No. 21-1014

In the
Supreme Court of the United States

T.O., A CHILD; TERRENCE OUTLEY; DARREZETT CRAIG
Petitioners,

V.

FORT BEND INDEPENDENT SCHOOL DISTRICT AND ANGELA ABBOTT,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Stephanie A. Hamm
Christopher B. Gilbert
Counsel of Record
THOMPSON & HORTON LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027
cgilbert@thompsonhorton.com
(713) 554-6744

Counsel for Respondents

QUESTIONS PRESENTED

Petitioners correctly note that the federal courts of appeal disagree on whether and how public school students may assert claims alleging excessive force by school officials under the United States Constitution, but they repeatedly misstate the law within the Fifth Circuit. The Fifth Circuit does not broadly foreclose federal constitutional claims whenever state law remedies are available and a school official has a "purportedly pedagogical purpose" for using force, as alleged throughout the Petition. In fact, the Fifth Circuit has long held that a school official's use of excessive force as an instructional technique *is* subject to constitutional scrutiny. *See Jefferson v. Ysleta Indep. Sch. Dist.*, 817 F.2d 303 (5th Cir. 1987).

The Fifth Circuit's reluctance to constitutionalize excessive force claims is much narrower than Petitioners suggest and is limited only to claims arising out of disciplinary corporal punishment, and only where state law both prohibits and provides a remedy for the use of unreasonable force. Although other circuits may grapple with which constitutional provisions might apply in this context, the Fifth Circuit—for decades—has consistently rejected these types of claims against teachers, regardless of the Amendments invoked. The questions presented are:

1. Whether granting the Petition would violate long-standing principles of constitutional avoidance, given that any ruling on the merits would not change the outcome of T.O.'s claims in light of Angela Abbott's continued entitlement to qualified immunity?

2. Whether excessive student discipline claims should be constitutionalized, even where state law adequately addresses excessive force by school officials?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

INTRODUCTION

The notion that students who attend public schools within the Fifth Circuit have no legal recourse for excessive discipline-related injuries is a myth that has been perpetuated, and rejected, for over thirty years:

> It is an overstatement to suggest that students can suffer extreme injury at the hands of educators without recourse. Admittedly, [] their choice of forum may be restricted to state courts. However, it is important to note that the [Fifth Circuit's] rule has been crafted to operate in the narrow context of student discipline administered within the public schools of states that authorize only reasonable discipline and, further, provide post-punishment relief for departures from its law.

Fee v. Herndon, 900 F.2d 804, 809 (5th Cir.), *cert. denied*, 498 U.S. 908 (1990). The rationale for restricting excessive student discipline claims to state courts is rooted in the fundamental tenet that the United States Constitution "deals with the large concerns of the governors and the governed, but it does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society." *Daniels v. Williams*, 474 U.S. 327, 332 (1986). Simply put, the Fifth Circuit finds "no constitutional warrant to usurp classroom discipline where states [] have taken affirmative steps to protect their students from overzealous disciplinarians." *Fee*, 900 F.2d at 809.

Petitioners ultimately seek to invalidate the Fifth Circuit's position but accomplishing their goal will not change the outcome of this case. Since *Ingraham v. Wright*, 525 F.2d 909 (5th Cir. 1976) (en banc), *aff'd*,

430 U.S. 651 (1977), the Fifth Circuit has consistently rejected excessive discipline claims against teachers—regardless of the constitutional provisions invoked—if the forum state's laws affirmatively proscribe and remedy the use of unreasonable force. *Id.* at 913–20 (rejecting claims under Eighth and Fourteenth Amendments);[1] *Fee*, 900 F.2d at 809–10 (same; also finding that "the paddling of recalcitrant students does not constitute a [F]ourth [A]mendment search or seizure"); *see also, e.g., Flores v. Sch. Bd. of DeSoto Parish*, 116 Fed. App'x 504, 510–11 (5th Cir. 2004) (unpublished) (rejecting claims under Fourth and Fourteenth Amendments, and stating that "the momentary 'seizure' complained of in this case is not the type of detention or physical restraint normally associated with Fourth Amendment claims"). Petitioners, and other circuits, may disagree with the Fifth Circuit's decision not to have student discipline "shaped by the individual predilections of federal jurists rather than by state lawmakers and local officials," *Fee*, 900 F.2d at 809, but the courts below correctly applied well-settled law within the Fifth Circuit when deciding that T.O. failed to allege a violation of any clearly established constitutional right, and therefore failed to overcome Angela Abbott's assertion of qualified immunity. *See* Pet. App. 4a–11a (rejecting T.O.'s "unpersuasive[] attempt[s]" to avoid qualified immunity

[1] In *Ingraham*, the Fifth Circuit held that excessive student discipline does not implicate the Eighth Amendment's prohibition on cruel and unusual punishment and does not violate the Fourteenth Amendment's substantive or procedural due process protections. This Court granted certiorari as to the questions of cruel and unusual punishment and procedural due process—and affirmed the Fifth Circuit's rulings on those issues, 430 U.S. at 683—but denied review as to whether excessive discipline implicates substantive due process rights. *Id.* at 659 & n.12.

because "for more than thirty years, the law of this circuit has clearly protected corporal punishment from constitutional scrutiny"). And because the qualified immunity analysis is permanently tethered to the law in effect at the time of the conduct at issue, *see Harlow v. Fitzgerald*, 457 U.S. 800, 818–19 (1982), any subsequent decision to overturn that law cannot be used to retroactively deprive Abbott of her entitlement to qualified immunity. *Mitchell v. Forsyth*, 472 U.S. 511, 535 (1985) ("The District Court's conclusion that Mitchell is not immune because he gambled and lost on the resolution of this open question departs from the principles of *Harlow*. Such hindsight-based reasoning on immunity issues is precisely what *Harlow* rejected.").

