth and Adults Given this Country’s History of Police Violence, is Insufficient Grounds for the Use of Deadly Force.....	13
II. United States Police, Shielded By Expansive Qualified Immunity Rulings, Are More Violent and Shoot More Suspects Than Nearly Any Other Law Enforcement Agency In The World.....	20
III. Overwhelmingly, African Americans Are the Targets of Unchecked Police Violence and Killings In This Country.....	23
IV. The Qualified Immunity Doctrine Should Not Provide Cover For Police Bias and Continuing Irrational Fears of Black and Brown Bodies.....	28
Conclusion.....	33

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>PAGE(S):</u>
<i>Commonwealth v. Warren</i> , 58 N.E.3d 333 (Mass. 2016).....	18
<i>Dred Scott v. Sandford</i> , 60 U.S. 393 (1857).....	15
<i>Illinois v. Wardlow</i> , 528 U.S. 119 (2000).....	17
<i>Tennessee v. Garner</i> , 471 U.S. 1 (1985).....	20
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	16
 <u>STATUTES:</u>	
ARK. CODE § 12-12-1401.....	23
 <u>OTHER AUTHORITIES:</u>	
ACLU-DC, RACIAL DISPARITIES IN STOPS BY THE METROPOLITAN POLICE DEPARTMENT: 2020 DATA UPDATE.....	18
ACLU OF NEW YORK, STOP-AND-FRISK DATA.....	17, 18

Aimee Ortiz, <i>Confidence in Police Is at Record Low, Gallup Survey Finds</i> , N.Y. TIMES, Aug. 12, 2020.....	16
Amanda Claire Curcio and Hunter Field, <i>Deadly Force: In 6 Years, 53 Blacks Shot by Police in Arkansas</i> , ARKANSAS DEMOCRAT-GAZETTE, Mar. 13, 2017.....	23
Amelia Cheatham and Lindsay Maizland, <i>How Police Compare in Different Democracies</i> , COUNCIL ON FOREIGN RELATIONS, Apr. 21, 2021.....	20
<i>Breonna Taylor Hearing</i> , Int'l Comm'n of Inquiry on Systemic Racist Police Violence, Jan. 30, 2021.....	31
Chelsea Hansen, <i>Slave Patrols: An Early Form of American Policing</i> , Blog: On the Beat, July 10, 2019.....	15, 19
Cody T. Ross, <i>A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States</i> , 2011–2014, 10 (11) PLoS ONE 1 (Nov. 2015).....	24
<i>Comm'n of Inquiry on Systemic Racist Police Violence: Reflections and Next Steps</i>	27
Daanika Gordon, <i>The Police as Place-Consolidators: The Organizational Amplification of Urban Inequality</i> , 45 LAW & SOCIAL INQUIRY 1 (Feb. 2020).....	17

- David A. Harris, *Racial Profiling: Past, Present, and Future?*, ABA CRIMINAL JUSTICE MAGAZINE, Jan. 21, 2020.....23
- DAVID WEISBURD & MALAY K. MAJUMDAR, *ET AL.*, PROACTIVE POLICING: EFFECTS ON CRIME AND COMMUNITIES (2018).....*passim*
- Derek Thompson, *The Overlooked Role of Guns in the Police-Reform Debate*, THE ATLANTIC, Jun. 19, 2020.....22
- Ed Pilkington, *Police Arrest Prominent Black History Scholar for Breaking into His Own Home*, THE GUARDIAN, July 21, 2009.....31
- Elle Lett, *et al.*, *Racial Inequality in Fatal U.S. Police Shootings, 2015-2020*, 75 J. OF EPIDEMIOLOGY & COMMUNITY HEALTH 394, (Oct. 2020).....20
- Emma Tucker, *Why It's Rare for Police Officers to Be Convicted of Murder*, CNN, Apr. 21, 2021....32
- Errin Haines, *'This Invokes a History of Terror,' Central Park Incident Between White Woman And Black Man is Part of a Fraught Legacy*, WASH. POST, May 27, 2020.....30
- Frank Edwards, *et al.*, *Risk of Being Killed by Police Use-of-Force in U.S. by Age, Race/Ethnicity, and Sex*, 116 PROCEEDINGS NAT'L ACADEMY SCIENCE 16793 (Aug. 20, 2019).....22, 25, 27

GARY POTTER, THE HISTORY OF POLICING IN THE UNITED STATES (2013).....	15
<i>Hearing Schedule, Int’l Comm’n of Inquiry on Systemic Racist Police Violence in the U.S...</i>	26
<i>Human Rights Council Holds Urgent Debate on Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality, U.N. Human Rights, Office of the High Comm’r, June 17, 2020.....</i>	25
<i>Int’l Comm’n of Inquiry on Systemic Racist Police Violence: Reflections and Next Steps.....</i>	27
JAMES BALDWIN, THE FIRE NEXT TIME (1963).....	28
Jenn Rolnick Borchetta, <i>One Nation Under Seige: Law Enforcement’s Shameful Campaign Against Black American</i> , SALON, Aug. 17, 2014.....	13
Jeremiah Mosteller, <i>Militarization of Police</i> Feb. 5, 2021.....	21, 22
Jill Lepore, <i>The Long Blue Line: Inventing the Police</i> , THE NEW YORKER, July 13, 2020.....	14
John Blake, <i>There’s One Epidemic We May Never Find a Vaccine For: Fear of Black Men in Public Spaces</i> , CNN, May 27, 2020.....	30
Joseph C. Thompson, <i>Toward a More Humane Oppression: Florida’s Slave Codes, 1821-1861</i> , 71 Fla. Hist. Q. 324 (1993)	14, 15, 19

