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No. 20-1609

IN THE

Supreme Court of the United States

David R. Seaton

Petitioner

vs.

Blake Johnson, *et al*

Respondents

On petition for a writ of certiorari
to the District of Columbia Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Should police brutality be constitutionally protected?

2. Do regulations ordering police to de-escalate confrontations instill an affirmative duty for police to de-escalate confrontations?

3. Does electronic evidence submitted by police override contradicting eye-witness accounts so dispositively so as to guarantee summary judgement as a matter of law for the government?

4. Should We the People adjudicate the use of state violence or should that be left to experts?

5. Should courts should continue to place their thumb on the scale in favor of the police over *pro se* litigants?

6. Should courts be permitted to ignore recent rulings of this Court?

LIST OF PARTIES

David R. Seaton, Plaintiff/Appellant/Petitioner

Blake Johnson, Defendant/Appellee/Respondent

Corey Vullo, Defendant/Appellee/Respondent

John D'Angelo, Defendant/Appellee/Respondent

City of Washington DC, Defendant/Appellee

/Respondent

Mayor Muriel Bowser, Defendant/Appellee

/Respondent

Metropolitan Police Department, Defendant/Appellee

/Respondent

LIST OF RELATED PROCEEDINGS

· *Seaton v. Johnson et al*, No. CAB6737-17, Superior Court of the District of Columbia. Order and Judgement entered D.C. January 9, 2019.

· *Seaton v. Johnson et al*, No. 19-CV-85, District of Columbia Court of Appeals. Memorandum Opinion and Judgement entered March 3, 2021.

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PETITION FOR WRIT OF CERTIORARI

I respectfully petition this Court for a writ of certiorari to review the judgement of the District of Columbia Court of Appeals

OPINIONS BELOW

The Superior Court of the District of Columbia ruled in favor of the above-named Defendants at summary judgement. *Seaton v. Johnson et al*, No. CAB6737-17 (D.C. January 9, 2019). I appealed to the District of Columbia Court of Appeals; which affirmed the Superior Court. *Seaton v. Johnson et al*, No. 19-CV-85 (App. D.C. March 3, 2021).

JURISDICTION

I invoke this Court's jurisdiction having timely filed a petition for *cert.* within 90 days of the judgement of the Court of Appeals. 28 U.S.C. § 1257.

CONSTITUTIONAL AND REGULATORY PROVISIONS AT ISSUE

"The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated[.]" **U.S. Const, amend IV.**

"No person shall be . . . deprived of life, liberty, or property, without due process of law[.]" **U.S. Const., amend. V.**

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens . . . deprive any person of life, liberty, or property, without due process of law; nor deny . . . equal protection of the laws." **U.S. Const., amend. XIV, § 1.**

"All members who encounter a situation where the possibility of violence . . . shall, if possible, first attempt to defuse the situation through advice,

warning, verbal persuasion, tactical communication, or other de-escalation techniques. Members shall attempt to defuse use of force situations with de-escalation techniques whenever feasible."

Metropolitan Police Department of the District of Columbia General Order 901.07, Part IV.A.

STATEMENT

Historically, American police departments have been engines of oppression. Police departments in the northern half of the country were originally created to prevent labor from organizing against capital; Thomas A. Reppetto, *Pennsylvania and New Jersey: The American Constabulary* (2010); and police departments in the southern half of the country originated from slave patrols. Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center for Justice, August 27,

2020. Policy makers, and disturbingly even courts, have attempted to sugar over this sordid history by fabricating from whole cloth the myth that the police have some level of professionalism or expertise that We the People do not. Josh Segal, *All of the Mysticism of Police Expertise: Legalizing Stop-and-Frisk in New York, 1961-1968*, 47 Harv. C.R.-C.L. L. Rev. 573 (Summer 2012).

Recently, police officers have become so bold that they routinely murder citizens on the street, in broad daylight. Stephanie Czekalinski, *Akron police: 37-year-old shot and killed on street in broad daylight*, Cleveland 19 News, February 24, 2021. The obvious solution is to dissolve these institutions, but policy makers have, for over a century refused, instead opting for reform as a kind of half measure. Mariame Kaba, *Yes We Mean Literally Abolish the Police*, The New York Times, June 12, 2020.

The most recent half measures suggested by policy makers is to provide police officers with de-escalation training/regulations; Chief David Kurz and Director Bryan V. Gibb, *When Less (Force) Is More: De-escalation Strategies to Achieve Officer Objectives and Simultaneously Reduce the Use of Force*, Police Chief Magazine, April 2017; and body cameras under the theory that this will make them less violent. Radley Balko, *The Watch How do we fix the police 'testilying' problem?*, The Washington Post, April 16, 2014). Nevertheless, people keep dying; Alanna Durkin Richer and Linsay Whitehurst, *1 verdict, then 6 police killings across America in 24 hours*, Associated Press, April 24, 2021; because the regulations implementing de-escalation have no teeth; Laura Thompson, *Police Reforms Don't Work When Cops Ignore Them*, Mother Jones, April 21, 2021; and camera footage is often faked. Kevin

Roose, *Here Come the Fake Videos Too*, The New York Times, March 3, 2018.