By nevertheless asking the Court to consider the merits of their claims, Petitioners ask the Court to violate fundamental principles of constitutional jurisprudence. This Court has long-recognized the rule that courts should avoid deciding "principles or rules of law which cannot affect the result as to the thing in issue in the case before it." *Webster v. Reprod. Health Svcs.*, 492 U.S. 490, 507 (1989). In particular, courts should not decide constitutional issues unless they are "unavoidable" or "absolutely necessary" to the outcome of a case. *Spector Motor Svc. v. McLaughlin*, 323 U.S. 101, 105 (1944); *Burton v. United States*, 196 U.S. 283, 294 (1904). These canons of constitutional avoidance and judicial restraint apply in qualified immunity cases. *See Pearson v. Callahan*, 555 U.S. 223, 241 (2009) (Requiring courts to first decide whether the plaintiff has alleged the violation of a constitutional right before deciding whether that right was clearly established "departs from the general rule of constitutional avoidance and runs counter to the older, wiser

judicial counsel not to pass on questions of constitutionality . . . unless such adjudication is unavoidable.") (discussing *Saucier v. Katz*, 533 U.S. 194 (2001)) (internal citations and quotations omitted); *but see Camreta v. Greene*, 563 U.S. 692, 705–09 (2011) (stating that, in certain circumstances, the "regular policy of avoidance sometimes does not fit the qualified immunity situation because it threatens to leave standards of official conduct permanently in limbo").[2]

Here, deciding whether or to what extent excessive corporal punishment violates the Constitution is neither unavoidable nor absolutely necessary because, no matter what the Court decides, Abbott—the only party sued for allegedly violating T.O.'s constitutional rights—will still be entitled to qualified immunity under then-existing Fifth Circuit law, and the outcome of this case will not change. Granting the Petition would therefore run counter to the "older, wiser" doctrines of constitutional avoidance and judicial restraint. *See Camreta*, 563 U.S. at 714 (Scalia, J., concurring) ("The parties have not asked us to [end the extraordinary practice of ruling upon constitutional questions unnecessarily when the defendant possesses qualified immunity], but I would be willing to consider it in the appropriate case."); *id.* at 729–30

[2] In *Camreta*, government officials appealed the Ninth Circuit's ruling that they violated the Constitution by interviewing a girl at school about sexual abuse allegations without first obtaining a warrant or parental consent, even though they prevailed on their qualified immunity defense because the constitutional right was not clearly established. 563 U.S. at 697–98. After discussing scenarios in which it might be appropriate to "avoid avoidance" in favor of "the development of constitutional precedent," the Court ultimately vacated, on mootness grounds, the Ninth Circuit's decision relating to the merits of the plaintiff's Fourth Amendment claim. *Id.* at 710–14.

(Kennedy, J., joined by Thomas, J., dissenting) ("The Court should not superintend the judicial decisionmaking process in qualified immunity cases under special rules, lest it make the judicial process more complex for civil rights suits than for other litigation. It follows, however, that the Court should provide no special permission to reach the merits. If qualified immunity cases were treated like other cases raising constitutional questions, settled principles of constitutional avoidance would apply.").

Even if this case falls within the narrow category of situations that might justify "avoiding avoidance," the tension between the Petition and traditional constitutional principles does not end there. The Constitution "does not purport to supplant traditional tort law," *Daniels*, 474 U.S. at 332, and the Fourteenth Amendment is not a "font of tort law to be superimposed upon whatever systems may already be administered by the States." *Paul v. Davis*, 424 U.S. 693, 701 (1976). States like Texas, Louisiana, and Mississippi "do[] not allow teachers to abuse students with impunity and provide[] civil and criminal relief against educators who breach statutory and common law standards of misconduct." *See Fee*, 900 F.2d at 809. In other words, these "states that affirmatively proscribe and remedy mistreatment of students by educators do not, by definition, act 'arbitrarily,' a necessary predicate for substantive due process relief." *Id.* at 808. The Fifth Circuit's position that it would therefore be a "misuse of [its] judicial power to determine, for example, whether a teacher has acted arbitrarily in paddling a particular child for certain behavior or whether in a particular instance of misconduct five licks would have been a more appropriate punishment than ten licks," *Ingraham*, 525 F.2d at

917, is consistent with this Court's historic reluctance to expand the amorphous concept of substantive due process. *See, e.g., Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 841 (1998); *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 128–29 (1992).

Although excessive student discipline should neither be tolerated nor condoned, the Fifth Circuit has appropriately recognized that "the Constitution is not a criminal or civil code to be invoked invariably for the crimes or torts of state educators who act in contravention of the very laws designed to thwart abusive disciplinarians." *Fee*, 900 F.2d at 808. Where states have implemented legal frameworks for prohibiting and remedying excessive corporal punishment, inviting federal judges to assume the role of deciding whether a particular incident of student misconduct justified the use or extent of a particular form of punishment—decisions traditionally made by state and local officials—expands the concept of substantive due process well beyond the Fourteenth Amendment's stated purpose and "limited effect." *Davis*, 424 U.S. at 700. The Court usually declines invitations to constitutionalize state law tort claims, particularly when, as here, the relationship between the parties is primarily governed at the state or local level:

> The reasoning in those cases [rejecting the imposition of constitutional duties analogous to those traditionally imposed by state tort law] applies with special force to claims asserted against public employers because state law, rather than the Federal Constitution, generally governs the substance of the employment relationship . . . Decisions concerning the [administration of government programs] involve a

> host of policy choices that must be made by locally elected representatives, rather than by federal judges []. The Due Process Clause is not a guarantee against incorrect or ill-advised personnel decisions. Nor does it guarantee municipal employees a workplace that is free of unreasonable risks of harm.

Collins, 503 U.S. at 128–29 (internal citations and quotations omitted). This case warrants the same level of deference to state and local officials. *Compare id. with Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 648 (1999) ("[C]ourts should refrain from second-guessing the disciplinary decisions made by school administrators.") *and Epperson v. State of Ark.*, 393 U.S. 97, 104 (1968) ("Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint . . . By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values."); *see also Milliken v. Bradley*, 418 U.S. 717, 741–42 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools . . ..").

The Court should deny the Petition.