Julie Tate, <i>et al.</i> , <i>Fatal Force: 988 People Have Been Shot and Killed by Police in the Past Year</i> , WASH. POST, Apr. 23, 2021.....	24
Justin Levinson and Danielle Young, <i>Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence</i> , 112. W. VA. L. REV. 307 (2010).....	29
Katherine B. Spencer, <i>et al.</i> , <i>Implicit Bias and Policing</i> , 10 SOCIAL AND PERSONALITY PSYCHOLOGY COMPASS 50 (2016).....	29
Laura Santhanam, <i>After Ferguson, Black Men Still Face the Highest Risk of Being Killed by Police</i> , PBS NEWS, Aug. 9, 2019.....	19, 27
Logan Schmidt, <i>et al.</i> , <i>Data-Backed Outrage: Police Violence by the Numbers</i> , VERA INSTITUTE THINK JUSTICE BLOG, July 07, 2020.....	21, 22
Lori L. Tharps, <i>The Difference Between Racism and Colorism</i> , TIME, Oct. 6, 2016.....	29
Lynne Peeples, <i>Brutality and Racial Bias: What the Data Say</i> , NATURE, July 2, 2020.....	24
Marisa M. Kashino, <i>Police Killed These Seven Washingtonians. Here are their Stories, and the Family Left Behind</i> , WASHINGTONIAN, Sep. 6, 2020.....	25
Melissa Godin, <i>What the U.S. Can Learn from Countries Where Cops Don't Carry Guns</i> , TIME, Jun. 19, 2020.....	22

Mia Carpiniello, <i>Striking a Sincere Balance: A Reasonable Black Person Standard for “Location Plus Evasion” Terry Stops</i> , 6 MICH. J. RACE & L. 355 (2001).....	16
Michel Martin, <i>Fear of Black Men: How Society Sees Black Men and How They See Themselves</i> , NPR, Mar. 31, 2015.....	31
Olivia B. Waxman, <i>How the U.S. Got Its Police Force</i> , TIME, May 18, 2017.....	15
<i>Racial Profiling Online Webpage, U. of Ark. System Criminal Justice Institute Website</i>	23
Rebecca C. Hetey, <i>et al.</i> , DATA FOR CHANGE: A STATISTICAL ANALYSIS OF POLICE STOPS, SEARCHES, HANDCUFFINGS, AND ARRESTS IN OAKLAND, CALIF., 2013-14 (Stanford 2016)...	29
Richard A. Oppel Jr. and Lazaro Gamio, <i>Minneapolis Police Use Force Against Black People at 7 Times the Rate of Whites</i> , NEW YORK TIMES, June 3, 2020.....	24
Robin Smyton, <i>How Racial Segregation and Policing Intersect in America</i> , TUFTS NOW, June 17, 2020.....	19
RONALD WEITZER & STEVEN A. TUCH, RACE AND POLICING IN AMERICA: CONFLICT AND REFORM (2006).....	13

Sarah DeGue, <i>et al.</i> , <i>Deaths Due to Use of Lethal Force by Law Enforcement</i> 51 AM. J. PREV. MED. S173 (2016).....	21
<i>The Breonna Taylor Case and Questions About Qualified Immunity</i> , EQUAL JUSTICE INITIATIVE, Aug. 17, 2020.....	32
US: UN Experts Urge Far-Reaching Reforms on Police Violence and Racism, U.N. Office of the High Comm’r, Feb. 26, 2021.....	26

INTEREST OF AMICI CURIAE

The organizations and collaboratives listed below seek to advance racial, criminal, and youth justice in the Washington D.C. area. As *amici curiae* they support petitioner’s application to this Court and are deeply concerned about and involved with the issues presented by this matter – yet another incident involving a Black citizen shot by a white police officer.¹

The **D.C. Justice Lab** is a non-profit which fights for racial equity, liberation, and smarter safety solutions on all fronts for residents of the District of Columbia. In collaboration with its founder and Executive Director, Patrice Amandla Sulton, its team of law and policy experts research, organize, and advocate for large-scale changes to the District’s criminal legal system, with a focus on ending the over-policing of poor people and Black people, eradicating root causes of economic and violent crime, and giving residents of all ages and backgrounds the tools and resources they need to thrive.

¹ The parties in this case were provided with timely notice and consented to the filing of this brief. See Supreme Court Rule 37.2. In addition, consistent with Supreme Court Rule 37.6, “no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief.” Instead, the UDC David A. Clarke School of Law Youth Justice Clinic drafted this brief gratis, with the *pro bono* assistance of Asha Burwell, Tatiana Hilaire, Niara Houston, and Cynthia Rollins, and Mae Quinn.