This case presents issues of whether police brutality should be constitutionally protected (hint it should not); whether regulations ordering police to de-escalate confrontations instill an affirmative duty to de-escalate confrontations (hint it does); whether police can be trusted not to fake evidence (hint they cannot); whether police are experts (hint they are not); whether courts should continue to place their thumb on the scale in favor of the police over *pro se* litigations (hint they should not); and whether courts should be required to abide by rulings of this Court (hint they should).

I. The Night in Question

On the night in question while in the Chinatown area of Washington DC, I (David R. Seaton, Petitioner) flipped the bird to a police car (of the Metropolitan Police Department of the District of Columbia) before attempting to enter a bar. This act was neither an act nor a threat of violence; rather it was a constitutionally protected act of free speech to express my displeasure at the fact that police officers were murdering American citizens in the streets.

As I attempted to enter the bar, the little Eichmanns acting as bouncers told me that I could not enter. When I asked why, they informed me that it was violent to flip the bird to a police car, and the mini Mussolinis informed me that if we disagreed we could talk with the police. I, in hind sight quite naively, agreed; believing that the police – who had no respect for the lives of the their countrymen – would respect my first amendment right to

symbolically invite the police to perform an act of consortium with themselves. . . and I was wrong. What can I say? I still naively believed that the Constitution absent some authority to defend it was worth the paper it was written on.

A gaggle of cops (approximately five or six of them) arrived. The police told me if I attempted to enter the bar than I would be arrested. This was not based on a good faith believe that I was too intoxicated to enter the bar, because – spoiler alert – in the charging documents the police admitted that they had suggested I simply go to another bar. Rightly or wrongly, I believed that it was a violation of my rights to prevent me from patronizing a common carrier and/or public house simply because I insulted government agents. I told them I would leave if they gave me their badge numbers.

Two out of the five or so police present gave me their badge numbers verbally (Respondents Vullo and D'Angelo); shouting them out in quick succession as to prevent me from remembering them. The rest refused. I asked the two that shouted their badge numbers to write their badge numbers down. They refused. Now you might ask "Why require them to write the badge numbers down?" Well, I don't know about you, but I can't easily remember random strings of letters and numbers under the best of circumstances; let alone when they are shouted at me in quick succession during a period of high stress. As far as I can tell, this problem is not unique to me. "One of the best established findings in the psychology of memory is that nonsense words and materials [such as say the random string of numbers and letters in a badge number] are more difficult to learn and to remember than meaningful materials."

Richard Herbert, *Code Overload: Doing a Number on Memory*, Association for Psychological Science, September 26, 2001. Indeed, I was only able to identify the officers named in this suit by – spoiler alert – the charging documents after the fact.

Another question that arises is "Why didn't I simply write down their badge numbers?" Well first to the best of my recollection, I did not have pen and paper on me. Even if I did however, the simple fact of the matter is that – if I had reached into my pocket to grab the pen and paper that I didn't have – the five or so armed police could have used that as an excuse to shoot me dead on the spot; claiming that I had been reaching for a weapon. Cops use this excuse to murder people every day. Joseph Goldstein, *Is Police Shooting a Crime? It Depends on the Officer's Point of View*, The New York Times, July 28, 2016.

Moreover, the police clearly had a reasonable expectation that I would not be able to remember their badge numbers. First, they were more then willing to give their badge numbers verbally but not in writing. Why? Second in an unrelated incident that occurred after the events in question, someone stole my wife's and my cat. When my wife reported the crime, the two officers who responded to the case both gave my wife their cards with their badge numbera on them. The only possible reason that the police would have refused to this in my case is that they knew what they were doing was wrong, and they did not want to be identified by their badge numbers and held accountable for their actions.

Regardless of their reasoning, we found ourselves in a standoff. Rather than be a bootlicking supplicant to jackbooted thugs, I refused to leave until the two officers wrote down their badge

numbers. This tactic representing a compromise that I would temporarily obey their directives so long as I retained the ability to sue them in Court. The two jackbooted thugs in question preferring instead to live in a world where citizens are reduced to bootlicking supplicants to be ordered about without consequence refused to write their badge numbers down.

Again, one is pressed to come up with a reason why two out of the five or so officers present would be willing to shout their badge numbers out in quick succession, but zero out of the five or so officers present would be willing to write down their badge number to de-escalate the situation.

More importantly, their own regulations required the police to de-escalate a situation whenever possible. Metropolitan Police Department of the District of Columbia General Order 901.07,

Part IV.A. So, I was willing to walk away; if the police wrote down their badge numbers. The police clearly had the ability to write down their badge numbers, and the only motive for refusing to write down their badge numbers was to avoid being held accountable for actions that they knew were wrong; namely restricting the liberty of a citizen who had flipped them the bird. This represented a biased and self-serving violation of their own regulations, and, but for, the police's failure to follow their own regulations the following events would not have ensued.

My attention directed at the first two cops, a third cop (Respondent Johnson), decided to escalate the situation by abruptly walking towards me at an oblique angle from my line of sight. I turned towards the third cop, and, to the best of my recollection, I stood my ground; and the next thing I knew I was

headbutted by the third cop, thrown to the ground, dogpiled by the rest of the officers, and had my face ground into the pavement. I was arrested, eventually hospitalized, and charged criminally. The charges were dropped pursuant to a deferred prosecution agreement. I was advised by my counsel at the time that in entering the deferred I was only waiving my right to a speedy trial.

