No. ____

In the Supreme Court of the United States

JANTZEN VERASTIQUE; DONDI MORSE; AND PARKER NEVILLS,

Petitioners,

v.

THE CITY OF DALLAS, TEXAS,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Questions Presented are:

I. Whether this Court's holding in *Leatherman v. Tarrant Cnty. Narcotics Intel. and Coordination Unit*, 507 U.S. 163 (1993) is applicable to a § 1983 pleading in which deliberate indifference of a governmental entity is asserted because of a pattern of constitutional violations committed by the same officer.

II. Whether the *similarity* requirement to show an actionable pattern of constitutional violations under this Court's interpretation of § 1983's deliberate indifference in *Connick v. Thompson*, 563 U.S. 51 (2011) only requires the same constitutional violations committed *in the same way*, or whether those previous actions must be factually identical.

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Jantzen Verastique; Dondi Morse; and Parker Nevills, are the Petitioners and were Plaintiff-Appellants in the court of appeals.

David Baker, *also known as* Dabi Baker, and Maggie Little, were also Plaintiffs-Appellants in the court of appeals, but this petition does not refer to the challenge against the dismissal of their claims.

Yolanda Dobbins was also one of the Plaintiffs-Appellants, but she waived any challenge against the dismissal of her claims, as expressly recognized by the court of appeals.

The City of Dallas, Texas, is the Respondent and was one of the Defendants-Appellees in the court of appeals.

Dallas County, and Dallas County Sheriff's Office, were the other Defendants-Appellees in the court of appeals, but the remaining claims against them were forfeited by the Plaintiffs-Appellants, as expressly recognized by the court.

Sergeant Roger A. Rudloff, Senior Corporal Russell Barrett, Senior Corporal Chinh Weltman, David Pillar, and Thomas Hoffman, are still Defendants in the district court, but were not part of the court of appeals case, since a final judgment under FED. R. CIV. P. 54(b) was entered as to the Defendants-Appellees aforementioned.

No corporate disclosure is needed in this case pursuant to Rule 29.6 of the Rules of this Court.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

- *Jantzen Verastique; Dondi Morse; Parker Nevills; Yolanda Dobbins; David Baker, also known as Dabi Baker; Maggie Little, v. The City of Dallas, Texas; Dallas County; Dallas County Sheriff's Office*, No. 23-10395, United States Court of Appeals for the Fifth Circuit, judgment entered on July 8, 2024 (106 F.4th 427).

- *Jantzen Verastique, Dondi Morse, Parker Nevills, Yolanda Dobbins, David Baker (aka Dabi Baker), and Maggie Little, v. City of Dallas, Dallas County, Dallas County Sheriff's Office*, *et al.*, No. 3:22-CV-1182-C, United States District Court for the Northern District of Texas, Dallas Division, motions to dismiss granted on March 20, 2023 (2023 WL 11842518 & 2023 WL 11842519).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. 1a) was published at 106 F.4th 427. The district court's order (Pet. App. 30a) was unpublished.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 2024. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The Civil Rights Act of 1871, 42 U.S.C. § 1983, provides, in relevant part,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983.

INTRODUCTION

Section 1983 creates a cause of action against any person who acts under color of state law to abridge rights created by the Constitution and laws of the United States. *See generally Monroe v. Pape*, 365 U.S. 167 (1961). Its text and history reveal that § 1983's "central purpose" is "to provide compensatory relief to those deprived of their federal rights by state actors." *Felder v. Casey*, 487 U.S. 131, 141 (1988). Section 1983 was enacted because many states were not adequately protecting individual rights and were enforcing their own laws discriminatorily, so the new remedy was precisely designed to vindicate "federally secured rights." *Smith v. Wade*, 461 U.S. 30, 34 (1983).

In this statutory context, Petitioners filed a complaint under § 1983 against several governmental entities and officers, seeking injunctive relief and damages due to a series of constitutional violations while they were peacefully participating in a protest in Dallas. In their complaint, Petitioners asserted factual allegations against the City of Dallas establishing, among other things, the past failure to discipline the officer that violently attacked them, despite having notice of a pattern of actions that represented an actionable deliberate indifference.

In order to plausibly plead a claim of this nature, Petitioners needed to show that the city's failure amounted to deliberate indifference, and the existence of a causal link between that failure and the violations they suffered in their constitutional rights. *Oklahoma City v. Tuttle*, 471 U.S. 808, 823-824 (1978). That required Petitioners to plausibly present prior incidents in which the officer acted in a *similar* way to the facts alleged in this case. Petitioners did precisely

that, presenting in detail 19 previous incidents of the same officer, each in which he interacted with people by using excessive force and deviated from the nature of his duty as a police officer. Pet. App. 35a-39a. Petitioners met the requirements for pleadings under the Federal Rules of Civil Procedure and this Court's precedents.

Yet, the Fifth Circuit made numerous inferences in their prejudice, speculating just how the Defendants might overcome the allegations even though the pleading standard for a case like this is no higher than it is for others. *Leatherman*, 507 U.S. at 168. The Fifth Circuit simply disregarded the large number of previous incidents in which the same officer was involved, by asking hypothetical questions about missing pieces of information that could lead to alternative theories of what happened or justifications for the officer's behavior. The court improperly resolved those inferences in favor of the City Defendant.

Similarly, while analyzing Petitioners' argument that those actions consisted of a pattern of constitutional violations that would have put the city on notice, the Fifth Circuit dismissed the allegations, by considering essentially that the incidents were not factually identical to those suffered by the Petitioners, disregarding this Court's holding that past violations only need to be *similar*, as expressly recognized in *Connick*, 563 U.S. at 61.

As the dissent below recognized, the majority's reasoning defies *Leatherman* and *Connick*. The opinion increased the standard required by this Court to plausibly plead a claim under § 1983, and heightened this Court's holding as to what type of past

constitutional violations could constitute a noticeable pattern. The decision is deeply flawed and creates utterly illogical conclusions. Under this Court's interpretation of the scope and nature of § 1983, the Fifth Circuit's holding cannot be the prevailing rule.