The **D.C. Supporting Hopeful Youth – Youth Action Board (DC SHY-YAB)** is a youth-focused voluntary membership organization that provides policy and protocol recommendations to improve the youth justice system on the local and national level, supports youth who are experiencing homelessness, and partners with other youth action boards and youth justice organizations in the Washington D.C. region.

Harriet’s Wildest Dreams, a Black-led community defense hub, was founded by Makia Green, Qiana Johnson, and Nee Nee Taylor to center all Black lives at risk for state-sanctioned violence. It seeks to increase social, racial, environment and economic justice in the United States and around the world by improving the manner in which people work together in struggles for a more just society. By doing so it strives to improve the prices of working for justice much more than it focuses on the content of any specific justice struggle. The corporation functions primarily for educational purposes in which it undertakes trainings, demonstration and evaluation projects and research.

Helping Ourselves to Transform is a non-profit organization in the Capital region that seeks to educate and promote mass liberation. Its mission is to equip loved ones – who are coming home from incarceration, injustice, and abuse – by giving them the tools to succeed in family, housing, business, and law. The group educates, supports, and helps returning loved ones on many levels, with the goal of empowerment and success – inspiring loved ones to

transform themselves into new citizens and live productive lives in the community.

Life After Release (LAR) is a women-based, formerly incarcerated-led organization. LAR provides support for formerly incarcerated women re-entering their communities. It helps returning loved ones to manage life after release from incarceration. It also teaches them organizing and advocacy skills to help shape legislation and policy that affects their lives. In addition, LAR members have founded and are leading one of the nation's most expansive and successful court-watch projects, which seek justice system transparency and accountability. Specifically, volunteers in LAR's Court Watch PG project document bond review hearings, to monitor system actors in Prince George's County and address improprieties.

STND4YOU, Inc. is a nonprofit organization developed to provide diversion, advocacy, and free wrap-around clinical services for Black and Latinx youth placed at-risk for involvement with the justice system secondary to their overlooked Cognitive and Communication Disorders (CCD). Its founder, Dr. Shameka Stanford, is an associate professor in the department of Communication Sciences & Disorders at Howard University and a juvenile Forensic Speech-Language Pathologist (the first and only in the United States) with a clinical specialty in juvenile and special education legal issues. Dr. Stanford is committed to increasing understanding of youth with cognitive and communication disorders, as well as preventing their overcriminalization and victimization by police.

SUMMARY OF THE ARGUMENT

Amici curiae support Petitioner Davdrin Goffin's writ application, which argues officers are not entitled to qualified immunity if they shoot in the back a fleeing suspect who is known to be unarmed based upon a prior police search of the suspect.

The relationship between African Americans and law enforcement in the United States cannot be characterized with niceties. Hundreds of years of turmoil and oppression by police have shaped African Americans' feelings and thoughts. Living in constant fear of death at the hands of those sworn to serve and protect produces trauma responses. One such rational response is flight.

Yet, contemporary criminal justice practices in this country fail to fully account for this history of harms, or wholly reject its underlying premises and approaches. Officers still bring racial bias to the job. This, in turn, affects how they perceive danger. Irrational race-based beliefs have resulted in an overwhelming number of African Americans – especially men and boys – becoming targets of police force. This is true even when Black suspects are unarmed – as was the case here.

But flight does not justify use of deadly force. And Officer Robbie Ashcraft was not justified in shooting Davdrin Goffin, an unarmed Black man, in the back. Accordingly, a jury should be allowed to determine whether she is civilly liable in this case – one representative of far too many police encounters that result in violence being visited on Black bodies.

ARGUMENT

I. Flight, a Reasonable Response of Self-Preservation by Unarmed Black Youth and Adults Given this Country's History of Police Violence, is Insufficient Grounds for the Use of Deadly Force.

Black Americans are wholly justified in wanting to avoid contact with law enforcement. Starting long before the Civil War and continuing until the modern day, our nation's history is shamefully rife with incidents of racial violence at the hands of police. From early slave patrols to local sheriffs who willingly enforced oppressive Jim Crow laws, fleeing was birthed from a desire to survive.

Sadly, this phenomenon continues to this day, where many Black communities feel they are under siege by the very individuals who are supposed to protect them. *See, e.g.,* Jenn Rolnick Borchetta, *One Nation Under Seige: Law Enforcement's Shameful Campaign Against Black American*, SALON, Aug. 17, 2014.

Amongst other things, routine stops are routinely used to aggressively take hold of Black bodies in our streets, perpetuating further trauma and trepidation. *See generally* RONALD WEITZER & STEVEN A. TUCH, *RACE AND POLICING IN AMERICA: CONFLICT AND REFORM* (2006). Such encounters are experienced as contemporary methods of racialized shaming and intimidation – which at any moment could turn deadly at the hands of police protected by qualified immunity.

A Black man's effort to evade police most certainly does not justify the use of lethal force. Instead, it must be understood as a justified – though tragic – act of self-preservation in 21st century America. And the decision by Robbie Ashcraft, a white police officer, to shoot into the back of a Black fleeing suspect, Davdrin Goffin, was wholly unreasonable and unconstitutional.

A. Before the Civil War, flight became a survival mechanism by African Americans because of historical discriminatory policing in the United States.