STATEMENT OF THE CASE

This case arises from allegations of excessive corporal punishment, which, in the Fifth Circuit, implicate narrow legal standards regarding the applicability of federal constitutional protections. The courts below relied on these well-established legal principles

in dismissing Petitioners' claims against Angela Abbott based on qualified immunity.

I. Factual Background

During the 2016–2017 school year, Angela Abbott worked as a Fourth Grade math specialist at Hunters Glen Elementary, within the Fort Bend Independent School District in Fort Bend County, Texas. T.O. attended first grade at the same school. Pet. App. 44a.

T.O. has Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD). The District therefore provided T.O. with certain behavioral accommodations pursuant to Section 504 of the Rehabilitation Act, including a Behavioral Intervention Plan involving the use of verbal redirection, a quiet area for him to calm down when needed, and positive praise for returning to appropriate behavior. Pet. App. 44a. The District also assigned an aide to provide T.O. with one-on-one behavioral support. Pet. App. 45a.

On January 31, 2017, T.O.'s behavioral support aide removed him from his classroom, into the hallway, after he exhibited "behaviors characteristic of his diagnoses"—*i.e.*, disruptive behaviors characteristic of ADHD and ODD. The aide instructed T.O. to remain in the hallway outside of the classroom until he calmed down. Abbott happened to be walking down the hallway at this time, observed T.O.'s ongoing disruptive behavior, and intervened to assist. Pet. App. 45a.

Petitioners allege that Abbott stood in front of the door to physically block T.O. from returning to the classroom, yelled at him in response to him yelling that he wanted to go back to class, and yelled at him

to stop pulling on his behavioral aide's arm. Pet. App. 45a. Then, after T.O. tried to physically push Abbott away from the door, and after he also hit her on her right leg, Abbott allegedly "threw [T.O.] to the floor and seized him by his throat/neck, choking and yelling at him," including that he "had hit the wrong one" and should "keep his hands to himself." Pet. App. 45a–46a. Abbott purportedly held T.O. in a choke hold for "several minutes," during which time he allegedly began "foaming at the mouth." Pet. App. 46a.

Petitioners assert that the incident resulted in some bruising and redness on T.O.'s neck, *see* Pet. App. 48a, but that Abbott's actions "threatened T.O. with much greater physical injury than the physical injuries that actually resulted." Pet. App. 47a.

II. Relevant Procedural History

Terrence Outley and Darrezett Craig (as parents and next-friends of T.O.) sued Angela Abbott, via 42 U.S.C. § 1983, claiming that her in-the-moment reaction to T.O.'s misbehavior violated the Fourth, Fifth, and Fourteenth Amendments. Pet. App. 49a.[3]

Abbott moved to dismiss based on qualified immunity, arguing that any injuries T.O. sustained occurred in the context of student discipline, which the Fifth Circuit has held does not implicate federal constitutional rights because Texas law both prohibits and remedies excessive corporal punishment. *See, e.g., Moore v. Willis Indep. Sch. Dist.*, 233 F.3d 871, 874–75 (5th Cir. 2000); *Fee*, 900 F.2d at 807–10; *Cunningham v. Beavers*, 858 F.2d 269, 271–72 (5th Cir.

[3] Initially, Petitioners also asserted Section 1983 claims against Fort Bend ISD, but, for reasons unknown to Respondents, they dropped those claims from their Amended Complaint.

1988), *cert. denied*, 109 S. Ct. 1343 (1989); *Ingraham*, 525 F.2d at 912–20; *Flores*, 116 Fed. App'x at 510. The district court agreed and, after adopting a magistrate judge's report and recommendation, dismissed T.O.'s claims. Pet. App. 21a–34a.

The Fifth Circuit affirmed, holding that T.O. failed to state a substantive due process violation under the line of cases typified by *Ingraham* and *Fee*. Pet. App. 5a–9a. With respect to T.O.'s Fourth Amendment claim, the court noted that it had not "conclusively determined whether the momentary use of force by a teacher against a student constitutes a Fourth Amendment seizure," but acknowledged a previous ruling in which it had expressly "rejected Fourth Amendment claims brought by a student who was choked by a teacher on the basis that allowing such claims to proceed would 'eviscerate this circuit's rule against prohibiting substantive due process claims' stemming from the same injuries." Pet. App. 9a (quoting *Flores*, 116 Fed. App'x at 510).

Although the Fifth Circuit went on to state that "we have also noted that claims of excessive force and unlawful arrest against *other school officials* are properly analyzed under the Fourth Amendment," it cited cases involving police officers and/or security guards—not teachers—and in which the defendants never invoked *Ingraham* or *Fee*. Pet. App. 9a (citing *Keim v. City of El Paso*, 162 F.3d 1159 (5th Cir. 1998) (unpublished) and *Curran v. Aleshire*, 800 F.3d 656 (5th Cir. 2015)) (emphasis added).

Ultimately, the Fifth Circuit held that "[i]n light of this inconsistency in our caselaw, we cannot say that it was clearly established, at the time of the incident, that Abbott's actions were illegal under the Fourth

Amendment." Pet. App. 9a. And, in holding that T.O. otherwise failed to overcome Abbott's assertion of qualified immunity, the court specifically stated:

> [F]or more than thirty years, the law of this circuit has *clearly protected* disciplinary corporal punishment from constitutional scrutiny.

Pet. App. 11a (emphasis added).[4]

Two of the panel judges specially concurred, calling for en banc reconsideration of *Ingraham* and *Fee*. Pet. App. 16a (Weiner, J., joined by Costa, J., specially concurring). T.O. timely filed a petition for rehearing en banc and the Fifth Circuit requested a response; however, the Fifth Circuit denied the petition after "[n]o member of the panel nor judge in regular active service [] requested that the court be polled on rehearing en banc." Pet. App. 39a.

REASONS FOR DENYING THE PETITION

I. Long-Standing Principles of Constitutional Avoidance and Judicial Restraint Prohibit Consideration of Petitioners' Claims.