In addition, the Fifth Circuit is in open and clear contradiction of other circuits' holdings, specifically the Sixth Circuit. Under the same federal law, the Petitioners' claims would have a completely different outcome in circuits other than the Fifth. This Petition offers a straightforward vehicle to resolve the circuit split. Also, the questions presented are of great legal and practical significance, ensuring that plaintiffs of such cases have certainty as to the scope of the rules that will govern their legal claims, and providing clear guidelines for officers and governmental entities.

Consistent with precedents, and the text, nature and scope of § 1983, this Court should grant certiorari and reverse the Fifth Circuit.

STATEMENT OF THE CASE

A. Factual background.

During the spring of 2020, multiple protests took place throughout our country in response to the murder of George Floyd by a police officer in Minneapolis, Minnesota. It is well known that those public displays against the treatment toward Black people by police officers led to multiple interactions between law enforcement officers and protestors, which included in many instances injuries and mass arrests. The City of Dallas was no exception.

On May 30, 2020, Petitioners peacefully joined the protests. Despite the unnecessary adjectives used

by the Fifth Circuit, and the pointless efforts to mischaracterize the Dallas protest as a riot (Pet. App. 2a-3a.), the court of appeals could not extend those adjectives to Petitioners, who at all times behaved as peaceful participants of it.

Petitioners Jantzen Verastique and Dondi Morse marched together, and among others were ultimately forced by police officers to walk into a grassy slope. Petitioners noticed a Black woman on the ground crying out in pain and joined other protestors to assist her, just to be suddenly attacked by several officers, led by Sergeant Roger A. Rudloff. *Id*. at 18a-19a.

Officers ignored Petitioners' attempts to explain that no crime had been committed, and despite that they did not represent a threat, Sergeant Rudloff advanced towards Ms. Verastique with a rifle, aiming directly at her chest and ordering her to place her hands in the air. Despite Verastique's full compliance, Rudloff deliberately shot her at close range with a "less-than-lethal pepper ball round", causing substantial pain, immediate bruising, and difficulty breathing. *Id*. at 19a-20a.

The incident did not stop there. Once Ms. Verastique collapsed, Sergeant Rudloff aimed his weapon at Ms. Morse, who had no option but to raise her hands above her head. Without probable cause, Rudloff placed them under arrest and failed to provide any medical help to Ms. Verastique while she was visibly suffering. *Id*. at 20a.

While this was happening, Parker Nevills approached Ms. Verastique hoping to help her and was also met with pepper balls. Again, without

probable cause, Sergeant Rudloff placed Mr. Nevills under arrest. Mr. Nevills voluntarily placed his hands behind his back, but Rudloff, using excessive force and with no reasonable purpose, kneed him in the groin area, then grabbed him by the hair, forced him on the ground, and placed him in handcuffs. *Id*. at 20a-21a.

Ms. Verastique and Ms. Morse were condemned by the officers for protesting, and some made unmistakable comments acknowledging they did not commit any crime. Officers even recognized that they were being arrested because an unidentified person, totally unrelated to them, threw something at an officer. *Id*. at 19a.

Petitioners were individually charged with criminal offenses, but ostensibly due to the lack of probable cause during their arrests ultimately all charges were dropped just two weeks later, effectively ending all criminal proceedings without a single conviction.

B. Procedural background.

On May 31, 2022, Petitioners filed a complaint against several Defendants for violations of § 1983, including claims against the City Respondent for failures to discipline their officers, specifically, Sergeant Roger A. Rudloff. Petitioners included detailed allegations of 19 complaints describing how Sergeant Rudloff had committed multiple and egregious constitutional violations in the past, and thus, was a well-known aggressor, but nonetheless had never been terminated or even adequately disciplined. *Id*. at 35a-39a. To the contrary, the City gave him authority over other officers in carrying the Department's policies during the protest in which Petitioners peacefully participated. *Id*. at 38a-39a.

On August 16, 2022, the City of Dallas filed a Motion to Dismiss[1] in which, among other things, argued that Sergeant Rudloff's prior bad acts could not have put the City of Dallas on notice that the officer was in any way inclined to unlawfully arrest or violate Plaintiffs' constitutional rights. *Id.* at 5a.

The district court agreed with that reasoning and granted the Motion to Dismiss on August 20, 2023. *Id.* at 30a-32a. On August 22, 2023, the court filed an Amended Rule 54(b) Judgment dismissing Plaintiffs' claims against the specific Defendants that filed the motions, in their entirety and with prejudice. *Id.* at 33a-34a.

The district court stated that the Complaint failed to allege facts "that amount to deliberate indifference in any alleged unconstitutional policy, practice, or procedure that was a moving force behind the alleged constitutional violations . . .." *Id.* at 31a.

Petitioners properly rebutted the dismissal in their appeal brief, in which it was explained how the pleading provided highly specific information, detailing each of Sergeant Rudloff's previous incidents of excessive use of force and malicious treatment of members of the community. *Id.* at 24a-28a. Since Rudloff was never terminated or properly disciplined, despite the numerous violent episodes in which he had a protagonist role, Petitioners argued the existence of a pattern of constitutional violations, of which the Dallas Police Department had notice. *Id.* Petitioners therefore pleaded, at least plausibly at that moment, that Respondent's failures allowed Rudloff to

[1] On August 8, 2022, Defendants Dallas County, and Dallas County Sheriff's Office, also filed a Motion to Dismiss that was granted by the District Court on March 20, 2023. *Id.* at 5a.

participate in the 2020 protests and engage in his egregious misconduct, thereby acting as the moving force behind Petitioners' constitutional injuries. *Id*.