Early policing practices in the United States gave rise to flight as an essential survival mechanism for African Americans. For many, fleeing made the difference between freedom and bondage; bodily integrity and beating; life and death. This history serves as the foundation for today's criminal justice system and provides important context for contemporary perceptions of policing – which historically has sought to control Black Americans and maintain their subordination.

Before the Civil War, slave codes were used by police and others as a legal mechanism to perpetuate Black inferiority. See Joseph C. Thompson, *Toward a More Humane Oppression: Florida's Slave Codes, 1821-1861*, 71 Fla. Hist. Q. 324 (1993). From the slave codes, slave patrols arose – a kind of citizen militia with an official imprimatur. Jill Lepore, *The Long Blue Line: Inventing the Police*, THE NEW YORKER, July 13, 2020. “The responsibility of patrols was

straightforward—to control the movements and behaviors of enslaved populations.” Chelsea Hansen, *Slave Patrols: An Early Form of American Policing*, Blog: On the Beat, Jul. 10, 2019, <https://lawenforcementmuseum.org/2019/07/10/slave-patrols-an-early-form-of-american-policing/>.

Slave patrols were authorized to beat and terrorize African Americans in the same way as overseers and slave catchers. To them, it was a civic duty. And, indeed, murdering allegedly rebellious slaves was deemed justified. *See* J. Thompson, *supra* at 326; *see also* Olivia B. Waxman, *How the U.S. Got Its Police Force*, TIME, May 18, 2017 (recounting that early southern police forces were used for “protection of shipping interests” and “the preservation of the slavery system”).

After the Civil War, slavery formally ended. But subordination of African Americans continued through Jim Crow segregation laws and practices. Slave patrols grew into southern police departments to enforce Jim Crow segregation laws. They furthered the idea of Black American inferiority, blocking participation in the political system, and systemizing racial oppression. *See* GARY POTTER, THE HISTORY OF POLICING IN THE UNITED STATES 3 (2013), <https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf>.

It is hard for people to trust a system that was never made to protect them and at one point refused to consider them citizens. *See, e.g., Dred Scott v. Sandford*, 60 U.S. 393, 396 (1857). Individuals valued only as property for nearly 400 years have good reason

to question whether they will be treated humanely by government actors – especially those with weapons. In fact, data demonstrates that African Americans are more likely to see “police misconduct as commonplace” than others in the United States. Mia Carpiniello, *Striking a Sincere Balance: A Reasonable Black Person Standard for “Location Plus Evasion” Terry Stops*, 6 MICH. J. RACE & L. 355, 360 (2001); *see also* Aimee Ortiz, *Confidence in Police Is at Record Low, Gallup Survey Finds*, N.Y. TIMES, Aug. 12, 2020.

It stands to reason, therefore, that African Americans of all ages and backgrounds might seek to remove themselves from police presence. In this way, Mr. Goffin’s alleged flight when confronted by law enforcement was not an act of violence. Instead, it may be understood as a survival mechanism. And it most certainly did not justify the use of deadly force.

B. Modern police practices, including widespread stop-and-frisks of black Americans, contributes to ongoing trauma and trepidation.

Even fifty years after this country’s important Civil Rights Era, law enforcement agents and agencies continue to inspire fear and visit harm on Black communities. *Terry stops* are one powerful example. *Terry v. Ohio*, 392 U.S. 1 (1968). Contemporary stop and frisk strategies often work to harass, humiliate, and intimidate unarmed African American men, women, and youth – leading many to want to avoid police encounters. *See* DAVID WEISBURD & MALAY K. MAJUMDAR, PROACTIVE POLICING: EFFECTS ON CRIME AND COMMUNITIES 251

(2018)(National Academy of Sciences report noting that many modern “proactive policing strategies . . . may increase the overall opportunity for problematic interactions that have disparate impacts”).

Just walking quickly or running down your street may result in stop, detention, and frisk – if your neighborhood is one considered “dangerous” by police. *See Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000)(suggesting flight from police in high crime area may support reasonable suspicion). Unfortunately, many communities of color, impacted by poverty, are considered “high crime” areas where police feel free to engage in all manner of surveillance and confrontation. *See, e.g.,* Daanika Gordon, *The Police as Place-Consolidators: The Organizational Amplification of Urban Inequality*, 45 LAW & SOCIAL INQUIRY 1, 23 (Feb. 2020)(“[r]eliance on investigatory stops” in Black residential areas “overgeneralized symbolic ideas of criminality and disproportionately subjected residents to intrusive policing”).

It is well documented that police forces across the country have abused *Terry* stops in the guise of crime control in communities of color. New York City’s Police Department (NYPD) is perhaps most infamous for its long-standing targeting of minorities. In 2011, NYPD recorded a total of 685,724 stops. Of that number, 350,743 involved Black residents – or nearly 53 percent of all *Terry* stops in 2011. *See* ACLU OF NEW YORK, STOP-AND-FRISK DATA, <https://www.nyclu.org/en/stop-and-frisk-data>. By way of contrast, only 61,805 white individuals were stopped by NYPD. *Id.*

Similar disparities have been identified in the District of Columbia. One 2019 study found that over a period of less than six months, the Metropolitan Police Department conduct 62,611 stops – meaning that people were stopped on the streets of D.C. every three to four minutes. Of that number, 72% of the individuals were Black. For individuals under the age of 18 the percentage was even higher – nearly 89%. Over 90% of those persons ultimately searched were Black. However, 91.1% of those Black residents searched were found to have no contraband. And only 46.5% of people who live in the District are Black. District data available for 2020 is substantially similar. ACLU-DC, RACIAL DISPARITIES IN STOPS BY THE METROPOLITAN POLICE DEPARTMENT: 2020 DATA UPDATE 1-6, March, 10, 2021, https://www.acludc.org/sites/default/files/field_documents/2021_03_10_near_act_update_vf.pdf.