II. Ensuing Litigation

Thereafter, I sued the Respondents in the Superior Court of the District of Columbia for a variety of intentional torts as well as negligence. The United States Congress established the Superior Court as a Federal Court of original jurisdiction. District of Columbia Court Reform and Criminal Procures Act of 1970, 84 Stat. 473 (1970). The Superior Court is a court of first instance of civil actions alleging controversies in the District of

Columbia. D.C. Code § 11-921. All the events took place in the District of Columbia. The parties were all either the government of the District of Columbia, agents of the government of the District of Columbia, or present in the District of Columbia during the events in question.

The Respondents unable to meet the deadline to file for summary judgement filed a motion for an extension of time to file a motion for summary judgement; which I never received. I would note that more or less contemporaneously, the Respondents' initial discovery disclosures were sent to the wrong address. It is possible that Respondents attempted to serve me a copy of their motion for additional time. Nevertheless, I never received it. The Superior Court apparently unconcerned with such a breach of due process granted Respondents' motion for additional time to file for summary judgement.

In support of their claim for summary judgement, Respondents submitted body camera footage which, contrary to my recollection of events, purported that my forehead touched the third officer's forehead first. The footage had obviously been edited at least to some degree as it included title cards; as opposed to simply the raw footage. More interestingly, the footage contradicted the sworn statements of the police in the charging documents. Namely, the police officers alleged that on of the police officers had been headbutt by me; as opposed to my recollection of events in which a police officer headbutt me. Nothing in the footage submitted in the police confirms either my recollection or the police's recollectionof events.

Thereafter, the Superior Court granted Respondents; summary judgement. *Seaton v. Johnson et al*, No. CAB6737-17 (D.C. January 9,

2019). In particular, the Superior Court relied on body camera footage that contradicted not only my testimony, but the testimony of the police officers.

I argued that body camera footage was in essence just another witness that a factfinder could accept or reject at trial, and, as a result, the body camera footage could not be the basis for summary judgement; as the Superior Court was required to interpret the facts in the light most favorable to me during the summary judgement proceedings. In other words a factfinder *could* potentially afford the body camera footage more weight than my testimony at trial, but, at summary judgement, the Superior Court was required to afford my recollection of events greater weight due to the fact that it was more favorable to me. The Superior Court rejected this argument.

Additionally, I argued that the police were at fault for failing to write down their badge numbers, because: they had a duty to de-escalate the situation; writing down their badge numbers would have de-escalated the situation; the only possible motivation for refusing was to avoid punishment; and but for their refusal I would not have suffered any injury. The Superior Court rejected this argument as well.

Finally, Respondents argued, and the Superior Court accepted, that police violence cannot be critiqued by the average citizen, but rather it is a matter of professional expertise that can only be analyzed by experts. I objected to this argument on the grounds that being a jackbooted fascist thug requires no level of expertise, and that, even if it did, it does not take an expert to realize that it is excessive force for five or more armed men to dog pile on a single unarmed man and grind his face into the

pavement for an alleged misdemeanor. The Superior Court rejected this argument.

I appealed to the District of Columbia Court of Appeals; essentially restating my arguments made before the Superior Court. The Court of Appeals is the court of last resort to appeal decisions of the Superior Court; D.C. Code § 11-721; and it is the equivalent of a state supreme court. 28 U.S.C. § 1257. The Respondents once again unable to meet their deadlines filed a motion for an extension of time to file a brief in opposition; essentially arguing that my appeal was not worth their time and that they should not be responsible for having to file a timely opposition brief. I actually received this motion, and I filed a response opposing it; noting that to the extent to which the government was overrun with appeals should be a hint that they were in the business of injustice and that they should not be

rewarded for their behavior. The Court of Appeals granted the extension and affirmed the Superior Court for essentially the same reasons offered by the Superior Court. *Seaton v. Johnson et al*, No. 19-CV-85 (App. D.C. March 3, 2021).

Of note, the Court of Appeals explicitly rejected a claim for an intentional tort, because the amount of damage that I had sustained was negligible. This is critical because it contradicts the standard outlined by this Court in an eight to one majority in *Uzuegbunam et al v. Preczewski et al* that even nominal damages as low as one dollar are sufficient to keep a law suit alive. No. 19-968 (U.S. March 8, 2021). Accordingly, I petition this honorable Court for *certiorari*.

REASONS FOR GRANTING THE WRIT

Both the Superior Court and the Court of Appeals committed reversable error by shielding

violent cops from having to face a jury trial. More importantly, this case raises multiple questions of such widespread public concern that this Court should rule on this case.

I. Police departments have been infiltrated by faacists, and they need to be stripped of power as expeditiously as possible.