Resolving the constitutional questions raised in the Petition will not alter the outcome of this case because T.O. only asserted constitutional claims against Angela Abbott, and Abbott remains entitled to qualified immunity under the Fifth Circuit law in effect as of January 31, 2017. Petitioners seek to circumvent

---

[4] The Amended Complaint also asserted conclusory discrimination claims against Fort Bend ISD. Pet. App. 48a. The Fifth Circuit affirmed the dismissal of those claims because "none of the factual allegations contained in the complaint permit the inference that T.O. was ever discriminated against because of his disability." Pet. App. 13a–14a & n.44.

well-settled rules of constitutional avoidance and judicial restraint by manufacturing a circuit split relating to the "clearly established" prong of qualified immunity. But the Fifth Circuit's test is no different than this Court's test, and the faithful application of traditional constitutional principles is both warranted and appropriate. The Petition should be denied.

A. The Fifth Circuit Examines Qualified Immunity Claims Using this Court's Binding Precedent.

The Fifth Circuit does not have its own test for deciding qualified immunity—it uses the test handed down by this Court:

> The basic steps of our qualified-immunity inquiry are well-known: a plaintiff seeking to defeat qualified immunity must show: (1) that the official violated a statutory or constitutional right; and (2) that the right was "clearly established" at the time of the challenged conduct.

Morgan v. Swanson, 659 F.3d 359, 370 (5th Cir. 2011) (en banc), *cert. denied*, 567 U.S. 905 (2012) (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). And when tackling the often-times difficult question of whether a claimed constitutional right is "clearly established," the Fifth Circuit is guided by what it describes as this Court's "four applicable commandments:"

> First, we must frame the constitutional question with specificity and granularity. For example, it is obviously beyond debate the Fourth Amendment prohibits certain unreasonable seizures. Yet that is not enough. The Supreme Court has repeatedly told courts not to define

> clearly established law at that high level of generality. Rather, the dispositive question is whether the violative nature of *particular* conduct is clearly established. That is because qualified immunity is inappropriate only where the officer had "fair notice"—in light of the specific context of the case, not as a broad general proposition—that his *particular* conduct was unlawful.
>
> Second, clearly established law comes from holdings, not dicta. Dictum is not law, and hence cannot be clearly established law . . ..[5]
>
> Third, overcoming qualified immunity is especially difficult in excessive-force cases. This is an area of the law in which the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent "squarely governs" the specific facts at issue . . . [E]xcessive-force claims often turn on "split-second decisions" to use [] force. That means the law must be *so* clearly established that—in the blink of an eye []—every reasonable officer would know it immediately.
>
> The fourth and final commandment is that we must think twice before denying qualified immunity. The Supreme Court reserves the extraordinary remedy of a summary reversal for decisions that are manifestly incorrect. Yet it

---

[5] What constitutes dicta in qualified immunity cases may differ from other cases. *Camreta*, 563 U.S. at 708 (stating that "a constitutional ruling preparatory to a grant of immunity creates law that governs the official's behavior" and is "[n]o mere dictum"); *see Morrow*, 917 F.3d at 875 n.6.

> routinely wields this remedy against denials of qualified immunity. Because of the importance of qualified immunity to society as a whole, the Supreme Court often corrects lower courts when they wrongly subject individual officers to liability. We'd be ill-advised to misunderstand the message and deny qualified immunity to anyone "but the plainly incompetent or those who knowingly violate the law."

Morrow v. Meachum, 917 F.3d 870, 874–76 (5th Cir. 2019) (internal citations, quotations, and alterations omitted) (emphasis in original); *see also Morgan*, 659 F.3d at 371–73 (discussing requirements for defining a "clearly established" constitutional right). If Petitioners take issue with this analytic approach, then their issue is with this Court's precedent—not a fictional circuit split involving the Fifth Circuit.

B. The Fifth Circuit Correctly Rejected T.O.'s Claimed Fourth Amendment Rights as Not Clearly Established.

Petitioners do not dispute Abbott's entitlement to qualified immunity on T.O.'s Fourteenth Amendment substantive due process claim. *See* Pet. 23, 27. But they do argue that the Fifth Circuit erroneously rejected T.O.'s Fourth Amendment claim as not "clearly established" based on "mere disagreements" over whether that specific Amendment applies to excessive student discipline. This argument is incorrect, in several respects.

The Fifth Circuit did not reject T.O.'s claimed Fourth Amendment right as not clearly established simply because it was confused about which constitutional provisions might apply to excessive discipline

claims. Other circuits may wrestle with this issue,[6] but Petitioners concede that the Fifth Circuit "forecloses any federal constitutional challenge by a student to a public school official's use of excessive force." Pet. 16. In fact, Petitioners specifically complain that "[u]nder Fifth Circuit precedent . . . a student cannot bring an excessive force claim under the Fourth Amendment because that would 'eviscerate this circuit's rule . . . prohibiting substantive due process claims' stemming from the same injuries." Pet. 16 (quoting *Flores*, 116 Fed. App'x at 510). While Petitioners may disagree with the Fifth Circuit's decision in *Flores*—and its earlier pronouncement in *Fee* that corporal punishment "does not constitute a [F]ourth [A]mendment search or seizure," 900 F.2d at 810—their displeasure goes to the merits of their underlying constitutional arguments, not the accuracy of the Fifth Circuit's qualified immunity test.