Boston has seen similar problems with Black residents being stopped and frisked. Indeed, the Massachusetts Supreme Court recently acknowledged that “where the suspect is a [B]lack male stopped by the police on the streets of Boston, the analysis of flight as a factor in the reasonable suspicion calculus cannot be divorced from the findings in a recent Boston Police Department . . . report documenting a pattern of racial profiling of [B]lack males in the city of Boston.” *Commonwealth v. Warren*, 58 N.E.3d 333, 342 (Mass. 2016). The court went on to reason that “the finding that [B]lack males in Boston are disproportionately and repeatedly targeted . . . suggests a reason for flight totally unrelated to consciousness of guilt.” *Id.*

Such racially biased policing practices, which occur in many places around the country, are far too reminiscent of slave patrols “checking travelers for a permission pass.” Hansen, *supra*, at 2. It is difficult not to see such actions as an effort to check, control, and intimidate Black citizens. Robin Smyton, *How Racial Segregation and Policing Intersect in America*, TUFTS NOW, June 17, 2020 (“contemporary practices reflect legacies of police participation in the systems that have constructed and maintained Black-white racial difference and hierarchy”; interview with sociologist Daanika Gordon). It is also further grounds for African Americans to want to avoid engagement with police.

Indeed, this country and its oppressive propensities have caused fear in the hearts of its Black citizens. Yet, it fails to consider the effect of its own doings. The simple reality is that flight is a reasonable response of self-preservation on the part of unarmed Black citizens. See, e.g., Laura Santhanam, *After Ferguson, Black Men Still Face the Highest Risk of Being Killed by Police*, PBS NEWS, Aug. 9, 2019. Gunning down those who flee under these circumstances should not be treated the same it was during slave patrol days, where murder of a slave in the act of supposed rebellion was seen as justifiable homicide. J. Thompson, *supra*, at 326.

History thus sheds important light on the question of why Black Americans might want to avoid contact with law enforcement in this country. It also provides further basis for understanding Officer Ashcraft’s unnecessarily brutal action – shooting unarmed Mr. Goffin in the back as he ran away – as

unreasonable and unconstitutional. *See Tennessee v. Garner*, 471 U.S. 1, 4 (1985). His case, and so many others like it, should be considered by jury members comprised of community residents – and not dismissed on summary judgment based upon claims of qualified immunity.

II. United States Police, Shielded by Expansive Qualified Immunity Rulings, Are More Violent and Shoot More Suspects than Nearly Any Other Law Enforcement Agency in the World.

The United States, seen as a massive police state globally, is well known for having the largest and most aggressive law enforcement force in the world. Compared to other developed nations, our police are more heavily armed, more militarized, and more likely to shoot and kill civilians. And the problem, recently declared an “urgent” “public health emergency,” continues unabated. *See* Elle Lett, *et al.*, *Racial Inequality in Fatal U.S. Police Shootings, 2015-2020*, 75 J. OF EPIDEMIOLOGY & COMMUNITY HEALTH 394 (Oct. 2020). Yet, time and again, acts of police brutality are protected by overly-expansive qualified immunity interpretations by our courts. Individual officers are thus allowed to escape accountability and police violence continues undeterred.

According to the Council on Foreign Relations, the number of law enforcement agents in the United States “far surpasses those in other advanced democracies.” Amelia Cheatham and Lindsay Maizland, *How Police Compare in Different*

Democracies, COUNCIL ON FOREIGN RELATIONS, Apr. 21, 2021, <https://www.cfr.org/backgroundunder/how-police-compare-different-democracies>. In this country we have more than “18,000 local, state, and federal law enforcement agencies” that “employ over 420,000 law enforcement officers” who are supposed to keep communities safe. Jeremiah Mosteller, *Militarization of Police*, <https://www.charleskochinstitute.org/issue-areas/criminal-justice-policing-reform/militarization-of-police>.

American law enforcement act more like military troops than peace officers, with nearly all carrying one or more firearms. Yet in places like the United Kingdom and New Zealand, police are generally unarmed. It is not surprising, therefore, that police in the United States tend to rely on use of force more than police elsewhere. *Id.*

Even the National Institute of Health has warned about the long-term effects of police violence, resulting in unnecessary physical and emotional harm to our citizenry. Sarah DeGue, *et al.*, *Deaths Due to Use of Lethal Force by Law Enforcement*, 51 AM. J. PREV. MED. S173 (2016) (noting “long-term health and economic consequences for affected communities” as a result of police force).