The Fifth Circuit, however, affirmed the dismissal, by concluding that Plaintiffs did not plead a proper claim in the context of a failure-to-discipline claim, mainly because in the court's opinion, the complaint did not present specific facts regarding a *persistent* and *widespread* practice. *Id*. at 7a-9a.

The court found that 19 incidents involving the same officer did not constitute an actionable pattern of conduct, because they were just "conclusory and devoid of critical factual enhancement." *Id*. The court classified those incidents in two large groups: the first one, composed of eight incidents where it found Petitioners failed to explain the presence of physical or verbal abuse, and Petitioners did not describe the circumstances, as well as how the respective complaints were finally resolved. *Id*. The court filled any margin of doubt with inferences in favor of the City Defendant, and thus, reached that determination by applying a higher pleading standard despite the nature of the § 1983 claims contained in the complaint.

Additionally, the Fifth Circuit's conclusion as to the second group of incidents is inapposite. The court of appeals recognized the existence of prior incidents in which officer Rudloff was involved, but dismissed the idea of a pattern of facts, since the prior complaints did not involve "less-than-lethal" weapons and did not occur in the context of a comparable public protest. *Id*. at 9a-10a. Under that interpretation, peaceful protesters that were marching on foot, even if subjected to violent actions from the same officer,

could not allege the existence of a pattern of constitutional violations, since the Petitioners were not arrested for public intoxication, were not choked or struck with the palm of a hand, and were not involved in traffic stops (*Id*. at 9a), like it happened with the previous people that had the misfortune of interacting with Sergeant Rudloff.

The Fifth Circuit went further away and added, that in any case, the City of Dallas could not know that Sergeant Rudloff's actions during the protest were a predictable consequence, since the complaint did not present a sufficient number of incidents to create a pattern capable of providing constructive notice, due to the existence of less than one incident per year against such an officer. *Id*. at 10a-12a. Thus, according to the court, there was not a pattern of unconstitutional violations by considering the size of the Dallas Police Department and the number of arrests the officers handle on daily basis. *Id*. at 12a-13a.

In the opinion below, the Fifth Circuit chose to disregard this Court's precedents, created a circuit split, and overall, reached the wrong conclusion on the law by creating standards that are simply incompatible with Section 1983's nature and scope.

This Court should grant certiorari as it will be explained.

REASONS FOR GRANTING THE PETITION

This case presents two independent issues that satisfy this Court's certiorari criteria. The Fifth Circuit resolved both issues in clear conflict with other circuits, and in open defiance to this Court's precedents.

As the dissent below recognized, in dismissing Petitioners' § 1983 complaint, the Fifth Circuit defied this Court's clear *Leatherman* directives regarding the plausibility standard applicable to § 1983 pleadings, while also conducting an erroneous interpretation of this Court's holding in *Connick* as to the *similarity* requirement to plausibly plead the presence of an actionable pattern of constitutional violations. This decision is in direct conflict with this Court's clear established precedents, without providing a rational basis for its divergent holding. The Fifth Circuit's conclusion is also in conflict with decisions from other courts, specifically the Sixth Circuit.

Both issues presented are important to the adjudication of frequently recurring claims arising under the rights afforded and guaranteed by the Constitution. The Court should grant certiorari to resolve them.

I. The Fifth Circuit disregarded the application of *Leatherman*'s holding in finding that Petitioners failed to plead a § 1983 claim.

In their original complaint, Petitioners explained how, after the 2020 Dallas protests, they learned from a journalism report about 19 similar incidents in which Sergeant Rudloff had been involved. Pet. App. 35a-39a. The complaint highlighted how numerous people, just like Petitioners, unlawfully suffered constitutional violations while interacting with the officer. *Id.*

While analyzing the City's motion to dismiss, the Fifth Circuit considered that from the 19 incidents, eight were not specific enough and were too vague. *Id.* at 7a. The court, in an unusual

methodological structure, even formulated some inquisitorial questions to purportedly demonstrate such lack of specificity. Indeed, the court stated: "Where did those incidents take place? Did all eight involve both physical and verbal abuse? How did the abuse occur? What even are the alleged constitutional violations? How was each complaint resolved? Plaintiffs do not say, and we have not a clue." *Id*. at 8a.

The court did not stop there. As to the rest of Sergeant Rudloff's previous incidents, the court considered that they did not include sufficient factual detail. Again, by disregarding that the case was merely in the pleadings stage, and by acting essentially like a prosecutorial body, the court formulated a new set of questions to refute Petitioners' claims: "What prompted the encounters? Did the individuals threaten Rudloff with physical harm? Were they attempting to resist arrest?". *Id*.

The court of appeals wrongfully ignored that it was a pleading what they were analyzing. The dissenting opinion below correctly concluded that Petitioners' complaint satisfied this Court's standards, because it combined general allegations and specific ones regarding Sergeant Rudloff's past actions. However, the majority wrongfully made inferences not in Petitioners' favor, while also speculating as to just how the City might overcome the fail-to-discipline claim. *Id*. at 25a.

The dissent below explained how the majority drew inferences on behalf of the City Defendant, presenting potential justifications for actions that are plainly and simply unjustifiable. *Id*. Indeed, even if there is an explanation for Sergeant Rudloff's past

actions, the City Defendant would have the chance to show evidence in that regard and bring those points in a motion for summary judgment or trial. *Id.* at 26a.

The Fifth Circuit's opinion defies this Court's opinion in *Leatherman*, in which a complaint was filed based upon two incidents involving the execution of search warrants by local law enforcement officers, and thus, under *Monell* (*see generally Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978)) a claim was raised for municipal liability for Defendants' failure to adequately train the police officers involved. *Leatherman*, 507 U.S. at 164-65. This Court granted certiorari explicitly to decide whether federal courts needed to apply a higher pleading standard while dealing with a municipal liability claim under § 1983. *Id.* at 164. That issue is coincident with the one analyzed in this case by the opinion below.