In evaluating T.O.'s excessive force claim, the Fifth Circuit recognized that the Fourth Amendment's companion right to be free from unreasonable searches applies in schools (albeit to a lesser degree to account for

---

[6] *See, e.g., P.B. v. Koch*, 96 F.3d 1298, 1303 n.4 (9th Cir. 1996) (declining to decide whether student's excessive force claim implicated the Fourth or Fourteenth Amendment because the principal's alleged actions were "clearly unlawful" "under any standard"). Notably, had the plaintiff in *P.B.* lived within the Fifth Circuit, the Fifth Circuit also would have allowed his claims to go forward because the principal's actions "did not involve his acting in a disciplinary role but rather engaging in an arbitrary assault." *See Jefferson*, 817 F.2d at 305–06 (rejecting defendants' reliance on *Ingraham* where teacher tied student to chair as instructional technique "with no suggested justification, such as punishment or discipline").

pedagogical interests),[7] but clarified: "In this circuit, [] claims involving corporal punishment are generally analyzed under the Fourteenth Amendment." Pet. App. 5a. Then, the court summarized various scenarios in which it had previously rejected constitutional claims alleging excessive student discipline, including a Fourth Amendment claim alleging that "a teacher threatened a student, threw him against a wall, and choked him after the student questioned the teacher's directive." Pet. App. 6a–7a (citing *Flores*, 116 Fed. App'x at 506). And, after addressing T.O.'s various "unpersuasive[] attempt[s]" to challenge Abbott's entitlement to qualified immunity, the court ultimately concluded that "for more than thirty years, the law of this circuit has *clearly protected* disciplinary corporal punishment from constitutional scrutiny." Pet. App. 11a (emphasis added).

Granted, the court did also mention the "inconsistency" in its Fourth Amendment caselaw, but only in the context of cases involving "other school officials," *i.e.,* school officials employed in a law enforcement capacity. Pet. App. 9a (citing *Keim*, 162 F.3d at 1159 and *Curran*, 800 F.3d at 661). This is not a distinction without a difference because Abbott's entitlement to qualified immunity turns, at least in part, on whether she had fair notice that *her* particular conduct potentially violated T.O.'s Fourth Amendment rights under the circumstances. *See City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 613 (2015) ("We have repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a high level of generality. Qualified

---

[7] *See* Pet. App. 5a (citing *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) and *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)).

immunity is no immunity at all if 'clearly established' law can simply be defined as the right to be free from unreasonable searches and seizures.") (internal citations and quotations omitted).

Notably, Petitioners cannot identify a single case in which the Fifth Circuit allowed a student to assert discipline-related excessive force claims against a teacher (or other non-law enforcement employee) under the Fourth Amendment. Meanwhile, the Fifth Circuit expressly rejected a Fourth Amendment claim factually similar to T.O.'s, *see Flores*, 116 Fed. App'x at 509–10, and specifically rebuffed attempts to rely on Fourth Amendment principles to circumvent its prior rulings, *see Fee*, 900 F.2d at 810. And although *Keim* and *Curran* allowed Fourth Amendment claims against law enforcement employees, the defendants in those cases did not argue that the plaintiffs' claims conflicted with *Ingraham* or *Fee*. The Fifth Circuit itself has rejected attempts to rely on *Curran* for this very reason. *See J.W. v. Paley*, 860 Fed. App'x 926, 930 (5th Cir. 2021) (unpublished) ("Although [*Curran*] did allow a Fourth Amendment claim against a school resource officer to get past summary judgment, the defendant had not argued that a student's Fourth Amendment right was at odds with *Fee*. As qualified immunity is an affirmative defense, the officer's failure to assert immunity on the grounds that students cannot bring Fourth Amendment claims meant the question was not squarely before the court.") (internal citations omitted).

All of this is to say that, when evaluating excessive student discipline claims against *teachers*—or claims against *other school officials* who assert qualified immunity based on *Ingraham* and/or *Fee*—the Fifth Cir-

cuit has not waivered. All such claims are consistently rejected, regardless of the constitutional provisions invoked. *See, e.g., Moore*, 233 F.3d at 874–75; *Fee*, 900 F.2d at 807–10; *Cunningham*, 858 F.2d at 271–72; *Ingraham*, 525 F.2d at 912–20; *Flores*, 116 Fed. App'x at 510; *Marquez v. Garnett*, 567 Fed. App'x 214, 217–18 (5th Cir. 2014) (unpublished); *Serafin v. Sch. of Excellence in Educ.*, 252 Fed. App'x 684 (5th Cir. 2007) (unpublished), *cert. denied*, 554 U.S. 922 (2008); *Paley*, 860 Fed. App'x at 930.[8] In this regard, the Fifth Circuit's test for determining whether a student has asserted a "clearly established" right under existing law is no different than the test used by circuits that allow excessive student discipline claims irrespective of the claimed constitutional source.[9] The Fifth Circuit's qualified immunity analysis may lead to *results* at odds with other circuits, but those results necessarily flow from the fact that the Fifth Circuit's underlying *law* is different.

And, even setting aside the Fifth Circuit's unique approach to excessive discipline claims, T.O. still cannot show that his claimed Fourth Amendment rights are clearly established.

---

[8] Even considering *Keim* and *Curran*, those rulings, at most, suggest confusion over whether *Ingraham* and *Fee* apply to Fourth Amendment claims asserted against school officials employed in a law enforcement capacity—an issue not relevant to this case.

[9] Petitioners rely on the Fifth Circuit's inclusion of a truncated quotation from *Moore* to suggest otherwise, *see* Pet. 23, but their argument falls short. *Moore* did not define a "clearly established" right relating to excessive student discipline under any constitutional theory. To the contrary, it specifically rejected the notion that excessive corporal punishment implicates a student's constitutional right to bodily integrity. *See* 233 F.3d at 875.

C. This Court Has Not Considered the Open Question of Whether Excessive Corporal Punishment Violates the Constitution.

Petitioners presuppose that T.O.'s Fourth Amendment rights in this particular context are beyond debate, but the overall level of ambiguity in this area of the law is the very antithesis of "clearly established." This Court has not yet decided whether or to what extent excessive student discipline violates the Fourth Amendment—or, for that matter, the Fourteenth Amendment's substantive due process component—much less what standard would apply to such claims. *See Ingraham*, 430 U.S. at 673 n. 42 ("[T]he principal concern of [the Fourth] Amendment's prohibition against unreasonable searches and seizures is with intrusions on privacy in the course of criminal investigations. Petitioners do not contend that the Fourth Amendment applies, according to its terms, to corporal punishment in public school.") (internal citations omitted); *id at* 679 n. 47 ("We have no occasion in this case [] to decide whether or under what circumstances corporal punishment of a public school child may give rise to an independent federal cause of action to vindicate substantive rights under the Due Process Clause.").[10] This lack of guidance is significant to the question of qualified immunity.