Police departments have been infiltrated by jackbooted fascist thugs. "White supremacist groups have infiltrated U.S. law enforcement agencies in every region of the country over the last two decades." Sam Levin, *White supremacists and militias have infiltrated police across US*, The Guardian, August 27, 2020. "The FBI has long been concerned about infiltration of law enforcement . . . and its impact on police abuse[.]" Alice Speri, *Unredacted FBI Document Sheds New Light on White Supremacist Infiltration of Law Enforcement*, The Intercept, September 29, 2020. "[C]urrent and

former Border Patrol agents joked about the deaths of migrants, discussed throwing burritos at Latino members of Congress . . . and posted a vulgar illustration depicting Rep. Alexandria Ocasio-Cortez engaged in oral sex[.]" A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, Pro Publica, July 1, 2019.

These facist cops actually enjoy killing Americans. "In . . . a police training session, [Trainer Dave] Grossman can [be] heard saying, 'Killing is just not that big a deal.' . . . [C]ops can experience 'the best sex' and 'very intense sex' after killing another human." Sayantani Nath, *Who is Dave Grossman? Enforcement trainer tells cops sex after killing a human 'is best sex,'* Media, Entertainment, Arts, World Wide, April 22, 2021. "It's one thing to use . . . violence to affect an arrest. It's another thing

to find it funny . . . [i]t's just pervasive throughout policing. . . . you see the underbelly of it. And it's ... gross." Zack Beauchamp, *What Police Really Believe*, Vox, July 7, 2020. "This is the mentality when they go on the street. . . . This is all intentional and they believe this is righteous." Simone Weichselbaum and Jamiles Lartey, *What Are Cops Really Thinking When Routine Arrests Turn Violent?*, The Marshall Project, June 26, 2020. "We also have to deal with the 'above the law' mentality of officers, . . . and the blue wall of silence that extends from police departments to prosecutor's offices and courtrooms." Rashawn Ray, *Bad apples come from rotten trees in policing*, The Brookings Institution, May 30, 2020.

Police departments either out of sympathy for police brutality or through shear bureaucratic inertia simply refuse to take steps to curb police violence.

"[L]aw enforcement agencies not only fail to adequately investigate misconduct allegations, they rarely sustain citizen complaints. Disciplinary sanctions are few and reserved for the most egregious cases." Jill McCorkle, *Police Officers Accused of Brutal Violence Often Have a History of Complaints by Citizens*, Next City, June 2, 2020. "[T]he use of force becomes legitimized because everyone does it and nobody says anything about it." Arlin Cunic, *The Psychology Behind Police Brutality*, Very Well Mind, January 17, 2020. "The function of police, then, is to control poor populations of color with either the threat or use of violence with impunity. No amount of training will yield different results as long as that's what policing was built to do." Char Adams, *Experts stress that more training won't eradicate police violence*, NBC News, April 15, 2021.

Given these publicly available facts, it is axiomatic that any and all avenues to geld police officers of their powers should be immediately exploited to their full potential. Taking this case will provide this Court an opportunity to chastise police forces for devolving into roving gangs of fascists that brutalize the American people, strip them of their power, and establish a regime of accountability and deterrence that police departments either out of sympathy for police brutality or through shear bureaucratic inertia simply refuse to enact. In other words, this is an important question (some might say crisis) that this Court should resolve. Supreme Court Rule 10.

If this Court does grant *cert.*, then what should this Court do? This Court should overturn *Graham v. Connor*, 490 U.S. 396 (1989). In *Graham*, this Court ruled that the use of force must be based

on an officer-centric standard of reasonableness; the factors taken into consideration when considering the reasonableness included: severity of the crime alleged; officer safety; and resistance from or flight from police violence. The first two factors are designed to legitimize police violence, and the third is circular. What agencies alleges the severity of the crime and determines what is and is not dangerous? The very fascist police departments brutalizing the public. What happens when the public stand up to police brutality? The fascist police departments have a government license for more police brutality. Clearly, this Court should not continue to allow police departments overrun with fascists to continue to enjoy this power.

In *Planned Parenthood v. Casey*, this Court outlined the standards for reversing previous decisions of this Court. 505 U.S. 833 (1992). These

factors include: practical workability; reliance; and a change of facts.

Graham is neither practical nor workable, because police think and act like occupying armies; and, thus considers We the People their enemy rather than their patrons. "The founders of modern policing quelled foreign uprisings. 'Demilitarizing' police will be harder than taking away their tanks." Stuart Schader, *Yes, American police act like occupying armies. They literally studied their tactics*, The Guardian, June 8, 2020.

The only people relying on *Graham* are the police. Police represent .35% of the population. "The rate of full-time law enforcement employees . . . per 1,000 inhabitants was 3.5." *Police Employee Data*, Federal Bureau of Investigation (2019). This is held in sharp relief when compared to *Casey*. *Casey* upheld *Roe v. Wade*, 410 U.S. 113 (1973), because

American women, roughly half the population, relied on the ruling. Fifty percent is substantially larger than .35%. This is held in even sharper relief once one realized that 99.65% of the population (100% - .35% = 99.65%) are not police and would benefit from overturning the *Graham*.

Finally, the "facts" that *Graham* relied on to the extent that they were ever true certainly are not true anymore. As discussed *supra* in more detail, police departments have been infiltrated by fascists who are psychologically compelled to brutalize the American population, and police departments refuse to restrain them. Therefore, the underlying factual assumption of *Graham* – namely that cops are willing or even capable to determine what level of force is and is not reasonable based on their training and experience – is demonstrably untrue.