This Court's precedent left no room for doubt. In reversing the Fifth Circuit, this Court held that a more demanding rule for pleading a complaint in a § 1983 case is inconsistent with the Federal Rules of Civil Procedure. *Id.* at 168. This Court held that "[…] it is impossible to square the "heightened pleading standard" applied by the Fifth Circuit in this case with the liberal system of "notice pleading" set up by the Federal Rules". *Id.* According to this Court's precedents, a complaint only requires setting out in detail the factual basis for the claim, through a "short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957).

Rule 9(b) only requires such a higher standard in two specific instances (fraud and/or mistake), and a

complaint alleging municipal liability under § 1983 is not one of those exceptions. *Leatherman*, 507 U.S. at 168. Therefore, by applying a textualist approach, and in the absence of an amendment to such Rules, this Court held that a higher standard could not be demanded by federal courts in these types of cases, since "unmeritorious" claims in any case could be handled by summary judgment and discovery. *Id*. at 168-69.

The opinion below cannot be squared with this Court's decision in *Leatherman*. For decades, this Court has adhered to the Rule that complaints filed under § 1983 do not require a higher pleading standard. Because of that, the general criteria on how to analyze a motion to dismiss is also applicable to complaints under that Section, including the federal courts' duty to make inferences only in the plaintiffs' favor. Therefore, and considering the characteristics of this case, *Leatherman* is applicable to a § 1983 pleading in which deliberate indifference of a governmental entity is asserted because of the existence of a pattern of constitutional violations committed by the same officer.

The Fifth Circuit is in open defiance of this Court's precedents. Despite *Leatherman*'s clear and explicit guidance as to how to proceed with the analysis of a complaint of this nature, the court of appeals made inferences on behalf of the City Respondent, even posing hypothetical questions to refute Petitioners' theory of the case.

Throughout those erroneous inferences and unwelcomed questions, the Fifth Circuit elevated the standard that is required under the Federal Rules, only because Petitioners' claim was raised under §

1983, requiring specific details of Sergeant Rudloff's previous conducts, and demanding evidence that could defeat any doubt regarding the officer's behavior. Because that is not the standard dictated by this Court, and because a pleading like the one presented by the Petitioners was detailed enough to overcome a motion to dismiss, this Court should grant certiorari to reinforce its holding established long ago in *Leatherman*, but willfully ignored by the Fifth Circuit despite it's often reliance by this Court.

Indeed, *Leatherman* is not just an isolated precedent. This Court has constantly used that standard while analyzing civil rights cases. For instance, in *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 11 (2014) (a case in which some police officers sued the city for which they worked alleging a violation of the due process clause), this Court reversed the Fifth Circuit reiterating that "no heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke § 1983 expressly in order to state a claim." In *Crawford-El v. Britton*, 523 U.S. 574, 595 (1998) (a case in which the question to be solved was whether courts of appeals could "craft special procedural rules" for Section 1983 cases to protect public officers from the inherent burdens of facing a judicial process), the opinion expressly stated that in *Leatherman* this Court rejected an invitation to revise the Federal Rules to implement a higher specificity requirement in cases alleging municipal liability.[2]

Likewise, *Leatherman* is consistently relied upon by the courts of appeals of the different circuits

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[2] *See also Manuel v. City of Joliet, Ill.*, 580 U.S., 357, 360 fn. 1 (2017).

across our nation, and the holding is identified as well-settled precedent leaving no margin for interpretation as to the method used by federal courts while dealing with this type of cases.

The examples are abundant and recent, and reveal that the Fifth Circuit placed itself outside of a common standard accepted and used nationwide: *Doe v. Cassel*, 403 F.3d 986, 988 (8th Cir. 2005) ("Common law heightened pleading requirements, while once enforced in § 1983 suits, have been eliminated. The Supreme Court invalidated heightened pleading requirements in § 1983 suits against municipalities in *Leatherman* […]"); *Hoefling v. City of Miami*, 811 F.3d 1271, 1275-76 (11th Cir. 2016) ("After *Leatherman*, we eliminated the heightened pleading standard in § 1983 cases not involving qualified immunity"); *Kyle v. Morton High School*, 144 F.3d 448, 455 (7th Cir. 1998) ("Before *Leatherman*, on occasion we would apply a more stringent standard for notice pleading in civil rights cases; we no longer do so. We judge [] complaint by the same standards we would apply in non-civil rights cases, and would reach the same result if it were, for example, a negligence or contract dispute").[3]

Contrary to the rest of the courts of appeals, the Fifth Circuit keeps trying to create a higher standard for pleadings that arise from § 1983 despite this Court's clear and unmistakable precedent, and notwithstanding the constant reminders from this Court holding that besides the explicit exceptions of the Federal Rules (fraud and/or mistake) any other

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[3] *See also Iqbal v. Hasty*, 490 F.3d 143, 153 (2d Cir. 2007); *Lee v. City of Los Angeles*, 250 F.3d 668, 679-80 (9th Cir. 2001); *Thomas v. Independence Tp.*, 463 F.3d 285, 294 (3d Cir. 2006); and *Jordan by Jordan v. Jackson*, 15 F.3d 333, 338 (4th Cir. 1994).

type of claim, for purposes of a motion to dismiss should be analyzed under the general rules and precedents of this Court, and no higher standard can be demanded, even if the claim comes from § 1983. Certiorari should be granted because the Fifth Circuit, unfortunately and inexplicably, requires a reminder of this Court's precedents.

II. Under *Connick* and the rest of circuits, a pattern of constitutional violations to plead deliberate indifference only requires similar incidents, not identical.

A. The Fifth Circuit disregarded this Court's holding in *Connick*.

Petitioners explained in the original complaint how they learned, after the constitutional violations they suffered, about 19 similar incidents in which Sergeant Rudloff had been involved, executing comparable violent acts like the ones he unjustifiably implemented during the May 2020 protests. Pet. App. 35a-39a. Petitioners alleged in detail how numerous members of the community, just like them, suffered from Rudloff's excessive force even though they did not represent a reasonable threat to the officer. *Id*.