Although the Court held in *Graham v. Connor*, 490 U.S. 386 (1989), that "*all* claims that law enforcement officers have used excessive force [] in the course of an

[10] On several occasions, this Court has questioned whether controlling circuit precedent could constitute clearly established law under the circumstances presented. *See Sheehan*, 575 U.S. at 614; *Carroll v. Carman*, 574 U.S. 13, 17 (2014); *Reichle v. Howards*, 566 U.S. 658, 665–66 (2012).

arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its reasonableness standard," *id*. at 395, the courts of appeal disagree on whether or how that ruling impacts excessive discipline claims against school officials. *See* Pet. 12–19. This confusion is not surprising.[11] While students, generally, do not shed their constitutional rights at the schoolhouse gate, *see Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969), this Court routinely acknowledges that their rights are limited to those appropriate for students in the public school setting. *See Vernonia Sch. Dist. 47J*, 515 U.S. at 655–56. So, when and to what extent do constitutional protections apply to students once they walk through that schoolhouse gate? The answer to this highly-debated question is a treasured favorite of many lawyers: "It depends."

When this Court first held that the Fourth Amendment applies to searches conducted in public schools, it simultaneously eliminated the traditional warrant and probable cause requirements, citing the unique educational environment that justified a more lenient standard:

> Just as we have in other cases dispensed with the warrant requirement when the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search, we hold

---

[11] This Court has confirmed that *Graham* does not constitute "clearly established" law as to every possible scenario in which officers may be required to use excessive force. *See Sheehan*, 575 U.S. at 613–14 ("*Graham* holds only that the objective reasonableness test applies to excessive-force claims under the Fourth Amendment. That is far too general a proposition to control this case.") (internal citations and quotations omitted).

> today that school officials need not obtain a warrant before searching a student who is under their authority. . . [And] the accommodation of the privacy interests of school children with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause . . . Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.

T.L.O., 469 U.S. at 340–41 (internal citations and quotations omitted);[12] *see Vernonia Sch. Dist. 47J*, 515 U.S. at 655–56 (emphasizing that "the nature of [school officials'] power is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults," and holding that "Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children").

In evaluating the Fourth Amendment claims at issue in *T.L.O.*, Justice Powell, in particular, stressed the importance of limiting constitutional protections in the public school setting:

> The primary duty of school officials and teachers, as the Court states, is the education and training of young people. A State has a compelling interest in assuring that the schools meet this responsibility. Without first establishing

[12] The claims in *T.L.O.* did not involve allegations of excessive force, so the Court did not squarely address that issue.

> discipline and maintaining order, teachers cannot begin to educate students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern. For me, it would be unreasonable and at odds with history to argue that the full panoply of constitutional rules applies with the same force and effect in the schoolhouse as it does in the enforcement of criminal laws.

469 U.S. at 350 (Powell, J., joined by O'Connor, J., concurring).

Although *T.L.O.* rejected arguments that school officials act solely *in loco parentis* when dealing with students, such that the Fourth Amendment would not apply in public schools, *id.* at 339–40, the Court has relied on the doctrine in other contexts to significantly curtail students' constitutional rights. For example, in *Mahanoy Area School District v. B.L.*, 141 S. Ct. 2038 (2021), the Court stressed the doctrine's significance in student free speech cases:

> [W]e have also made clear that courts must apply the First Amendment "in light of the special characteristics of the school environment." One such characteristic, which we have stressed, is the fact that schools at times stand *in loco parentis*, *i.e.,* in the place of parents.

Id. at 2044–45 (internal citations and quotations omitted); *see Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (Allowing educators to exercise editorial control over student speech in school-sponsored activities "is consistent with our oft-expressed view

that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges."); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683–84 (1986) (discussing cases that "recognize the obvious concern on the part of parents, and school authorities acting *in loco parentis*, to protect children—especially in a captive audience—from exposure to sexually explicit, indecent, or lewd speech," and finding that the "determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board" rather than the federal courts).

The Court has also recognized that the doctrine generally encompasses student discipline, *Mahanoy*, 141 S. Ct. at 2046, though members of the Court have disagreed on the extent to which it should be applied. *See, e.g., Safford Unified Sch. Dist. v. Redding*, 557 U.S. 364, 382–83 (2009) (Thomas, J., concurring in part and dissenting in part) ("The majority imposes a vague and amorphous standard on school administrators. It also grants judges sweeping authority to second-guess the measures that these officials take to maintain discipline in their schools and ensure the health and safety of the students in their charge. This deep intrusion into the administration of public schools exemplifies why the Court should return to the common-law doctrine of *in loco parentis* under which the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and teachers to set and enforce rules and to maintain order.") (internal citations and quotations omitted).

With respect to corporal punishment in public schools, this Court has held that students are *not* entitled to procedural due process under the Fourteenth Amendment before corporal punishment is imposed, and that excessive corporal punishment does *not* implicate the Eighth Amendment's prohibition on cruel and unusual punishment. *Ingraham*, 430 U.S. at 683. Setting aside the conflicting opinions across the "deeply divided" federal courts of appeal, this Court's rulings in *Ingraham* likely begin and end the conversation of what constitutes "clearly established" law in this particular context.

Unfortunately, cases involving the applicability of other constitutional rights in the public school setting provide little to no guidance on whether or to what extent courts should recognize excessive force claims under the Fourth and/or Fourteenth Amendments. For example, does the doctrine of *in loco parentis* diminish a student's substantive rights with respect to excessive corporal punishment? If so, to what extent? Also, to what degree does a school official's use of excessive force deprive a student of a constitutionally-protected liberty or privacy interest, given that it occurs in a school environment where students' liberty and privacy are already curtailed and are otherwise distinguishable from rights that may exist beyond the schoolhouse gate? And if state and local officials have already developed legal frameworks for determining whether a specific use of force was reasonable under the circumstances, and for remedying the use of unreasonable force, what, if any, is the proper role of the federal courts in deciding (or second-guessing) these issues?