Instead this Court should take this case in order to adopt a more citizen-centric standard constitutionally stripping cops of their ability to use force and requiring cops to exhaust every avenue of de-escalation (and even impose a duty to retreat) before using force.

II. De-escalation regulations are the only legal tool in the armory of the average citizen standing up against the police oppression, and they must be given more teeth.

In light of manifest corruption and oppression of American police departments, the American people have begun calls for abolishing or at least defunding the police. The "call . . . has grown across the country as protests against police brutality continue." Benn Kesslen, *Calls to reform, defund, dismantle and abolish the police, explained*, NBC News, June 8, 2020. "The desired place of coercion and force in our lives must be addressed, and I, for

one, wish to have as little of these present as possible." Sean Illing, *The "abolish the police" movement, explained by 7 scholars and activists*, Vox, June 12, 2020. "[Y]oung people are hopeless in America . . . Here's a solution . . . abolish the police." Maya Dukmasova, *Abolish the police? Organizers say it's less crazy than it sounds*, Chicago Reader, August 25, 2016.

Unfortunately, there is bipartisan consensus across administrations that police brutality should continue unabated. "President Joe Biden said at a CNN town hall on Tuesday that he remains opposed to calls for 'defunding the police[.]'" Scottie Andrew, Josiah Ryan, and Caroline Kelly, CNN, April 14, 2021. "President Trump on Monday assailed a broad movement to defund police departments[.]" Katie Rogers, *Trump Continues Criticism of Movement to Defund the Police*, New York Times, July 13, 2020.

"Republican senators . . . oppose calls to 'defund the police[.]'" Jordain Carney, *GOP senators introduce resolution opposing calls to defund the police*, June 9, 2020. "[D]espite the . . . insistence that dismantling the policing system in the US . . . is the solution . . . Democratic leaders . . . [have begun] an active effort to distance themselves from it." Steve Chaggaris, *Defunding police: An idea most Democrats don't want to talk about*, Aljazeera, April 15, 2021.

The one concession to popular unrest that policy makers appear to be willing to implement is to require police officers to attempt to de-escalate a situation rather than use violence. "'We need . . . police department[s] . . . to undertake a comprehensive review of their . . . de-escalation practices,' [President] Biden said . . . 'And the federal government should give the . . . resources they need to implement reforms.'" Laura Barron, *Biden White*

House puts its police oversight commission on ice, Politico, April 11, 2021. "De-escalation training . . . was embraced by Senate Republicans[.]" Erin Schumaker, *Police reformers push for de-escalation training, but the jury is out on its effectiveness*, ABC News, July 5, 2020. "[D]e-escalation is gaining new prominence amongst law enforcement[.]" Tom Jackman and Dan Morse, *Police de-escalation training gaining renewed clout as law enforcement seeks to reduce killings*, Washington Post, October 27, 2020.

This is an appalling breach of our political leaders' duty in light of the fact that experts have already scientifically determined that de-escalation training alone will never work. "[W]hat is increasingly clear [from systematic research] . . . is that . . . de-escalation training is . . . an insufficient solution." Stacey McKenna, *Police Violence Calls for*

Measures beyond De-escalation Training, Scientific American, June 17, 2020. "Experts who study de-escalation, as well as law enforcement officials . . . say . . . there's no conclusive evidence that de-escalation training works." Erin Schumaker, *Police reformers push for de-escalation training, but the jury is out on its effectiveness*, ABC News, July 5, 2020.

Indeed, the attitude of police officers and policy makers appears to be that de-escalation regulations can be promulgated and then immediately ignored. "The clamoring for de-escalation is loud, and . . . it is clear that police . . . must help . . . policymakers understand the . . . mythology of de-escalation." Police Chief Joel F. Shults, *Putting the Brakes on De-escalation Expectations*, National Police Association, August 26, 2020. The media often . . . give[s] an opinion about

what the officer could have said or done to avoid using force[;] . . . meandering, blathering mumbo jumbo[.]" Police Lieutenant Jim Glennon, *De-escalation: Completely Misunderstood, Employed & Trained*, Calibre Press, August 3, 2020. "[T]hese concepts . . . in some situations, they are useless and even dangerous[.] . . . [P]olicy should not mandate that it [(de-escation)] be the first tool" used. Police Lieutenant Brian Landers, *Are De-Escalation Policies Dangerous?*, Police Magazine, October 14, 2017. "It's the latest instance of police appearing to ignore the hard-won reforms[.] . . . [O]fficers in at least half a dozen cities have allegedly violated those policies throw[ing] into question how effective reforms are at controlling violent police behavior." Laura Thompson, *Police Reforms Don't Work When Cops Ignore Them*, Mother Jones, April 21, 2021.

Turning back to my case, the District of Columbia has promulgated regulations requiring police officers to de-escalate confrontations. The police when given the opportunity decided not to de-escalate the situation, and the District of Columbia rather than hold these police officers accountable has defended the police's right to ignore de-escalation regulations all the way to this Court. The District of Columbia's contempt for reigning in police violence is palpable, and, more sadly, it is representative of the attitudes of municipalities nationwide. These de-escalation regulations are essentially a matter of first impression that this Court should rule on. Supreme Court Rule 10. Specifically, this Court should rule that de-escalation regulations instill and affirmative duty on the police to de-escalate confrontations by any reasonable means; and

reasonable means includes writing down their badge numbers.