While analyzing the city's motion to dismiss, the court of appeals concluded that Rudloff's past incidents were not similar enough to those pleaded by the Petitioners, since four of those incidents did not include physical conduct, none involved "less-than-lethal weapons", and they also did not occur in the context of a city-wide protest. *Id*. at 9a. The Fifth Circuit added that Petitioners failed to plausibly plead a pattern of constitutional violations because of the 19 past incidents: (i) one involved slamming a man's head into the ground while arresting him for

public intoxication, which did not happen in this case; (ii) in another incident Rudloff choked a man and struck him with the palm of his hand, but Petitioners did not experience those exact violent methods; and (iii) two incidents were car-related involving a traffic stop and a carjacking, but none of the Petitioners were driving when they interacted with Sergeant Rudloff. *Id.*

Just like the dissenting below enlightened, the complaint satisfied the requirements for a failure-to-discipline claim, at least to prevail in a motion to dismiss, because if Petitioners' allegations were true, that would raise a serious question about why the Respondent allowed Rudloff to continue patrolling the streets and interacting with the community as a police officer. *Id.* at 26a. The Fifth Circuit's decision is a direct disregard of this Court's holding in *Connick*.

Connick is a case in which the plaintiff alleged that a District Attorney failed to adequately train his prosecutors about their duty to produce exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963). This Court granted certiorari to decide whether a single *Brady violation* could be enough to hold the district attorney's office liable under § 1983. *Connick*, 563 U.S. at 54. Despite that this Court decided that an isolated violation in that case was not enough to hold the public office liable, the majority established the proper method to analyze the pleadings when deliberate indifference is claimed through a pattern of constitutional violations. *Id.* at 61-62.

By citing *Board of Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 410 (1997), this Court held that in a failure-to-train claim in the context of deliberate

indifference, a pattern of similar constitutional violations is "*ordinarily necessary*."[4] *Connick*, 563 U.S. at 62.

Since the case involved the failure to disclose the existence of a blood-stained swatch, this Court considered that previous reversals to actions conducted by prosecutors in the district attorney's office could not create a pattern of inadequate training, since none of the reversals involved the failure to disclose "blood evidence, a crime lab report, or physical or scientific evidence of any kind." *Id.* at 62-63. Such incidents were not similar enough to the specific constitutional violation pleaded in the case, and thus, there was no proper notice that could explain the presence of deliberate indifference. *Id.* at 63.

Connick was originated by the failure to disclose the existence of a blood-stained swatch. This Court however did not hold that only the previous failure to disclose *blood-stained swatches* could be suitable to create a proper pattern under § 1983 claim. On the contrary, this Court merely required the existence of *similar* incidents and even gave examples: the failure to disclose evidence involving blood, reports of the same technical field, or even some other physical or scientific evidence. *Id.* at 62-63. Thus, comparable constitutional violations according to the context or nature of the undisclosed evidence, were enough to present a valid claim, and no absolute factual identity was required at any moment by this Court.

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[4] According to this Court, that does not negate the narrow exception of *single-incident* liability when the failure is patently obvious under *Canton v. Harris*, 489 U.S. 378, 390 (1989).

Under *Connick*, Petitioners pleaded with sufficiency the fail-to-discipline claim, as the dissenting below eloquently recognized: "The plaintiffs' allegations demand a conclusion quite the opposite of the majority's. Because Rudloff's alleged unconstitutional actions were not limited to a single context, or a single means of violence, they show a propensity to use excessive force in any context, by any method." Pet. App. 27a.

The opinion below cannot be squared with this Court's decision in *Connick*. In order to raise a failure-to-discipline claim based on a pattern of previous constitutional violations, this Court has found, under § 1983, that plaintiffs need to present *similar* incidents, that is, comparable previous instances in which an officer incurred in a violation of the same nature. Under no circumstances does this Court's holding demand the existence of *identical* contexts, methods, and actions.

By granting the dismissal, the Fifth Circuit is in open defiance of this Court's precedents. Despite the clear and explicit guidance regarding the argumentative requirements to plausibly plead a pattern of constitutional violations, the court of appeals increased the *Connick* standard and fundamentally demanded a factual and contextual identity as prerequisite to infer the existence of Rudloff's pattern of violent interactions with members of the community.

Through an erroneous interpretation of the *similarity* requirement addressed in *Connick*, the Fifth Circuit elevated the standard that is required to plausibly plead a failure-to-discipline claim, inappropriately demanding identical previous facts of

Sergeant Rudloff's misconduct to consider the presence of a pattern of which the Respondent had notice of. Because that is not the standard designed by this Court, certiorari should be granted to reinforce the *Connick* precedent and clarify that its *similarity* test under no means can be assimilated to the very distinctive threshold of *identical*.

B. The Courts of Appeals are divided on this question presented.

Certiorari is also warranted in light of the developed circuit split over the *similarity* requirement to analyze the existence of a pattern of constitutional violations that could show deliberate indifference under Section 1983.

Fifth Circuit. To plausibly plead a failure-to-discipline claim, Petitioners presented in detail 19 previous incidents in which Sergeant Rudloff, contrary to the nature of his duty as a police officer, interacted with people by using excessive force. Pet. App. 35a-39a. Essentially, the Fifth Circuit dismissed the pleadings by considering that those past incidents were not factually identical to those suffered by the Petitioners.

With that interpretation of the *similarity* requirement addressed by this Court in *Connick*, the Fifth Circuit elevated the standard to plausibly plead the existence of a pattern of constitutional violations, demanding identical previous facts regarding Sergeant Rudloff's constitutional violations in order to consider that the city had proper notice, equating the *similarity* test to a threshold of *factual identity*.