This Court has not directly addressed these questions, and the federal courts of appeal disagree on how

they should be answered. "Where no controlling authority specifically prohibits a defendant's conduct, and when the federal circuit courts are split on the issue, the law cannot be said to be clearly established." *Morgan*, 659 F.3d at 372 (citing *Wilson v. Layne*, 526 U.S. 603, 617–18 (1999)); *see al-Kidd*, 563 U.S. at 742 ("The general proposition, for example, that an unreasonable search or seizure violates the Fourth Amendment is of little help in determining whether the violative nature of particular conduct is clearly established."); *Redding*, 557 U.S. at 378–79 ("*T.L.O.* directed school officials to limit the intrusiveness of a search, 'in light of the age and sex of the student and the nature of the infraction' . . . But we realize that the lower courts have reached divergent conclusions regarding how the *T.L.O.* standard applies to [strip] searches"). As this Court has explained:

> [I]f judges thus disagree on a constitutional question, it is unfair to subject [govern officials] to money damages for picking the losing side of the controversy.

Wilson, 526 U.S. at 618.

It would be particularly unfair to subject Abbott to liability when this Court has never addressed whether excessive corporal punishment implicates substantive due process or the Fourth Amendment; when the Fifth Circuit, as a whole, has for nearly 50 years remained steadfast in its belief that excessive student discipline does not violate the Constitution; and when the qualified immunity analysis in excessive force cases, in general, is highly particularized and fact-specific. *See Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018) ("Use of excessive force is an area of the law in which the result depends very much on the

facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue.") (internal citations and quotations omitted).

So, the question then becomes: What, if anything, should the Court do with Petitioners' claims?

D. Deciding the Constitutionality of Excessive Corporal Punishment is Neither Unavoidable Nor Absolutely Necessary to the Outcome of this Case and Should Therefore be Avoided.

After detailing the open questions of law relative to excessive discipline claims, the temptation to decide them once and for all may be overwhelming. But this case is not the proper vehicle for that endeavor. Because Abbott remains entitled to qualified immunity, no matter the ultimate outcome of this case, deciding the merits of T.O.'s claims would "depart[] from the general rule of constitutional avoidance and run[] counter to the older, wiser judicial counsel not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Pearson*, 555 U.S. at 241 (internal citations and quotations omitted); *see also Spector Motor Svc.*, 323 U.S. at 105 ("If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality [] unless such adjudication is unavoidable."); *Burton*, 196 U.S. at 294 ("It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.").

Fidelity to these time-honored principles is warranted, notwithstanding the sensitive nature of T.O.'s claims. As this Court has previously noted, there are

numerous avenues for resolving constitutional questions that do not betray foundational rules of constitutional jurisprudence:

> [T]he development of constitutional law is by no means entirely dependent on cases in which the defendant may seek qualified immunity. Most of the constitutional issues that are presented in § 1983 damages actions [] also arise in cases in which that defense is not available . . ..

Pearson, 555 U.S. at 242; *see also Camreta*, 563 U.S. at 727–28 (discussing constitutional cases in which qualified immunity does not apply). To the extent the Court is inclined to resolve the constitutionality of excessive student discipline, it should do so in a case where its ruling will have an impact on the claims at issue. In the meantime, students within the Fifth Circuit will continue to be protected from unreasonable student discipline under applicable state law, and they will continue to have the opportunity to seek legal recourse against overzealous disciplinarians in state civil and criminal courts.

The Petition should be denied.

II. The Fifth Circuit's Test for Analyzing Excessive Corporal Punishment Claims is Consistent with this Court's Historic Reluctance to Constitutionalize State Law Tort Claims.

Great efforts have been made to cast the Fifth Circuit's handling of excessive student discipline claims as absurd or clearly erroneous, but the court's approach is not devoid of legal or historical support. As detailed above, the Constitution "does not purport to supplant traditional tort law," and the Fourteenth Amendment was never intended to be a "font of tort

law to be superimposed upon whatever systems may already be administered by the States." *Daniels*, 474 U.S. at 332; *see also Davis*, 424 U.S. at 701 ("We have noted the constitutional shoals that confront any attempt to derive from congressional civil rights statutes a body of general federal tort law; A fortiori, the procedural guarantees of the Due Process Clause cannot be the source for such law."). These core constitutional principles are what shaped the Fifth Circuit's test.

In *Ingraham*, the Fifth Circuit initially considered whether allowing corporal punishment in schools is arbitrary, capricious, or unrelated to legitimate educational goals. After deciding that it is not, the court "refused to look at each individual instance of punishment to determine if it has been administered arbitrarily or capriciously." 525 F.2d at 917. Why?

> We think it a misuse of our judicial power to determine, for example, whether a teacher has acted arbitrarily in paddling a particular child for certain behavior or whether in a particular instance of misconduct five licks would have been a more appropriate punishment than ten licks.

Id. And, even though one of the students alleged that two assistant principals "held [him] in a prone position while [the principal] administered twenty blows," causing him to "suffer[] a painful bruise that required the prescription of cold compresses, a laxative, sleeping and pain-killing pills and ten days of rest at home," *id.* at 911, the court declined to find a substantive due process violation:

> We emphasize that it is not this court's duty to judge the wisdom of particular school regulations governing matters of internal discipline. Only if the regulation bears no reasonable relation to the legitimate end of maintaining an atmosphere conducive to learning can it be held to violate the substantive provision of the due process laws.

Id. at 917.

To be clear, the court did not condone state-sanctioned child abuse—it simply disagreed with the plaintiffs' assertion that allegations of excessive corporal punishment implicate the Constitution:

> We do not mean to imply by our holding that we condone child abuse, either in home or the schools. We abhor any exercise of discipline which could result in serious or permanent injury to the child. Indeed, if the force used by defendant teachers in disciplining plaintiff was as severe as plaintiffs allege, a Florida state court could find defendants civilly and criminally liable . . . The basis of such actions is, however, tort and criminal law, not federal constitutional law . . .
>
> In short, scrutiny of the propriety of physical force used by a school teacher upon his or her student should be the function of a state court, with its particular expertise in tort and criminal law questions. . ..