III. The combination of the history of fraud perpetrated by police departments combined with deep fake technology necessitates establishing rules of procedure and evidence that do not privilege police footage over citizen testimony.

It is a matter of public record that police officers routinely forge evidence and commit perjury. "[M]ultiple officers work[ed] together to manufacture evidence[.]" Eric Levenson, Lauren del Valle and Darran Simon, *Public Defender: Baltimore Police Caught Planting Evidence, Again*, CNN, August 4, 2017. "Police lying persists[.]" Joseph Goldstein, *'Testilying' by Police: A Stubborn Problem*, The New York Times, March 18, 2018. "It's crazy and it's scary how these guys got the power to change your life like that[.] . . . The badge and that uniform gives them the power to do that." Steve Reilly and Mark Nichols, *Hundreds of police officers have been*

labeled liars. Some still help send people to prison., USA Today, October 14, 2019.

Even more disturbingly, lower courts throughout this country let cops get away with it. "Judges simply do not like to call other government officials liars – especially those who appear regularly in court." Christopher Slobogin, *Testilying: Police Perjury and What To Do About It*, 67 U. Colo. L. Rev. 1037 (Fall 1996). "[I]naccurate statements are encouraged by . . . a court system that rarely holds officers accountable[.]" Ryan J. Foley, *Video evidence increasingly disproves police narratives*, Associated Press, June 9, 2020.

Camera footage was supposed to blunt police misconduct. "Equip officers with body cameras. If police knew their every action was being recorded . . . they would more likely be on their best behavior." Louise Matsakis, *Body Cameras Haven't Stopped*

Police Brutality, Here's Why, Wired, June 17, 2020.

Unfortunately, "deep fake" technologies permit and will continue to permit cops to forge evidence. "Fake videos can now be created." Oscar Schwartz, *You thought fake news was bad? Deep fakes are where the truth goes to die*, The Guardian, November 12, 2018. "It's not hard to imagine this technology's being used to . . . frame people for crimes[.]" Kevin Roose, *Here Come the Fake Videos Too*, The New York Times, March 3, 2018. Even members of Congress have recognized the need "[t]o combat the spread of disinformation through restrictions on deep-fake video alteration technology[.]" DEEP FAKES Accountability Act, H.R. 2395, 117th Congress (2021).

This is no mere paranoia, as cops, have already been caught generating false camera footage. In Baltimore, MD for example, a cop, Richard

Pinheiro was caught on his body camera planting evidence. Bill Chappell, *Baltimore Police Caught Planting Drugs In Body-Cam Footage Public Defender*, NPR, July 30, 2017.

"Wait!" you say, "Doesn't this just prove that police body camera footage is reliable." No. The only reason that the cop was caught was because he was new to the technology. The officer "activate[d] his body-cam — apparently unaware . . . [of] a feature that saves the 30 seconds of video before activation[.]" *Id.* What this incident does demonstrate is an example of cops attempting to manipulate body camera footage in order to forge evidence; which, but for what in essence amounts to a rookie mistake, would have in all likelihood succeeded.

"But Wait!" you exclaim, "The offending officer was caught and convicted. *Pinheiro v. State*, 244

Md. App. 703 (2020). Doesn't this indicate that the system is holding cops accountable? No. The police chief (you know one of the top guys running the system) defended the offending officer's actions as a legitimate practice of "re-enacting a legitimate discovery of drugs[.]" Scott Calvert, *Baltimore Police Chief Defends Officers in Body-Cam Videos*, The Wallstreet Journal, August 2, 2017. The presiding judge (you know the theoretically independent judiciary that will prevent such deep-seated corruption) despite finding that "without a doubt the offending officer created the video to deceive" and that this was "a willful abuse of his authority for . . . personal gain[,]" stated in open court that the officer did not deserve jail time. Kevin Rector, *Baltimore Police officer found guilty of fabricating evidence in case where his own body camera captured the act*, Baltimore Sun, November 9, 2018. The officer in

question hardly chastened by this turn of events justified his behavior as being "proactive." *Id.* At the beginning of this year moreover, the guilty verdict was struck from the record; thus, the offending officer in question is "innocent" of all charges of misconduct. *State v. Pinheiro*, Case No. 118023003 (Md. Cir. Ct, February 12, 2021).

The *Pinheriro* Case represents a starting example of how cops can and will attempt to subvert the very technology designed to prevent misconduct in order to facilitate misconduct. This case study, moreover, cannot be dismissed as an isolated incident limited in either geography or substance. Consider the analysis of a retired police detective from the Metropolitan Police Department of the District of Columbia discussing camera footage in police confessions. "[V]ideotaping . . . *may* prevent the occasional rogue investigator from using

improper or illegal tactics . . . but many confirmed false confessions have occurred when the investigator used only standard, court-approved techniques." Detective James L. Trainum, *"I Did It" – Confession Contamination and Evaluation*, Police Chief Magazine, June 2014. Describing the effectiveness of body cameras a Washington DC Council member stated, "Instead of engendering the type of transparency and trust that we would want this program to have, it has had the complete opposite effect," Linsay Van Ness, *Body Cameras May Not Be the Easy Answer Everyone Was Looking For*, Pew Research, January 14, 2020. More broadly, "[l]aw enforcement has . . . [a] desire to extricate data from the digital world, but there hasn't been adequate scrutiny on these new technologies." Kashmir Hill, *Imagine Being on Trial With*

Exonerating Evidence Trapped in Your Phone, The New York Times, November 22, 2019.