The court of appeals found that there was no similarity by requiring the previous instances to be

identical, in upholding the district court's dismissal because this case did not involve an arrest for public intoxication, no chocking or stroking with a hand were used as violent methods, no traffic stop was at stake, and finally, none of the previous incidents involved a large-scale public protest. *Id.* at 9a.

Petitioners never argued in the complaint that Sergeant Rudloff's previous incidents were factually identical. They alleged that it was possible to perceive a constant use of unjustified force by the same police officer. The pattern of constitutional violations was a direct consequence of the way Rudloff interacted and used excessive force against members of the community despite that such a force was not required under the respective circumstances. It was the nature of the constitutional violations the aspect that fulfilled the *Connick similarity* requirement, and not the coincidence between every contextual aspect of those past cases. That approach was fully rejected by the Fifth Circuit, demanding a factual identity to recognize a pattern and disregarding the common nature of the violations described in the complaint.

Sixth Circuit. For its part, the Sixth Circuit has adopted a different interpretation of the *similarity* requirement to the one structured in the opinion below.

In *Franklin v. Franklin County, Kentucky*, No. 23-6107, 2024 WL 3823715 (6th Cir. Aug. 15, 2024), the court of appeals faced a § 1983 claim brought by a jail inmate who was sexually assaulted in a transportation van during a trip back from the hospital against the jail sergeant who assaulted her and two other jail employees who did not take adequate measures to prevent the event. *Id.* at *1-2.

The court explained how a specific number of previous cases is not a definitive aspect to conclude whether a pattern is present or not. *Id.* at *6. For instance, the same circuit had found cases in which five similar incidents over the course of three years were sufficient to constitute a pattern (*Simpkins v. Boyd Cnty. Fiscal Ct.*, No. 21-5477, 2022 WL 17748619, at *13 (6th Cir. Sept. 2, 2022), case concerning a plaintiff that was tied to a chair by a police officer, who then proceeded to beat him down, and a pattern was identified since the previous incidents involved the use of that same restraint chair as corporal punishment without any justification), but also other cases in which three instances of misconduct exposed during one police investigation did not establish a clear and persistent pattern (*Peet v. City of Detroit*, 502 F.3d 557, 568 (6th Cir. 2007), brought by a plaintiff who only showed the existence of two additional arrests without probable cause by the Police Department, for a total of three instances, but all of them related to just one criminal investigation). *Franklin*, 2024 WL 3823715, at *6.

The Sixth Circuit recognized that there was not a clear explanation of how *similar* past incidents can constitute a pattern of similar constitutional violations. *Id.* The court held that prior examples of wrongdoing must violate "the same constitutional rights and violate them in the same way." *Id.* However, the court explicitly stated that the pattern of similar conducts, "need not be identical, or even "almost identical" to that which a plaintiff alleges occurred in her case." *Id.*[5]

[5] "No caselaw within our circuit requires the production of evidence of almost identical conduct, such as an assault involving

While the Sixth Circuit concluded that the case did not involve a pattern of Eighth Amendment violations, because the instances of sexual misconduct were not perpetrated against an inmate in violation of the Eighth Amendment, the Sixth Circuit explained that the plaintiff had no obligation to demonstrate the existence of a previous sexual assault of an inmate that specifically occurred on a transportation vehicle. *Id*.

The Sixth Circuit never demanded identical facts in order to recognize the existence of a pattern of incidents, which in any case could have been construed as long as the constitutional violation was the same (in that case, to the Eight Amendment) and the violation happened in *the same way* (for instance in that case, an officer executing a misconduct of sexual nature involving an inmate, despite factual variances like an actual assault being consummated or not, or if the event happened on a transportation vehicle or in a different location).

The same standard had been already suggested by the Sixth Circuit in *Berry v. Delaware County Sherriff's Office*, 796 Fed.Appx. 857 (6th Cir. 2019), in which the court analyzed a claim based on the argument that the Sheriff's Office inadequately trained its officers to recognize "individuals in questionable health", because a person that was experiencing chronic pain while being arrested, was qualified anyway as "fit for confinement", situation that ultimately resulted in her death due to a diverticulitis condition. *Id*. at 859-861.

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tightened straps around the inmate's neck as alleged in this case." *Simpkins*, 2022 WL 17748619, at *13.

Even if the opinion reached the conclusion that there were no elements to conclude that a pattern existed, the court held that the similarity must be particularized, because in *Connick* this Court "connected the notice requirement not merely to the generalized type of constitutional violation in dispute (*Brady* violations), but rather to the specific way that the constitutional violation happened." *Id.* at 862.[6] The Sixth Circuit ultimately reached the holding that "[i]n short, the prior examples of wrongdoing must violate the same constitutional rights and violate them in the same way." *Id.* at 863.[7]

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[6] In *D'Ambrosio v. Marino*, 747 F.3d 378 (6th Cir. 2014), a case involving a *Brady* violation, claims were made indicating that a county had sufficient notice of an office-wide practice of persistent conducts. While analyzing the existence of a pattern, the Court held that the previous incidents were not *similar*, since only one other *Brady* violation occurred, and the rest of the incidents were *non-Brady* instances of prosecutorial misconduct. *Id.* at 388. By examining the nature of the constitutional violations, and not the factual nuances of the previous incidents, the Sixth Circuit considered that the *similarity* test had not been met. *Id.*

[7] A similar standard was held by the Seventh Circuit in *Flores v. City of South Bend*, 997 F.3d 725 (7th Cir. 2021). The case involved a police officer that caused a death by driving recklessly. *Id.* at 728. The complaint asserted that the city failed to train the police officer considering a history of reckless speeding by members of the Police Department. *Id.* at 733. The plaintiff contended that officers frequently drove above 50 miles per hour, well above limits, and at least on 3 occasions the same police officer drove at high rates of speed (70 mph, 114 mph, and 60 mph). *Id.* Despite telling the officers to operate their vehicles only up to a maximum of 50 miles per hour, the city never reprimanded anyone, nor did it require additional training for those who disregarded the policy. *Id.* Even if the previous incidents did not involve a death, and thus, there was no factual identity, the court held that no death was required before the city

The result of the circuit split is that plaintiffs in Section 1983 cases will face different standards by which federal courts should analyze claims regarding a deliberate indifference recognized through a pattern of constitutional violations, and thus, will be subjected to different judicial outcomes depending on their location. Likewise, a unified standard will give police and governmental agencies clear directives, so they are not held to different standards opening them up to liability. This is precisely the type of circuit conflict and discrepancy in the application of federal law that only this Court can resolve.