Police not only employ beatings and batons to subdue suspects, but all too often turn to gun violence. Thus, a substantial number of suspects are shot by police every year in the United States, not only causing physical injury but resulting in tremendous loss of life. See Logan Schmidt, *et al.*, *Data-Backed Outrage: Police Violence by the Numbers*, VERA

INSTITUTE THINK JUSTICE BLOG, July 07, 2020, <https://www.vera.org/blog/target-2020/data-backed-outrage-police-violence-by-the-numbers>.

Law enforcement officers in the United States “kill far more people than do police in other advanced industrial democracies.” Frank Edwards, *et al.*, *Risk of Being Killed by Police Use-of-Force in the U.S. by Age, Race-Ethnicity, and Sex*, 116 PROCEEDINGS NAT’L ACADEMY SCIENCE 16793, 16793 (Aug. 20, 2019). And many are unarmed. *See* Schmidt, *et al.*, *supra*.

Shamefully, the rate of killing by our police is “five times higher than that in Sweden, 30 times higher than that in Germany, and 100 times higher than that in the United Kingdom.” Derek Thompson, *The Overlooked Role of Guns in the Police-Reform Debate*, THE ATLANTIC, Jun. 19, 2020. In 2019, “1090 people were killed by police in the United States” as compared to Norway. Melissa Godin, *What the U.S. Can Learn from Countries Where Cops Don’t Carry Guns*, TIME, Jun. 19, 2020. No Norwegian residents were killed by police that year. *Id.*

In most European countries police officers cultivate “legitimacy . . . by maintaining the respect and approval of the public.” *Id.* They do not see their success rooted in numbers of arrests but “the absence of crime itself.” *Id.* Thus, other countries recognize that continual uses of force – including shootings – undermines trust. *See* Mosteller, *supra* (noting that militarized policing in this country “has occurred alongside a significant decline in public trust for law enforcement agencies”).

Unfortunately, courts have allowed police to turn all too quickly to the use of force without sufficient oversight or accountability by way of civil liability. And overwhelmingly, Black Americans are the victims of such unchecked violence.

III. Overwhelmingly, African Americans are the Targets of Unchecked Police Violence and Killings in this Country.

Laws prohibiting race-based policing have been implemented in several states, including Arkansas, the jurisdiction where Petitioner Goffin’s case arose. *See* ARK. CODE § 12-12-1401, *et seq.*; *see also* *Racial Profiling Online Webpage, U. of Ark. System Criminal Justice Institute Website*, <https://www.cji.edu/course-dates/racial-profiling-online-58/> (referencing 3-hour online class mandated for law enforcement officers under Arkansas Statute 12-12-1404). Yet police violence against Black bodies in Arkansas – as in the rest of the country – persists at an alarming rate. *See generally* David A. Harris, *Racial Profiling: Past, Present, and Future?*, ABA CRIMINAL JUSTICE MAGAZINE, Jan. 21, 2020.

For instance, in 2017, the Arkansas Democrat-Gazette reported that “53 Arkansas [B]lack men [were] killed or wounded by police in the past six years.” *See* Amanda Claire Curcio & Hunter Field, *Deadly Force: In 6 years, 53 blacks shot by police in Arkansas*, ARKANSAS DEMOCRAT-GAZETTE (Mar. 13, 2017). The same investigation reported that while Black men represent just 7.5 percent of the population in Arkansas, they “accounted for 73.9 percent of the unarmed suspects shot by police.” *Id.*

The problem of police use of force against Black citizens extends beyond Arkansas. For instance, following the death of George Floyd, the New York Times reported that although Black people make up about 20 percent of the Minneapolis population, they accounted for 59 percent of the city’s police-reported use-of-force incidents. See Richard A. Oppel Jr. and Lazaro Gamio, *Minneapolis Police Use Force Against Black People at 7 Times the Rate of Whites*, N.Y. TIMES, June 3, 2020.

Another recent study found that African Americans were shot by police at disproportionate rates in other cities, too – including Miami, Los Angeles, Houston, and Baltimore. See Cody T. Ross, *A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States, 2011–2014*, 10 (11) PLoS ONE 1, 6 (Nov. 2015). It further determined that the “probability of being ([B]lack, unarmed, and shot by police) is about 3.49 times the probability of being (white, unarmed and shot by police) on average.” See *id.* at 1.

Police violence against Black bodies is, in fact, a massive problem nationwide. See, e.g., Lynne Peeples, *Brutality and Racial Bias: What the Data Say*, NATURE, July 2, 2020 at 22. Across the country, Black residents have a far greater risk of being fatally shot by police officers than other races. They “account for less than 13 percent of the U.S. population” but nationwide “are killed by police at more than twice the rate of [w]hite Americans.” Julie Tate, *et al.*, *Fatal Force: 988 People Have Been Shot and Killed by Police in the Past Year*, WASH. POST, Apr. 23, 2021 (providing database for “every fatal shooting in the United States

by a police officer in the line of duty” since January 2015).

Even our nation’s capital has long been the site of repeated acts of deadly police violence against Black citizens. As one recent report notes, “police killings of African Americans in Washington go back decades, brutalizing those left behind, who have searched for answers they suspect would have come easily to white residents.” *See* Marisa M. Kashino, *Police Killed These Seven Washingtonians. Here are their Stories, and the Family Left Behind*, WASHINGTONIAN, Sep. 6, 2020 (noting that more than two dozen Black residents were killed by law enforcement in Washington D.C. in a five-year period).