As such, the Court should take this case, and rule that the credibility of electronic evidence submitted by police (as opposed to eye witness testimony by citizens) is a matter for a jury to adjudicate rather than judge to rule on at summary judgement. Supreme Court Rule 10.

IV. Police violence is not a matter of special expertise; rather it is We the People who are empowered to adjudicate it.

Police are neither experts nor professionals, and they do not possess special knowledge or expertise on what force is appropriate in what situations. "By the early 1980s, the 'professional model' . . . was thoroughly discredited. It . . . ma[de] police departments insular, arrogant, resistant to outside criticism and feckless in responding to social ferment." David Alan Skansky, *The Persistent Pull*

of Police Professionalism, New Perspectives in Policing, Harvard Kennedy School (March 2011). "I have a hard time calling policing a profession." Policeman Dean Isabella, *Is Policing a Profession*, Law Enforcement Today, August 24, 2017. If anything, police are less qualified than the civilians to deal with situations that require special expertise; such as when dealing with the mentally ill. "[P]olice officers . . . increase the risk of a violent encounter[.]" Zusha Elinson, *When Mental-Health Experts, Not Police, Are the First Responders*, The Wallstreet Journal, November 24, 2018.

The myth of police professionalism and expertise was specifically established as a public relations move to valorize police brutality. Even in the early days of professionalization internal literature "suggested that rank-and-file police rarely possessed the [necessary] competence" to comply

with department standards or demonstrate their supposed expertise. Josh Segal, *All of the Mysticism of Police Expertise: Legalizing Stop-and-Frisk in New York, 1961-1968*, 47 Harv. C.R.-C.L. L. Rev. 573 (Summer 2012). Consequently, police departments were forced to admit publicly that their professional standards were "simply suggestions to law enforcement officers." Brief for Respondent, *People v. Peters*, 219 N.E.2d 595 (N.Y. 1966). Even at the time, outside commentators observed police expertise was "mysticism" designed to get people "to accept the attitudes of police." Brief for NAACP Legal Def. and Educ. Fund, Inc. as Amicus Curiae Supporting Appellant *Terry v. Ohio*, 392 U.S. 1 (1968).

Moreover, government legitimacy "deriv[es]. . . from the consent of the governed[;]" Declaration of Independence (US – 1976); and the appropriateness of state violence is ultimately an issue for We the

People (*see* U.S. Const. Preamble *declaring* "We the People . . . in Order to . . . establish justice, ensure domestic tranquility, [and] provide for the common defense"). It is unlawful under our form of government for the use of state violence to be adjudicated by supposed experts "protecting them [(armed agents of the state in this case police)], by a mock [t]rial from punishment for any [crimes] which they should commit" against We the People. Declaration of Independence (US – 1976). "Something worth remembering by law enforcement responding to the thousands of American protesters today[.]" Robin Washington, *Revolutionary Moments in Law Enforcement*, The Marshall Project, July 3, 2018.

In more practical terms, labeling police as experts/professionals or the use of state violence as a matter of special expertise has the effect of driving

up the cost of litigation and confounding jury verdicts. "[T]he cost of litigation continues to rise, especially the costs associated with retained experts[.]" Jimmerson Birr, *Combating the Ever Increasing Costs of Experts in Litigation*, June 18, 2012. "Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it." *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579 (1993). As such, this Court grant *cert.* and rule that police are not experts, and that the appropriateness of state violence is a matter for We the People to adjudicate rather than experts designed to insulate the police. Supreme Court Rule 10.

V. Courts are cognitively biased against *pro se* litigants, and this violation of due process and equal protection under law has created an unjust windfall for municipalities who actively shield violent cops.

Courts are biased against *pro se* litigants. "The basic thing is that most judges regard *these people* [(*pro se* litigants)] as kind of trash not worth the time of a federal judge." Debra Caassens Weis, *Posner: Most Judges regard pro se litigants as 'kind of trash not worth the time,'* American Bar Association Journal (September 11, 2017) (*citing* Judge Richard Posner). "[M]any trial judges think of the self-represented as 'weirdos' or worse[.]" Stephen Landsmand, *The Growing Challenge of Pro Se Litigation*, 13 Lewis & Clark L. Rev. ii (2009). The very psychology of judges makes them find the legal arguments offered by *pro se* litigants to be "less meritorious . . . than counseled litigants, even when all case facts were held constant[.]" Katheryn M.

Kroeper, Victor D. Quintanilla, Michael Frisby, Nedim Yel, Amy G. Applegate, Steven J. Sherman, Mary C. Murphy, *Underestimating the Unrepresented: Cognitive Biases Disadvantage Pro Se Litigants in Family Law Cases*, American Psychological Association: Psychology, Public Policy, and Law, Vol. 26 No. 2 (2000).