III. Reversal on the questions presented would impact the court's decision regarding the notice of deliberate indifference.

The court of appeals added that in any case, the district court's dismissal should be upheld because it was not obvious for the city that Sergeant Rudloff would act in such egregious way during the May 2020 protests, and thus, that people's rights could be at risk. Pet. App. 10a. The court specified that Rudloff's past incidents happened in a time frame of more than two decades and considering the size of the City's Police Department and its number of arrests, the incidents could not support a sufficient pattern of illegality. *Id*. at 10a-13a.

This other argumentative construction is clearly intertwined with the way the court solved the

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could implement proper training. *Id*. at 734. The court considered that the allegations were enough to survive a motion to dismiss, since the key aspect was the nature of the legal violation, and therefore, the reckless driving was a common element between the incidents, despite that the outcome had been different. *Id*.

matters related to the questions presented in this petition. The court of appeals misread its own precedents (especially *Pineda v. City of Houston*, 291 F.3d 325 (5th Cir. 2002)), in which the Fifth Circuit decided that a small number of negative incidents *of the entire Police Department* of a large city could not constitute a pattern, and wrongly used that holding in a case in which numerous acts *of the same single police officer* were described to plausibly show a pattern.

The court's decision is by no means independent to the other reasons why the dismissal was upheld. Indeed, to build the argument that the city was not constructively aware of Rudloff's pattern of conducts, the opinion indicated that the complaint included an insufficient number of incidents to create such a pattern capable of providing notice. Pet. App. 11a. The court added that the contextual elements (size of the Police Department and number of arrests) did not facilitate the identification of a pattern, and thus, a constructive notice. *Id*. at 12a-13a.

It is quite obvious that the ruling of this Court regarding the questions presented would have an immediate and direct effect on this allegedly *parallel* argument. If this Court reverses the opinion below, for considering that Sergeant Rudloff's previous acts were specific enough in the complaint under *Leatherman*, and similar enough under *Connick*, then a plausible pattern of constitutional violations will be validly inferred from the pleadings.

The court's argument rests as a whole on the consideration that Petitioners did not present enough facts to show the existence of a pattern that the city could be aware of. By admitting, on the contrary, that there was a plausible pattern because *the same officer*

and not *the entire* Police Department committed *similar* constitutional violations, then it would be unreasonable, at least for purposes of a motion to dismiss and without any discovery made yet, to consider that the context of the Police Department prevents the existence of constructive notice. Like this Court has ruled, a pattern of similar constitutional violations is generally the keynote element to demonstrate deliberate indifference by a municipality (*see Bryan Cty.*, 520 U.S. at 408-409), since similar incidents can give notice that some specific measures were necessary to prevent more constitutional violations. *Connick*, 563 U.S. at 63.

The entangled nature of this collateral argument should not be an impediment to grant certiorari.

IV. The Fifth Circuit's decision is wrong.

Certiorari should also be granted because the Fifth Circuit's approach is wrong under this Court's precedents, the text of the Federal Rules of Civil Procedure, and common sense.

First, the court of appeals is plainly wrong in its analysis of Petitioners' pleadings in the context of a motion to dismiss. As any other pleading, while analyzing such a motion, federal courts need to accept the facts presented by the plaintiffs as true and make inferences only in favor of them. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-556 (2007).

The reason behind the logic of how this system works is quite obvious: under FED. R. CIV. P. 8(a)(2), a pleading that states a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Therefore, a motion

to dismiss under FED. R. CIV. P. 12(b) is filed when the pleading, and no other evidence obtained through discovery, is the only element available for the court's consideration

Indeed, no further evidence could be demanded from plaintiffs because no discovery has been conducted yet. Without such a rule, courts could require that plaintiffs, right from the start of a case, present proper and sufficient evidence to demonstrate the claims of relief requested. That would be contrary to the whole purpose and logic of the Federal Rules of Civil Procedure, and to the reason why judicial process is developed through successive steps and stages, in which evidence is progressively gathered by both parties.

The Fifth Circuit inexplicably did just the opposite. It qualified the lack of further information in the complaint as Petitioners' failure to present a compelling theory of their case with abundant factual support to properly verify any nuance of Rudloff's previous acts despite that no discovery had been made, ignoring that enough elements were described to conclude precisely that discovery was warranted during the successive procedural steps.

This misunderstanding of the scope and nature of the Federal Rules, and even of the Rules' explicit text, is mostly represented by the hypothetical questions formulated by the Fifth Circuit in the opinion below. Pet. App. 8a. Through them, the court of appeals basically presented alternative theories that could justify another explanation of Sergeant Rudloff's past actions. That is simply improper during the analysis of a mere motion to dismiss.

The dissenting below expressed this with clarity, by stating that the majority inexplicably assumed the duty to speculate how the defendants might overcome plaintiffs' allegations, without any chance of conducting discovery, and by alternatively assuming that Sergeant Rudloff's actions *could* be justified. *Id.* at 25a. This holding cannot be squared with this Court's *Leatherman* precedent and is contrary to the way the pleadings are regulated in the Federal Rules.