Deadly police violence against Black bodies, like those of Michael Brown, Stephon Clark, George Floyd, Eric Garner, Oscar Grant, Charlena Lyles, Tamir Rice, and so many others, has spurred protests around the country to bring attention to the “racialized character of police violence against civilians.” *See* Edwards, *et al.*, *supra* at 1. These killings, along with violence visited upon peaceful “Black Lives Matter” protesters, have also drawn the attention of the international human rights experts and the United Nations.

For instance, in June 2020, George Floyd’s family and other advocates testified before the United Nations’ Human Rights Council. They described how Floyd, an unarmed Black man, was killed by police in connection with an incident about the alleged use of a counterfeit \$20 bill. *See Human Rights Council Holds Urgent Debate on Current Racially Inspired Human*

Rights Violations, Systemic Racism, Police Brutality, and Violence Against Peaceful Protests, U.N. Human Rights, Office of the High Comm'r, June 17, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25971&LangID=E>.

Thereafter, the United Nations' Office of the High Commission issued a statement from twenty-five Special Rapporteurs who condemned racialized police violence in the United States and called for reforms. *US: UN Experts Urge Far-Reaching Reforms on Police Violence and Racism*, U.N. Human Rights, Office of the High Comm'r, Feb. 26, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26805&LangID=E> ("In this time of political change, the United States must initiate far-reaching reforms to address police brutality and systemic racism").

In February 2021, the International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States also concluded its proceedings. The independent Commission, comprised of international human rights experts from around the world, heard 18 days of testimony relating to the deaths of 40 Black men, women, and children killed by police in the United States in recent years. *See Hearing Schedule, Int'l Comm'n of Inquiry on Systemic Racist Police Violence in the U.S.*, <https://inquirycommission.org/hearing-schedule>.

Last month, the Commission shared its preliminary findings. It noted the evidence presented "shocked the collective conscience of the

commissioners.” *Int’l Comm’n of Inquiry on Systemic Racist Police Violence: Reflections and Next Steps*, <https://inquirycommission.org/2021/03/19/video-commission-of-inquiry-on-systemic-racist-police-violence-reflections-and-next-steps/> (video report of Commissioner Niloufer Bhagwat, Professor). The Commission was especially troubled by the American doctrine of qualified immunity for allowing police impunity for violence against African descendants in the United States. *Id.* Its report, calling for reforms, will be issued later this month.

And it is not just legal scholars and human rights experts who are calling for change. “Social scientists and public health scholars now widely acknowledge that police contact is a key vector of health inequality” as well as “an important cause of early mortality for people of color” in this country. *See* Edwards, *et al. supra* at 16793; *see also* Lett, *et al., supra* (referring to “fatal police shootings” as an “unjust” public health “burden” upon communities of color).

Indeed, “Black men and boys face the highest risk of being killed by police.” *See* Santhanam, *supra*. Between 2013-2018, Black men were about 2.5 times more likely than white men to be killed by police, and black men also had a “1 in 1,000 chance of being killed by police over the life course.” Edwards *et al., supra* at 16793 (evaluating data and analysis from the National Academy of Sciences). And “Black women are about 1.4 times more likely to be killed by police than are white women.” *Id.* at 16794. Yet qualified immunity has been a shield protecting police officers and other government actors from being brought to justice for causing such harm in the Black community.

IV. The Qualified Immunity Doctrine Should Not Provide Cover for Police Bias and Continuing Irrational Fears of Black and Brown Bodies.

During the 1960's Civil Rights Era, author and civil rights advocate James Baldwin wrote the following to his young nephew:

They are, in effect, still trapped in a history which they do not understand, and until they understand it, they cannot be released from it. They had to believe for many years, and for innumerable reasons, that black men are inferior to white men.

JAMES BALDWIN, *THE FIRE NEXT TIME* 13-14 (1963).

Baldwin was warning about those Americans stuck in toxic thinking, believing persons with darker skin are different from and more dangerous than Caucasians. Tragically, these irrational fears and beliefs – whether expressed or not – have contributed to every major oppressive structure within our nation including slavery and Jim Crow. And they persist to this day, serving as the unspoken backdrop for the continuing violent attacks against Black and Brown bodies by those ‘sworn’ to protect their American lives.

As described, *supra*, both laws and unofficial practices historically have sent the message that Black Americans should be feared and controlled. Until the mid-20th century, towns around the United States maintained racially restrictive covenants to prevent Black families from owning or leasing

property. WEISBURD & MAJMUNDAR, *supra* at 132. Relatedly, de jure and de facto “sundown town” practices arose that allowed Black people to work or shop during the day but required them to leave before sunset, else face the wrath of local police and residents claiming to protect their community. *Id.* at 38.

Although technically illegal today, remnants of these codes of behavior – and their underlying motivations and reasoning – still exist and impact peoples’ lives. *Id.* Many studies have shown that racial stereotyping and colorism are alive and well in the United States today. *See, e.g.*, Lori L. Tharps, *The Difference Between Racism and Colorism*, TIME, Oct. 6, 2016 (describing how both “race-based prejudices” and skin-tone preferences shape contemporary American life).