Id. at 915. As previously noted, this Court affirmed the Fifth Circuit's rejection of the plaintiffs' Eighth Amendment and Fourteenth Amendment procedural

due process claims but declined to review the substantive due process question.

Several years later, the Fifth Circuit reaffirmed *Ingraham* and its progeny in *Fee*:

> Our precedents dictate that injuries sustained incidentally to corporal punishment, irrespective of the severity of these injuries or the sensitivity of the student, do not implicate the due process clause *if* the forum state affords adequate post-punishment civil or criminal remedies for the student to vindicate legal transgressions. The rationale, quite simply, is that such states have provided all the process constitutionally due. Specifically, states that affirmatively proscribe and remedy mistreatment of students by educators do not, by definition, act "arbitrarily," a necessary predicate for substantive due process relief.

900 F.2d at 808; *see also id.* at 809 ("Texas does not allow teachers to abuse students with impunity and provides civil and criminal relief against educators who breach statutory and common law standards of conduct.").[13] The court reiterated its reluctance to constitutionalize state law tort claims, as well as its continued unwillingness to intrude upon areas traditionally governed by state and local officials:

---

[13] TEX. EDUC. CODE § 22.0511(a) (providing that professional immunity does not apply to "excessive force in the discipline of students or negligence resulting in bodily injury to students"); TEX. PENAL CODE § 9.62 (authorizing educators to use only force that "the actor reasonably believes [] is necessary to . . . maintain discipline in a group"); *id at* §§ 22.01 & 22.04 (defining criminal offenses of assault and injury to a child).

> [T]he Constitution is not a criminal or civil code to be invoked invariably for the crimes or torts of state educators who act in contravention of the very laws designed to thwart abusive disciplinarians.
>
> . . .
>
> This circuit has consistently avoided any inquiry into whether five, ten, or twenty swats invokes the [F]ourteenth [A]mendment. Thus, we have avoided having student discipline, a matter of public policy, shaped by the individual predilections of federal jurists rather than by state lawmakers and local officials. We find no constitutional warrant to usurp classroom discipline where states, like Texas, have taken affirmative steps to protect their students from overzealous disciplinarians.

Id. at 808–09 (internal citations omitted).

The court also directly addressed—and rejected—the criticism that its rulings made students vulnerable to extreme abuse and deprived them of their chosen remedy:

> The Fees admonish this circuit for adhering to an "overly rigid" rule, one that allegedly does not contemplate egregious cases of student discipline, such as physical disfigurement or, as here, severe emotional injury. They underscore their displeasure with *Cunningham* and other precedent by suggesting that teachers could mutilate or torture students in the pursuit of discipline without federal constitutional relief.
>
> We reject these emotionally charged criticisms as misplaced. The plaintiffs do not, and in fact

> cannot, claim that they lack adequate post-punishment remedies at the state level, under the facts as alleged in this case. The fact that they perceive federal damage recovery to be potentially more generous . . . is irrelevant to our inquiry and does not make state relief inadequate.
>
> It is an overstatement to suggest that students can suffer extreme injury at the hands of educators without recourse. Admittedly, under *Cunningham* their choice of forum may be restricted to state courts. However, it is important to note that the *Cunningham* rule has been crafted to operate in the narrow context of student discipline administered within the public schools of states that authorize only reasonable discipline and, further, provide post-punishment relief for departures from its law. The inquiry, predictably, would differ in states that authorize neither.

Id. at 809. And, the court rejected the plaintiffs' attempt to undermine its precedent with cases involving constitutional rights applicable in a prison setting, stating: "[T]he *Ingraham* Court has already rejected the application of the [E]ighth [A]mendment to student punishment, and the paddling of recalcitrant students does not constitute a [F]ourth [A]mendment search or seizure." *Id.* at 810; *see also Flores*, 116 Fed. App'x at 509–10 (rejecting discipline-related Fourth Amendment claim).

The logic underlying the Fifth Circuit's rulings—*i.e.*, its overall reluctance to constitutionalize state law torts or interfere in the daily operations of public schools—has been echoed by members of the Court

throughout this Nation's history. *See, e.g., Redding*, 557 U.S. at 382–83; *Lewis*, 523 U.S. at 841; *Collins*, 503 U.S. at 128–29; *DeShaney v. Winnebago Cnty. Dep't of Soc. Svcs.*, 489 U.S. 189, 201 (1989); *T.L.O.*, 469 U.S. at 340; *Milliken*, 418 U.S. at 741–42; *Epperson*, 393 U.S. at 104.

Notably, although other circuits disagree with *Ingraham* and *Fee*, the Fifth Circuit's approach does not directly conflict with any decision from this Court. Admittedly, the Court has held in other distinct contexts that post-deprivation remedies are irrelevant to a substantive due process analysis—*see, e.g., Zinermon v. Burch*, 494 U.S. 113 (1990) (involving a state mental health treatment facility) and *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019) (involving a Fifth Amendment takings claim)—but, as detailed above, the Court has also routinely held that students' constitutional rights are limited in the public school setting, assuming they apply at all. In fact, the Court has already foreclosed two avenues of constitutional relief in the specific context of disciplinary corporal punishment. *Ingraham*, 430 U.S. at 672, 682 (holding that the Eighth Amendment does not apply to disciplinary corporal punishment and that the Fourteenth Amendment does not require notice and a hearing prior to the imposition of corporal punishment, as authorized and limited by state law).

The federal constitutional rights of students in the public school setting are often limited. Where a State both prohibits and remedies the use of unreasonable force against students, student disciplinary issues should be shaped by state lawmakers and local officials, rather than "the individual predilections of federal jurists."

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of certiorari.

Respectfully submitted,

Stephanie A. Hamm
Christopher B. Gilbert
Counsel of Record
THOMPSON & HORTON LLP
3200 Southwest Freeway, Ste. 2000
Houston, Texas 77027
cgilbert@thompsonhorton.com
(713) 554-6744
Counsel for Respondents

DATED: May 5, 2022