Second, the Fifth Circuit's approach while analyzing the existence of a pattern of previous constitutional violations because of the similarity between past incidents, was also erroneous. The court of appeals considered that there was no similarity because this case did not involve an arrest for public intoxication, no stroking with a hand were used as violent methods, no traffic stop was at stake in here, and finally, none of the previous incidents involved a large-scale public protest. *Id.* at 9a.

In their complaint, Petitioners argued that Rudloff committed years of unnecessary violence against multiple members of the community. *Id.* at 35a-39a. Petitioners never contended that those past actions were contextually coincident to the May 2020 protests in Dallas. On the contrary, the complaint stated that it was possible to observe a constant use of unjustified force by the same police officer, that is, the pattern of constitutional violations was a consequence of the way Rudloff interacted and used excessive force against the people, despite that such a force was not required according to the respective circumstances. It was precisely that, the unwarranted used of excessive force under the existing conditions, the aspect that

originated the similarity between this case and those previous incidents, revealing enough elements to plausibly infer the existence of a pattern of constitutional violations.

Under *Connick*, this Court established that a pattern of facts directed to show deliberate indifference requires *similar* constitutional violations. The Fifth Circuit imposed as threshold the need to basically show *identical* previous facts. The dissenting opinion below presented that argumentative failure of the majority with great precision, concluding: "Our cases simply do not support that punctilious approach. Past violations must be "similar"; they need not be identical." *Id*. at 26a-27a.

By applying the Fifth Circuit's logic in this case, a pattern of constitutional violations could have been established only if Petitioners would have presented information about previous incidents in which Sergeant Rudloff, in the context of a large-scale protest, would have used less-than-lethal weapons against specific peaceful protestors that represented no reasonable threat of harm to the officer. Less than that, apparently, could not be presented or analyzed as a pattern. Such a conclusion defies all rules of logic and common sense.

By definition, a pattern requires a repetition of common elements, but in this case the court of appeals absolutely missed the mark. The common elements that need to be alike are not necessarily the specific and detailed circumstances, but (i) the way in which a specific police officer interacts with people in situations where there is no reasonable threat towards him; and (ii) the questionable and

reprimandable decisions to engage in the use of excessive force.

It is the nature of the constitutional violations, that is, the underlying core of Sergeant Rudloff's actions, what constitutes the pattern alleged by Petitioners, and not ancillary elements like whether a traffic stop, or a person intoxicated were involved, or the specific violent method chosen by Rudloff to commit such egregious acts. A common element is clearly present throughout the past incidents detailed in the complaint: a specific police officer who constantly and systematically chooses to use excessive force when that is not needed under the circumstances.

Petitioners were peaceful protestors that, while interacting with Sergeant Rudloff, were met with unconstitutional physical and verbal violence. Because that central element can also be recognized in the previous incidents detailed in the complaint, a plausible pattern of constitutional violations was sufficiently pleaded. Under *Connick*, this Court should reverse the outrageous Fifth Circuit's opinion.

In sum, the Fifth Circuit's approach is incompatible with this Court's precedents and with the explicit text of the Federal Rules of Civil Procedure. This Court should grant the petition and enforce such precedents by their terms.

V. The questions presented are critically important and this case presents an ideal vehicle to solve them.

The questions presented are important, and this case presents a clean vehicle for resolving the circuit split.

There is no doubt that the questions presented are of profound importance. They implicate the uniformity of federal law in an area of the utmost social importance: the constitutional and legal limits to the exercise of power by police officers.

This case warrants this Court's review because the first question presented is of great legal and practical significance. This case provides this Court with an opportunity to reinforce its precedent that Section 1983 pleadings are subjected to the same general standard of analysis under the Federal Rules of Civil Procedure. Despite how this Court has built a straightforward holding in that regard, the Fifth Circuit demonstrated that a reinforcement of such precedent is necessary. The legal issue of how to evaluate whether § 1983 pleadings meet the plausibility requirement will be applicable across the country to every single complaint filed under that Section. Hundreds of district court cases each year will use this Court's decision as to this question.

In addition, this case will provide this Court with an opportunity to clarify what type of previous constitutional violations are *similar* enough in order to constitute an actionable pattern that can be identified by the courts of appeals, in the context of a liability argument based on deliberate indifference to discipline.

The opinion below demonstrates that different courts of appeals are reaching dissimilar interpretations and conclusions as to the concept of *similar* while analyzing past constitutional violations, requiring guidance from this Court due to the multiplicity of judicial standards used across our nation. Given the frequency with which the federal

courts perform the *deliberate indifference* examination in failure-to-discipline claims, this Court should grant certiorari to provide direction on this important question of federal law.

Therefore, these questions are of remarkable practical significance for the thousands of civil-rights plaintiffs who file § 1983 claims each year.[8] Petitioners in this case are the perfect example of the kinds of plaintiffs who may be harmed by rulings like the opinion below, especially in such an important context like public protests regarding the way public power is being exercised against minorities in our country. Equally, a unified standard will provide guidance not only to plaintiffs, but also clear parameters to police and governmental agencies throughout our country, regarding the threshold by which their liability would be held.

This case is also an ideal vehicle for resolving the circuit split. The questions presented were core aspects reasoned in the opinions by the district court and the court of appeals, and there is no reason to think that further circuits' opinions will suddenly solve the developed conflict on these issues.

The questions are clearly presented, and there are no alternative holdings or grounds passed on by the court below that would interfere with this Court's review. Both the majority opinion and the dissent recognized the elements of the questions presented, with the majority plainly adopting a position contrary to this Court's precedents, and the dissent explicitly

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[8] "Each year the federal courts face dockets filled with huge numbers of § 1983 cases" (MARTIN A. SCHWARTZ & KATHRYN R. URBONYA, SECTION 1983 LITIGATION 4, Federal Judicial Center, 2nd ed. 2008).

recognizing the defiance to such holdings. The record is not only short, but also straightforward. There are simply no obstacles standing in the way of this Court's resolution of the questions presented.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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