For instance, one recent study showed that people who were shown a photo of a dark-skinned individual were more likely to believe the person was guilty of robbery than those who were shown a lighter-skinned individual’s photo – even when the evidence in both scenarios was the same. Justin Levinson and Danielle Young, *Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence*, 112. W. VA. L. REV. 307, 310, 331-339 (2010).

Other studies have shown officer bias against Black people in other domains, including when evaluating whether a suspect appears to be armed, *id.*; *see also, e.g.*, Katherine B. Spencer, *et al.*, *Implicit Bias and Policing*, 10 SOCIAL AND PERSONALITY PSYCHOLOGY COMPASS 50 (2016), or when deciding whether to use handcuffs. REBECCA C. HETLEY, *ET AL.*,

DATA FOR CHANGE: A STATISTICAL ANALYSIS OF POLICE STOPS, SEARCHES, HANDCUFFINGS, AND ARRESTS IN OAKLAND, CALIF., 2013-14 (Stanford 2016). Perhaps most significantly for purposes of this case, social scientists have determined that “white looking” suspects generally are met with less force by police than suspects who possessed darker skin tone and more stereotypically “Black” attributes. WEISBURD & MAJUMDAR, *supra* at 140.

But it does not take science to show that Black men and boys are still the subjects of irrational suspicions and fears in our country. Even news outlet CNN made the troubling connection between two tragic events that took place last year – the death of George Floyd, killed by a Minneapolis police officer kneeling on his neck while he declared, “I can’t breathe,” and the incident in Central Park where a white woman called police on a Black man, claiming that she felt threatened when the man was merely bird watching. John Blake, *There’s One Epidemic We May Never Find a Vaccine For: Fear of Black Men in Public Spaces*, CNN, May 27, 2020.

Not only did both occur on Memorial Day weekend, with both involving disturbing videos memorializing the incidents – but both suggested that for white America there persists a deep “[f]ear of [B]lack men in public spaces.” *Id.* (recounting James Baldwin’s warning about “[t]he white man’s unadmitted – and apparently, to him, unspeakable – private fears” relating to Black people in America); see also Errin Haines, *This Invokes a History of Terror, Central Park Incident Between White Woman and*

Black Man is Part of a Fraught Legacy, WASH. POST, May 27, 2020.

Law Professor Paul Butler, a former prosecutor, recently shared his own experiences as a Black man living in Washington D.C. On one occasion he was followed home by police who assumed he was engaging in criminal activity when he entered the porch of a beautiful house. However, it was Professor Butler's own home. And the officers who stopped Butler were Black – evidencing the pervasiveness of race bias and colorism in our society and law enforcement culture. See Michel Martin, *Fear of Black Men: How Society Sees Black Men and How They See Themselves*, NPR, March 31, 2015, <https://www.npr.org/2015/03/31/396415737/societys-fear-of-black-men-and-its-consequences>; see also Ed Pilkington, *Police Arrest Prominent Black History Scholar for Breaking into His Own Home*, THE GUARDIAN, July 21, 2009.

Greater accountability is needed in this country where Black Americans are being killed by police at an alarming rate under all manner of circumstances, including playing with a toy in a park (Tamir Rice), declaring they cannot breathe (George Floyd and Eric Garner) or just sleeping (Breonna Taylor). As witnesses declared before the *International Commission of Inquiry on Systemic Racist Police Violence*, qualified immunity decisions that block civil consequences send a message that officers have “free rein to kill.” See *Breonna Taylor Hearing, Int’l Comm’n of Inquiry on Systemic Racist Police Violence*, Jan. 30, 2021, <https://inquirycommission.org/video->

and-transcript-breonna-taylor-hearing-saturday-january-30-international-commission-of-inquiry/.

Indeed, criminal prosecution for police violence against Black citizens is a limited and infrequently used tool that very rarely results in conviction. *See, e.g.,* Emma Tucker, *Why It's Rare for Police Officers to Be Convicted of Murder*, CNN, Apr. 21, 2021 (noting that Derek Chauvin's recent trial and conviction for the murder of George Floyd "stands apart" from most other cases where officers kill Black citizens). Civil claims and relief are, therefore, essential to further advancing meaningful remedies and reform. *See The Breonna Taylor Case and Questions About Qualified Immunity*, EQUAL JUSTICE INITIATIVE, Aug. 17, 2020, <https://eji.org/news/the-breonna-taylor-case-and-questions-about-qualified-immunity/> ("Civil rights lawsuits are intended to go beyond criminal prosecution and can change policies and procedures that protect the public.")

Granting the Petitioner Davdrin Goffin's request in this matter would be an important step in the right direction.

CONCLUSION

For the reasons stated in the writ application, and this *amicus curiae* brief, this Court should grant Petitioner's request in this matter.

Dated: April 26, 2021

Respectfully submitted,
MAE C. QUINN*
**Counsel of Record*
Youth Justice Clinic
University of the District of Columbia
David A. Clarke School of Law
4340 Connecticut Avenue, NW
Washington, DC 20008
(202) 274-5073
mae.quinn@udc.edu
Counsel for Amicus Curiae