This is catastrophic in light of the fact that growing income inequality has caused a deluge in *pro se* litigants with meritorious cases. "As the economy has worsened, the ranks of the self-represented poor have expanded[.]" Chief Justice John T. Broderick and Chief Justice Ronald M. George, *A Nation of Do-It-Yourself Lawyers*, The New York Times, January 1, 2010. "[P]ursuing a claim in federal court with the aid of counsel is financially out of reach for many people, including those who are not poor" Spencer G. Park, *Providing Equal Access to Equal Justice: A*

Statistical Study of Non-Prisoner Pro Se Litigation in the United States District Court for the Northern District of California in San Francisco, 48 Hastings L.J. 821 (1997). "The number of these 'pro se litigants' has risen substantially in the last decade, due in part to the economic downturn[.]" Lauren Sudeall and Darcy Meals, *Every year, millions try to navigate US courts without a lawyer*, The Conversation, September 21, 2017.

This has resulted in a windfall in for municipalities who attempt to, and often successfully, co-op judges into shielding brutal cops. "[T]he law gives too much deference to police conduct and does not do nearly enough to hold the police accountable . . . in civil court." Erwin Chemerinsky, *The Deck Is Stacked in Favor of the Police*, The New York Times, May 18, 2016. "The cozy relationship between judges and police is . . . the worst kind of

bias – a bias in favor of police as a group[.] . . . It's a violation of the judicial duty[.]" Susan Bandes, *Why judges so rarely second-guess police testimony*, Salon, December 16, 2015.

Even some judges have admitted that action must be taken to counter this bias. "As judges, we believe more needs to be done to meet this growing challenge[.]" Chief Justice John T. Broderick and Chief Justice Ronald M. George, *A Nation of Do-It-Yourself Lawyers*, The New York Times, January 1, 2010 (*excoriating* the need for intervention in the then growing and growing ever still crisis in *pro se* litigation). That was over a decade ago, and yet little or nothing has been done, and the *pro se* litigation crisis remains ever growing still. Consequently, this is an important question that has not been settled by this Court, and this Court should grant *cert.* in order to evaluate this case. Supreme Court Rule 10.

That naturally raise the question that, if the Court did grant *cert.* then what should the Court do. Of course, the most obvious remedy would be enacting a general version of *Gideon v. Wainwright*, 372 U.S. 225 (1963) (*recognizing* the constitutional right of indigent criminal defendants to government provided counsel). Namely, granting a universal right to government provided counsel in all cases regardless of wealth; or, at least, if not in all cases, in cases, where a government entity is a party to the case. In my particular case, this would require vacating any judgement against me and reajudicating the case with government appointed counsel. Regarding the public at large, it would revolutionize the rights of the indigent and the proletariat to hold the powerful accountable; making this iteration of the Court the most liberatory in the

history of the United States. Not sure why anyone would say no to that.

Alternatively, this Court could expand *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). In *Yick Wo*, the Court held that facially neutral laws enforced in a systemically racially discriminatory matter are unconstitutional. A systemic bias in favor of one class of litigants (the police and the local municipalities they work for) over another (*pro se* litigants suing them) is no less a violation of the equal protection clause of the 14th Amendment and the due process clauses of the fifth and 14th Amendment regardless of whether or not it is due to racial discrimination.

In my case in particular, both the Superior Court and the Court of Appeals granted extensions over my objections because the police and Washington DC indicated that they were too busy

litigating other cases; and didn't feel they had the time to meet their deadlines. Rather than chastising the government, both courts ultimately granted these requests. Imagine the likelihood of a court humoring a *pro se* litigant offering the same explanation. But for these extensions, the government would not have been able to meet key deadlines necessary for summary judgement, and I would have gotten a trial. Regarding the public at large, it forces municipalities to either commit more resources to litigating cases (thus creating jobs), or it would force municipalities to settle lawsuits that, for whatever reason, were not a high enough priority to commit the resources to meet deadlines during litigation. This would ultimately force municipalities to be more accountable to their constituents; rather than continue their current practices of aggrieving so

many people as to generate so many lawsuits that they cannot defend them all.

VI. The Court should exercise its supervisory powers in order to enforce *Uzuegbunam*.

As discussed *supra*, one of the reasons that the Court of Appeals dismissed my case is that allegedly the evidence of record did not demonstrate a severe enough level of damages. As previously noted, this Court in an eight to one majority found that even nominal damages as low as one dollar are sufficient to keep a law suit alive. *Uzuegbunam et al v. Preczewski et al*, No. 19-968 (U.S. March 8, 2021). Given that the Court of Appeals published the decision on appeal five days prior to this Court publishing *Uzeuegunan* it would be inaccurate to suggest that the Court of Appeals was deliberately defying the authority of this Court. On the other hand, what kind of message does it send to lower

courts if this Court allows a *near* contemporaneous decision to stand that directly contradicts an eight to one decision of this Court. Taking this case will give this Court the opportunity to show that the Court is serious about enforcing *Uzuegbunam*, and that this Court expects lower courts to take note of it and apply it immediately. It is therefore a matter of great public concern. Supreme Court Rule 10.